

Proposed Rules

Federal Register

Vol. 75, No. 194

Thursday, October 7, 2010

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 930

RIN 3206-AL67

Programs for Specific Positions and Examinations (Miscellaneous)

AGENCY: U.S. Office of Personnel Management.

ACTION: Proposed rule with request for comments.

SUMMARY: The U.S. Office of Personnel Management (OPM) is proposing to eliminate the licensure requirements for incumbent administrative law judges who are covered under the Administrative Law Judge Program.

DATES: Comments must be received on or before December 6, 2010.

ADDRESSES: You may submit comments through the Federal eRulemaking Portal at <http://www.regulations.gov>. All submissions received through the Portal must include the agency name and docket number or Regulation Identifier Number (RIN) for this proposed rulemaking.

You may also send, deliver, or fax comments to Angela Bailey, Deputy Associate Director for Recruitment and Hiring, U.S. Office of Personnel Management, Room 6566, 1900 E Street, NW., Washington, DC 20415-9700; e-mail at employ@opm.gov; or fax at (202) 606-2329.

FOR FURTHER INFORMATION CONTACT: Ms. Linda Watson by telephone at (202) 606-0830; by fax at (202) 606-2329; by TTY at (202) 418-3134; or by e-mail at linda.watson@opm.gov.

SUPPLEMENTARY INFORMATION: On March 20, 2007, OPM published a final rule at 72 FR 12947, to revise the Administrative Law Judge Program. These revisions included a requirement for incumbent administrative law judges (ALJs) to “possess a professional license to practice law and be authorized to practice law under the laws of a State, the District of Columbia, the Commonwealth of Puerto Rico, or any

territorial court established under the United States Constitution.” That regulation (currently at 5 CFR 930.204(b)(1)) goes on to state, “Judicial status is acceptable in lieu of ‘active’ status in States that prohibit sitting judges from maintaining ‘active’ status to practice law. Being in ‘good standing’ is also acceptable in lieu of ‘active’ status in States where the licensing authority considers ‘good standing’ as having a current license to practice law.” See 72 FR at 12955.

At the time the final rule was published, OPM noted that under the Administrative Procedure Act, ALJs preside in formal proceedings requiring a decision on the record after an opportunity for a hearing, and consequently, ALJs must be held to a high standard of conduct so that the integrity and independence of the administrative judiciary is preserved. The requirement was intended to ensure that ALJs, like attorneys, remain subject to a code of professional responsibility. However, on July 18, 2008, OPM published an interim rule, at 73 FR 41235, suspending the professional license requirement as it applies to incumbent ALJs, to prevent any adverse impact on incumbents, because we had “reconsidered comments received during the notice and comment period * * * about the burdens imposed by the active licensure requirement, as it applies to incumbents, the potential differences between the ethical requirements that pertain to an advocate and those requirements that pertain to someone asked to adjudicate cases impartially, and the variations in what States require as to lawyers serving as ALJs.”

OPM is considering whether the licensure requirement for incumbents should be eliminated from the final rule. In addition to the reasons stated above, OPM recognizes that once an applicant is appointed as an ALJ, he or she becomes subject both to supervision appropriate to the position and to the standards of ethical conduct for employees of the Executive Branch, codified by the Office of Government Ethics at part 2635 of this title. Moreover, an ALJ who exhibits conduct that rises to the level of “good cause established and determined by the Merit Systems Protection Board on the record after opportunity for hearing by the Board,” 5 U.S.C. 7521, may be subject to

an adverse action pursuant to statute. 5 CFR 930.211(c) enumerates other actions that may be taken in appropriate circumstances.

In conclusion, OPM believes that the standards of ethical conduct that apply to ALJs as Federal employees, and agencies’ existing authority to supervise ALJs and take actions against them in appropriate circumstances, are sufficient to ensure that ALJs are held to a high standard of conduct. Accordingly, OPM is proposing to permanently eliminate the requirement in § 930.204(b), that an incumbent ALJ must maintain a particular sort of license or status with respect to the practice of law, as unnecessary. OPM is soliciting comments, once again, on this narrow issue.

However, OPM is proposing no amendment to part 930, as it concerns *applicants*. OPM remains convinced that active licensure at the time of application and appointment is vital as an indicator that the applicant presenting himself or herself for assessment and possible appointment has been subject to rigorous ethical requirements right up to the time of appointment.

OPM will consider comments on this proposed rule and comments on the interim rule published at 73 FR 41235 when issuing a final rule.

Executive Order 12866, Regulatory Review

This proposed rule has been reviewed by the Office of Management and Budget in accordance with Executive Order 12866.

Regulatory Flexibility Act

I certify that these regulations would not have a significant economic impact on a substantial number of small entities (including small businesses, small organizational units, and small governmental jurisdictions) because they would affect only some Federal agencies and employees.

List of Subjects in 5 CFR Part 930

Administrative practice and procedure, Computer technology, Government employees, Motor vehicles.

U.S. Office of Personnel Management.

John Berry,
Director.

Accordingly, OPM proposes to amend 5 CFR part 930 as follows:

PART 930—PROGRAMS FOR SPECIFIC POSITIONS AND EXAMINATIONS (MISCELLANEOUS)

Subpart B—Administrative Law Judge Program

1. The authority citation for subpart B continues to read as follows:

Authority: 5 U.S.C. 1104(a), 1302(a), 1305, 3105, 3301, 3304, 3323(b), 3344, 4301(2)(D), 5372, 7521, and E.O. 10577, 3 CFR, 1954–1958 Comp., p. 219.

2. Amend § 930.204 by revising paragraph (b) to read as follows:

§ 930.204 Appointments and conditions of employment.

* * * * *

(b) *Licensure.* At the time of application and any new appointment, the individual must possess a professional license to practice law and be authorized to practice law under the laws of a State, the District of Columbia, the Commonwealth of Puerto Rico, or any territorial court established under the United States Constitution. Judicial status is acceptable in lieu of “active” status in States that prohibit sitting judges from maintaining “active” status to practice law. Being in “good standing” is also acceptable in lieu of “active” status in States where the licensing authority considers “good standing” as having a current license to practice law.

* * * * *

[FR Doc. 2010–25316 Filed 10–6–10; 8:45 am]

BILLING CODE 6325–39–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–0957; Directorate Identifier 2010–NM–062–AD]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Model 767 Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede an existing airworthiness directive (AD) that applies to certain Model 767 airplanes. The existing AD currently requires, for certain airplanes, reworking the bonding jumper assemblies on the drain tube assemblies of the slat track housing of the wings. For certain other airplanes, the existing

AD requires repetitive inspections of the drain tube assemblies of the slat track housing of the wings to find discrepancies, corrective actions if necessary, and terminating action for the repetitive inspections. This proposed AD would also require replacing the drain tube assemblies. For certain airplanes, this proposed AD would also require installing an additional electrostatic bond path for the number 5 and 8 inboard slat track drain tube assemblies. For certain other airplanes, this proposed AD would also require reworking the bonding jumper assembly. This proposed AD would also revise the applicability to include additional airplanes. This proposed AD results from reports of fuel leaks from certain drain locations of the slat track housing near the engine exhaust nozzles of the wings, which could result in a fire when the airplane is stationary, or taxiing at low speed; reports of a bonding jumper assembly of certain drain tubes that did not meet bonding specifications and could result in electrostatic discharge and an in-tank ignition source; and reports of fuel leaks onto the main landing gear (MLG) as a result of a cracked drain tube at the number 5 or 8 slat track housing, which could let fuel drain from the main fuel tanks into the dry bay area of the wings and onto hot MLG brakes and result in a fire.

DATES: We must receive comments on this proposed AD by November 22, 2010.

ADDRESSES: You may send comments by any of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *Fax:* 202–493–2251.

- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, Washington 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; e-mail me.boecom@boeing.com; Internet <https://www.myboeingfleet.com>. You may review copies of the referenced service information at the FAA,

Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

You may examine the AD docket on the Internet at <http://www.regulations.gov>; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (telephone 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Douglas Bryant, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle Aircraft Certification Office (ACO), 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone 425–227–2384; fax 425–917–6590.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include “Docket No. FAA–2010–0957; Directorate Identifier 2010–NM–062–AD” at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

We will post all comments we receive, without change, to <http://www.regulations.gov>, including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

On July 12, 2001, we issued AD 2001–14–19, amendment 39–12330 (66 FR 38350, July 24, 2001), for certain Boeing Model 767 airplanes. That AD requires, for certain airplanes, reworking the bonding jumper assemblies on the drain tube assemblies of the slat track housing of the wings. For certain other airplanes, that AD requires repetitive inspections of the drain tube assemblies of the slat track housing of the wings to find discrepancies, corrective actions if necessary, and terminating action for the repetitive inspections. That AD was