

Proposed Rules

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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 300

RIN 3206-AE80

Employment (General); Use of Private Sector Temporaries

AGENCY: Office of Personnel Management.

ACTION: Proposed rule with request for comments.

SUMMARY: The Office of Personnel Management (OPM) proposes to authorize Federal agencies to use private sector temporaries for 120 work days instead of 120 calendar days as currently permitted. Agencies would continue to purchase temporary help services through the Federal procurement process following all applicable laws and regulations relating to the purchase of goods or services from the private sector. The proposed change would give agencies more flexibility to conduct their operations, as recommended by the National Performance Review.

DATES: Comments must be received on or before November 7, 1995.

ADDRESSES: Send or deliver written comments to Leonard R. Klein, Associate Director for Employment, U.S. Office of Personnel Management, 1900 E Street NW., Room 6F08, Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Ellen Russell on 202-606-0830, FAX 202-606-2329, or TDD 202-606-0023.

SUPPLEMENTARY INFORMATION: On January 25, 1989, OPM published [at 54 FR 3762] regulations authorizing Federal agencies to use commercial temporary help services in two situations: certain employee absences and critical unexpected workload needs. Because the authority was new and there were concerns about the possibility of misuse, the timeframes were deliberately tight. Moreover, the regulations contained two sets of time limits: a 45-work day limit on using a

particular individual from a temporary help service firm and an overall 120-calendar-day limit on using temporary help services for any one situation. When justified, OPM approved agency requests for extensions.

Our review indicates that in the more than 6 years the authority has been in effect, Federal agencies have appropriately used the services of temporary help firms. Agencies indicated that their employees favor the policy because using temporary help services alleviates extra work pressure and stress during workload peaks and also makes it easier for employees to get time off for critical personal needs. Agencies recommended continuing the authority for temporary help service firms without the 45-day restriction on the use of same individual from a firm because it was inefficient to retrain a new person after 45 days.

Although this proposal would permit agencies to use temporary help services for longer periods, there is no change in the Office of Personnel Management view that continuing work is most appropriately performed by permanent Federal employees. On September 13, 1994, OPM published final regulations [at 59 FR 46895] to ensure that temporary Federal appointments are used to meet truly short-term needs. As in those regulations, the limits in this proposal are designed to restrict the use of temporary help services to short-term needs.

In exercising the discretion to use temporary help services, agencies are reminded of their labor relations obligations under Chapter 71 of Title 5 of the U.S. Code and Executive Order 12871.

This proposal would lengthen the time agencies could use temporary help services for an individual situation from 120 calendar days to 120 workdays. The new 120-workday limit would also apply to an agency's use of a particular individual from a firm; a change from the current 45-workday limit in a 6-month period. The proposal would continue the provision for agencies to request an extension from local OPM service centers when the need for temporary help services continued beyond the initial 120 workdays and would specify that OPM could approve an extension for up to a total of 240 workdays. This would mean that an agency with OPM approval could use

the same individual from a firm for up to 240 workdays on the same assignment or on a different assignment. In this context, "agency" means a major organizational element, headquarters or field, of an agency.

The proposal continues the current prohibitions against using temporary help services to displace Federal employees or in place of regular civil service procedures for permanent appointment and would add a prohibition against use of temporary help services to circumvent controls on employment levels. The proposal also continues current provisions permitting the use of temporary help services only when there are no current agency employees who could be spared to do the work, there are no former employees available on the agency's reemployment priority list, and when there are no applicants available for temporary Federal employment within the timeframe needed.

The proposal would change the reporting requirement to OPM from annual reports to reports on an as-requested basis. Agencies would have to maintain the records necessary for such reports and for internal evaluation. The proposed wording more accurately reflects the fact that agencies have the primary responsibility for oversight. Agency contracting officers are responsible for proper performance of the contract for temporary help services. Additionally, agency expenditures for temporary help services are subject to the full range of internal controls and oversight, Inspector General reviews, and audits which apply to every service contract. Agency adherence with these regulations is subject to review under OPM's regular compliance and evaluation activities.

Finally, the proposal would make several editorial changes, for example, deleting reference to the Federal Personnel Manual, a document abolished on December 31, 1994, and adding a reference to temporary reassignments and time-limited promotions as mechanisms for agencies to accomplish work instead of using temporary help firms. The proposal would also clarify that agencies may not use temporary help services for the Senior Executive Service or for the work of managerial or supervisory positions.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities for the following reasons:

1. OPM is not regulating entities (including businesses) of any size, or imposing record keeping, reporting, or other compliance requirements on them. OPM is regulating the conduct of Federal agencies if they choose to use temporary help firms.

2. The requirements an entity must observe are generated through an agency-initiated contracting process featuring competitive bidding under the already-established, statutory Federal procurement system. That system applies to all contractors providing goods and services to the Government. The entities affected by that system are those who seek a contract. Those who win a contract receive a beneficial economic impact.

Executive Order 12866, Regulatory Review

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

List of Subjects in 5 CFR Part 300

Freedom of information, Government employees, Reporting and recordkeeping requirements, Selective Service System.

Office of Personnel Management.

James B. King,

Director.

Accordingly, OPM proposes to amend part 300 of title 5, Code of Federal Regulations, as follows:

PART 300—EMPLOYMENT (GENERAL)

1. The authority citation for part 300 is revised to read as follows:

Authority: 5 U.S.C. 552, 3301, 3302; E.O. 10577, 3 CFR, 1954–1958 Comp., page 218, unless otherwise noted.

Secs. 300.101 through 300.104 also issued under 5 U.S.C. secs. 7201, 7204, 7701; E.O. 11478, 3 CFR, 1966–1970 Comp., page 803.

Secs. 300.301 also issues under 5 U.S.C. 1104 and 3341.

Secs. 300.401 through 300.408 also issued under 5 U.S.C. secs. 1302(c), 2301, and 2302.

Secs. 300.501 through 300.507 also issued under 5 U.S.C. 1103(a)(5).

Sec. 300.603 also issued under 5 U.S.C. 1104.

Secs. 300.801 through 300.802 issued under 5 U.S.C. 3328.

1. Section 300.502 is revised to read as follows:

§ 300.502 Coverage

(a) The regulations in this subpart apply to the competitive service and to

Schedules A and B in the excepted service.

(b) Agencies may not use temporary help services for Senior Executive Service or for the work of managerial or supervisory positions.

2. In § 300.503 paragraph (c)(3) is added to read as follows:

§ 300.503 Conditions for using private sector temporaries.

* * * * *

(c) * * *

(3) To circumvent controls on employment levels.

3. In § 300.504, paragraphs (a) and (b) are revised to read as follows:

§ 300.504 Prohibition on employer-employee relationship.

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(a) In accordance with the regulations in this subpart, an agency may use private sector temporaries in a particular situation for no more than 120 workdays. If the situation justifies use of temporary help services beyond the initial 120 workdays, the agency may request OPM authorization for an additional period not to exceed 120 workdays, up to a total of 240 workdays.

(b) An individual employee of a temporary help firm may work at a major organizational element (headquarters or field) of an agency for no more than 120 workdays in a 12 month period. An agency may request OPM authorization to keep the individual for an additional period not to exceed 120 workdays up to a total of 240 workdays:

(1) In conjunction with an extension of the overall time limit for a particular situation, or

(2) For a different situation if the using of the same individual would be in the interest of good administration.

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4. Section 300.505 is revised to read as follows:

§ 300.505 Relationship of civil service procedures.

Agencies continue to have full authority to meet their temporary needs by various means, for example, redistributing work, authorizing overtime, using in-house pools, and making details or time-limited promotions of current employees. In addition, agencies may appoint individuals as civil service employees on various work schedules appropriate for the work to be performed.

5. Section 300.507 is revised to read as follows:

§ 300.507 Documentation and oversight.

Agencies are required to maintain records and provide oversight to

establish that their use of temporary help service firms is consistent with the regulations in this subpart. As needed, OPM may request agencies to provide information on the extent of their use of temporary help service firms.

[FR Doc. 95–22317 Filed 9–7–95; 8:45 am]

BILLING CODE 6325–01–M

DEPARTMENT OF AGRICULTURE**Agricultural Marketing Service****7 CFR Part 1260**

[No. LS–95–007]

Beef Promotion and Research; Reapportionment

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would adjust representation on the Cattlemen's Beef Promotion and Research Board (Board), established under the Beef Promotion and Research Act (Act) of 1985, to reflect changes in cattle inventories and cattle and beef imports that have occurred since the Board was reapportioned in 1993. These adjustments are required by the Beef Promotion and Research Order (Order) and would result in an increase in Board membership from 107 to 111, effective with the Secretary's 1996 appointments.

DATES: Comments must be received by October 10, 1995.

ADDRESSES: Send two copies of comments to Ralph L. Tapp, Chief, Marketing Programs Branch; Livestock and Seed Division; Agricultural Marketing Service (AMS), USDA, Room 2606–S; P.O. Box 96456; Washington, D.C. 20090–6456. Comments will be available for public inspection during regular business hours at the above office in Room 2606–South Building, 14th and Independence Avenue, Southwest, Washington, DC.

FOR FURTHER INFORMATION CONTACT:

Ralph L. Tapp, Chief, Marketing Programs Branch, on 202/720–1115.

SUPPLEMENTARY INFORMATION:**Executive Orders 12866 and 12778 and the Regulatory Flexibility Act**

The Department of Agriculture is issuing this rule in conformance with Executive Order 12866.

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. It is not intended to have retroactive effect. Section 11 of the