

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 316

RIN 3206-AH47

Temporary and Term Employment

AGENCY: Office of Personnel Management.

ACTION: Proposed regulations.

SUMMARY: The Office of Personnel Management (OPM) proposes to revise regulations on nonpermanent employment as part of continuing efforts to streamline the appointing system. The proposal would eliminate the authority for temporary appointments pending the establishment of a register (TAPER) as well as the "outside-the-register authority" for term appointments. The proposal would give OPM authority to extend the length of term appointments when justified, clarify the crediting of prior service for the required trial period, and allow certain excepted service employees whose positions are brought into the competitive service to serve the full 4-year period allowed for term appointment. The proposal would also add four categories of individuals to the list of those eligible for noncompetitive temporary and term appointments on the basis that they are currently eligible for permanent appointment and would clarify the conditions for making nonpermanent appointments based on a veteran's eligibility for a veterans readjustment appointment (VRA). To help agencies control the costs of workers' compensation by returning more injured employees to duty, the proposal would permit the reappointment of injured temporaries to any position for which qualified. Finally, the proposal would eliminate references to the former Federal Personnel Manual.

DATES: Comments must be received on or before November 8, 1996.

ADDRESSES: Send or deliver written comments to Mary Lou Lindholm,

Associate Director for Employment, Office of Personnel Management, Room 6F08, 1900 E Street NW., Washington, DC 20415.

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

SUPPLEMENTARY INFORMATION:

Length of Term Appointments

Agencies were authorized in 1962 to use term appointments of up to 4 years for project work with prior approval of the Civil Service Commission. A few years later, the Commission delegated full authority to agencies. On January 13, 1995, OPM broadened the conditions under which agencies could make term appointments to include nonpermanent situations other than project work. See § 316.301.

Some agencies have questioned whether they could make a second term appointment of an individual to the same position when the need for the employee continued beyond the 4-year limit. The appropriate procedure would be for the agency to document the reasons for the continued need of the individual and seek OPM approval to extend the term appointment. Although the current regulations do not prohibit consecutive term appointments as long as the agency follows appropriate competitive hiring procedures, the need for more than one term appointment suggests that a permanent appointment may be more appropriate.

This proposal would allow OPM, where clearly justified, to authorize extensions beyond the 4-year limit, including extensions in advance. Currently, OPM permits agencies to extend term appointments under certain conditions by issuing a variation to the regulations under § 5.1. The proposed regulatory provision permitting OPM to authorize extensions would change the form, not the substance, of the procedure in order to reduce paperwork.

We also propose to clarify that agencies may make term appointments in any increments so long as the appointment is for more than 1 year and no more than 4 years. For example, when an agency makes a term appointment for 13 months, the agency may extend that appointment up to the 4-year limit in as many increments as the agency chooses. The vacancy announcement for a term appointment

of less than 4 years should make clear the possibility of extension up to the 4-year limit.

Eliminating Outside-the-Register Mechanism for Term Appointments

The proposal would eliminate the outside-the-register hiring mechanism for term appointments. In the past when OPM (or agencies under delegated examining) maintained standing registers, it was appropriate for the register-holding office to authorize outside-the-register appointments when those registers did not have candidates available for certification. However, as delegation of examining increased, OPM authorized fewer outside-the-register authorities. At this point, totally eliminating term appointments outside-the-register would be consistent with the new face of competitive examining. Now that OPM has delegated full examining authority to agencies, the outside-the-register mechanism is not necessary for term appointments. Agencies are in full control of the examining process and can announce individual vacancies as they occur. Also, since term appointees may serve for long periods of time and since they have benefits similar to permanent employees, it is appropriate that term and permanent employees be appointed in the same manner.

Trial Period for Term Appointment

The proposal would require crediting prior service toward the trial period required for term appointment in the same way that prior service is credited for probation, i.e., same agency, same line of work, and no more than a single break in service not exceeding 30 days. See § 315.802.

Crediting Excepted Service Toward Time Limit for Term Appointment

The proposal would allow former excepted employees whose positions were brought into the competitive service when OPM revoked an excepted authority to serve up to the full 4-year period for term appointment rather than have the amount of their prior time-limited excepted service subtracted from the maximum time limit for term appointment. This change in § 316.702 would give agencies more flexibility without harming employees who are already eligible for benefits.

Categories Eligible for Noncompetitive Term and Temporary Appointments

The current regulations indicate the categories of individuals eligible for noncompetitive term and temporary appointments based on their eligibility for permanent appointment under various authorities. In this proposal, we would add that appointments under 5 U.S.C. 3304(c), commonly referred to as Ramspeck appointments, can no longer be made after December 18, 1997, as provided by Pub. L. 104-65, the Lobbying Disclosure Act of 1995. We would also clarify that noncompetitive term and temporary appointments based on an individual's eligibility for a veterans readjustment appointment (VRA) are permitted only at the grade levels authorized for VRA appointments but that the temporary or term appointments are not VRA appointments themselves and do not lead to conversion to career-conditional. (This longstanding policy was stated in the former Federal Personnel Manual.)

The proposal would also add four categories of individuals to the list of those eligible for noncompetitive temporary and term appointments on the basis that they are currently eligible for permanent appointment. The categories are: current and former General Accounting Office employees (31 U.S.C. 732[g]); current and former employees of the Administrative Office of the U.S. Courts (Pub. L. 101-474); disabled veterans who have completed training prescribed by the VA under title 38 (5 CFR 315.604); and readers, interpreters, and personal assistants whose employment under Schedule A is no longer necessary (5 CFR 315.711).

We did not include other categories of individuals eligible for noncompetitive appointment under authorities that specifically require no break in service, e.g. current Postal employees because in such situations, an employee who took a temporary or term appointment would lose his or her eligibility for a permanent appointment.

Selecting Term Employees for Permanent Positions

We have received questions about the current regulation § 315.703 that permits the conversion of term appointees to permanent appointment under very limited conditions. Conversion is possible only when all the conditions of § 315.703 are met including the requirement that the term employee must have been within reach for permanent appointment. In this context, within reach means that the term employee could have been selected for a permanent position that was

actually announced and filled. It is not sufficient for the vacancy announcement to have stated that positions could be filled by term or permanent appointment or that an individual selected for a term appointment might later be converted to a permanent appointment without further competition.

Temporary Employees Injured on the Job

The proposal would permit agencies to reappoint noncompetitively former temporary employees who were injured on the job to any position for which they qualify if their injury disqualified them for reappointment to their original position or one with the same qualification requirements. Time under the initial appointment and reappointment must adhere to the limits for temporary appointments, but time spent on workers' compensation does not count toward any time limit. For example, a temporary employee who worked for 8 months before being injured on the job spent 3 years on workers' compensation. If the individual recovered to some degree, the agency could reappoint the individual for the remaining 4 months of the temporary appointment and then, if warranted, extend the temporary appointment for up to another year. Reappointments of other former temporary employees, i.e., those who were *not* injured on the job, may be reappointed only to the same position or one with the same qualification requirements.

Temporary Appointments of Persons With Disabilities

Agencies may appoint qualified eligibles on a time-limited basis under § 213.3102(t) or (u), or § 213.3202(k), as appropriate. The time-limited appointment gives the individuals the opportunity to demonstrate their potential for successful performance, with or without reasonable accommodation. After determining that the appointees have successfully demonstrated their abilities, the agency may remove the time limitation on the appointment. This is important because the requirements for conversion of employees under 213.3102(t) and (u) to career or career-conditional appointment under § 315.709 include 2 or more years of satisfactory service under *nontemporary* Schedule A appointment. There is no conversion authority for individuals under 213.3202(k).

Eliminating the TAPER Authority

Our proposal would eliminate the TAPER (temporary appointments pending establishment of a register) authority for the reasons already discussed in connection with our proposal to eliminate the outside-the-register mechanism for term appointments. When OPM publishes final regulations eliminating the TAPER authority, agencies will have to examine competitively for positions, most notably Worker-Trainee (GS-1 and WG-1 and -2), that have been filled under the TAPER authority since 1979. In commenting on a draft of this proposal, a few agencies requested continuation of the TAPER authority for Worker Trainees on the basis that a simpler and more flexible examining process was required for individuals with limited education and experience. Such a process can be devised by agencies under their delegated authority to examine. According to the FY 95 Central Personnel Data File, agencies made only 97 Worker Trainee appointments. Thus there no longer appears to be a justification to continue a process solely for filling this type of position.

Individuals serving on TAPER appointments on the date OPM publishes final regulations eliminating the TAPER authority will not be affected. However, as required by § 315.704, TAPER employees who complete 3 years of qualifying service must have their appointments converted to career appointments or separated. TAPER employees who complete 3 years of qualifying service but do not meet the other conditions and requirements for conversion, must be separated no later than 90 calendar days following the day on which they met the service requirement for conversion.

Editorial

The proposal would also delete a section relating to the eligibility of certain term employees for within-grade increases. The section duplicates material already in subpart D of 5 CFR part 531, and employees would continue to be eligible.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because the regulation pertains only to Federal employees and agencies.

List of Subjects in 5 CFR Part 316

Government employees.

U.S. Office of Personnel Management.
James B. King,
Director.

Accordingly, OPM proposes to amend part 316 of title 5, Code of Federal Regulations, as follows:

PART 316—TEMPORARY AND TERM EMPLOYMENT

1. The authority citation for part 316 is revised to read as follows:

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

Subpart B—[Removed]

2. Subpart B consisting of §§ 316.201 and 316.202 is removed and reserved.

3. In § 316.301, the existing text is designated as paragraph (a) and revised, and paragraph (b) is added, to read as follows:

§ 316.301 Purpose and duration of term appointments.

(a) An agency may make a term appointment for a period of more than 1 year but not more than 4 years to positions where the need for an employee's services is not permanent. Reasons for making a term appointment include, but are not limited to: project work; extraordinary workload; scheduled abolishment, reorganization, or contracting out of the function; uncertainty of future funding; or the need to maintain permanent positions for placement of employees who would otherwise be displaced from other parts of the organization. Agencies may extend appointments made for more than 1 year but less than 4 years up to the 4-year limit in increments determined by the agency. The vacancy announcement should state that the agency has the option of extending a term appointment up to the 4-year limit.

(b) At the request of an agency head (or designee), OPM may approve an exception to the time limits for term appointment when the extension is clearly justified to enable the agency to address a need more effectively and is consistent with applicable statutory provisions. Send requests to the Associate Director for Employment, Office of Personnel Management, Room 6F08, 1900 E Street NW., Washington, DC 20415.

4. Section 316.302 is revised to read as follows:

§ 316.302 Selection of term employees.

(a) Competitive term appointment. An agency may make a term appointment under 5 CFR part 332 competitive procedures.

(b) Noncompetitive term appointment. An agency may give a

noncompetitive term appointment, without regard to the requirements of parts 332 and 333, to an individual who is qualified for the position and who is eligible for:

- (1) Reinstatement under § 315.401;
- (2) Veterans readjustment

appointment (VRA) under § 307.103. Term appointments under this section are permitted only at the grade levels authorized for VRA appointments. Such appointments are not VRA appointments and do not lead to conversion to career-conditional appointment.

(3) Career-conditional appointment under §§ 315.601, 315.604, 315.605, 315.606, 315.607, 315.608, 315.609, 315.703, or 315.711 of this chapter;

(4) Appointment under 5 U.S.C. 3112 (veterans with compensable service-connected disability of 30% or more). The disability must be documented by a notice of retirement of discharge due to service-connected disability from active military service dated at any time, or by a notice of compensable disability rating from the Department of Veterans Affairs, dated within the last 12 months.

(5) Career appointment under 5 U.S.C. 3304(c) ("Ramspeck appointments") but appointments must be effective no later than December 18, 1997. A term appointment under this section does not provide competitive status and does not extend or terminate an individual's eligibility for career appointment under 5 U.S.C. 3304(c).

(6) Appointment under 31 U.S.C. 732(g) for current and former employees of the General Accounting Office;

(7) Appointment under Pub. L. 101–474 for current and former employees of the Administrative Office of the U.S. Courts;

(8) Reappointment on the basis of having left a term appointment prior to serving the maximum amount of time allowed under the appointment.

Reappointment must be to a position in the same agency appropriate for filling under term appointment and for which the individual qualifies. Combined service under the original term appointment and reappointment must not exceed the time limits in § 316.301.

(9) Conversion in the same agency from a current temporary appointment when the employee is or was within reach on a certificate of eligibles for term appointment *at any time during service in the temporary position*. Within reach means that the person could have been selected for the position under competitive hiring procedures, including veterans' preference. The certificate must have been actually used for term or permanent appointment. The person must have been continuously employed

in the position from the date found within reach to the date converted to a term appointment.

(c) Term employees are eligible for an extension of their appointment in accordance with the time limits in § 316.301 even if their eligibility for noncompetitive appointment expires or is lost during the period they are serving under term employment.

5. In section 316.304 paragraph (a) is revised to read as follows:

§ 316.304 Trial period.

(a) The 1st year of service of a term employee is a trial period regardless of the method of appointment. Prior Federal civilian service is credited toward completion of the required trial period in the same manner as prescribed by § 315.802 of this chapter.

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§ 316.305 [Removed]

6. Section 316.305 is removed.

7. Section 316.402 is revised to read as follows:

§ 316.402 Procedures for making temporary appointments.

(a) Competitive temporary appointments. In accordance with the time limits in § 316.401, an agency may make a temporary appointment under 5 CFR part 332 competitive procedures or under 5 CFR part 333 "outside-the-register" procedures.

(b) Noncompetitive temporary appointments. In accordance with the time limits in § 316.401, an agency may give a noncompetitive temporary appointment, without regard to the requirements of parts 332 and 333, to an individual who is qualified for the position and who is eligible for:

(1) Reinstatement under § 315.401;

(2) Veterans readjustment appointment under § 307.103.

Temporary limited appointments under this section are permitted only at the grade levels authorized for VRA appointments. Such appointments are not VRA appointments and do not lead to conversion to career-conditional appointment;

(3) Career-conditional appointment under §§ 315.601, 315.604, 315.605, 315.606, 315.607, 315.608, 315.609, or 315.711 of this chapter;

(4) Appointment under 5 U.S.C. 3112 (veterans with compensable service-connected disability of 30% or more). The disability must be documented by a notice of retirement of discharge due to service-connected disability from active military service dated at any time, or by a notice of compensable disability rating from the Department of Veterans Affairs, dated within the last 12 months;

(5) Career appointment under 5 U.S.C. 3304(c) ("Ramspeck appointments") but appointments must be effective no later than December 19, 1997. A temporary appointment under this section does not provide competitive status and does not extend or terminate an individual's eligibility for career appointment under 5 U.S.C. 3304(c);

(6) Appointment under 31 U.S.C. 732(g) for current and former employees of the General Accounting Office;

(7) Appointment under Pub. L. 101-474 for current and former employees of the Administrative Office of the U.S. Courts;

(8) Reappointment on the basis of being a former temporary employee of the agency who was originally appointed from a certificate of eligibles or under the provisions of part 333 of this chapter. An agency may not reappoint a former temporary employee if the individual has already served the maximum time allowed in § 316.401 or if the position has been filled under temporary appointment for the maximum time allowed in § 316.401. Reappointment must be to the same position or another position appropriate for temporary appointment with the same qualification requirements;

(9) Reappointment on the basis of being a former temporary who was originally appointed from a certificate of eligibles or under the provisions of part 333 of this chapter and who sustained a compensable injury while serving on the temporary appointment. Reappointment must be to the same position or another position appropriate for temporary appointment with the same qualification requirements. If the compensable injury disqualifies the former individual from performing such a position, reappointment may be to any position for which the individual is qualified.

(c) An individual who receives a valid temporary appointment will be eligible for an extension in accordance with § 316.401 even if his or her eligibility for noncompetitive appointment expires or is lost during the authorized period of temporary employment.

8. In § 316.702 paragraph (d) is revised to read as follows:

§ 316.702 Excepted positions brought into the competitive service.

* * * * *

(d) An employee who was serving under an excepted appointment with a definite time limit longer than 1 year may be retained under a term appointment. The term appointment is subject to all conditions and time limits applicable to term appointments.

Subpart H—[Removed]

9. Subpart H consisting of § 316.801 is removed and reserved.

[FR Doc. 96-22904 Filed 9-6-96; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Parts 319 and 381

[Docket No. 95-051A]

RIN 0583-AC01

Meat and Poultry Standards of Identity and Composition

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Advance notice of proposed rulemaking; request for comments.

SUMMARY: The Food Safety and Inspection Service (FSIS) is reviewing the standards of identity and composition established over the years for meat and poultry food products. These standards define particular products or product categories in terms of specified meat or poultry contents or other characteristics. As part of its regulatory review initiatives, the Agency is considering whether to modify or eliminate specific standards, or to modify its overall regulatory approach to standardized meat and poultry products. Because of new technologies, changing lifestyles, changed consumer expectations, and the information now available to consumers through ingredient and nutrition labeling, the relevance and general usefulness of standards are in question.

FSIS recognizes that some of the current standards may impede innovation, or slow the introduction into the marketplace of products with reductions in certain constituents of health concern to some people. The Agency is soliciting information from the public on what direction further reform of food standards should take, including suggestions on whether to alter, or eliminate entirely, the regulations on standardized meat and poultry products. The Agency would like to know how product definitions and standards, if needed, can provide consumer protection, while at the same time granting the flexibility necessary for timely development and marketing of meat and poultry products that meet consumer needs. This review responds in part to President Clinton's memorandum to heads of departments and agencies, titled "Regulatory

Reinvention Initiative," dated March 4, 1995.

DATES: Comments must be received on or before November 25, 1996.

ADDRESSES: Please send an original and two copies of written comments to Docket Clerk, Room 4352 South Building, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250. Copies of reports and handbooks cited in this notice are available for review in the FSIS Docket Room.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Post, Chief, Food Standards and Ingredients Branch, Product Assessment Division, Regulatory Programs, at (202) 254-2588.

SUPPLEMENTARY INFORMATION:

Background

The Federal Meat Inspection Act (FMIA) and the Poultry Products Inspection Act (PPIA) prohibit the preparation for, and the sale or transportation, in commerce, of meat and poultry products that are adulterated or misbranded (21 U.S.C. 610; 21 U.S.C. 458).

These prohibitions apply to interstate and foreign commerce. They also apply to commerce solely within designated states by establishments that operate solely within a designated state. A state is designated if it does not have or is not effectively enforcing requirements at least equal to Title I and IV of the FMIA, and specified provisions of the PPIA. Once a state is designated, the inspection requirements of the FMIA and PPIA apply to establishments that slaughter livestock and poultry and/or prepare or process meat and/or poultry products therefrom, solely for distribution within the state.

A meat or poultry product may be considered misbranded if it falsely purports to be or falsely represents itself to be a food for which a standard of identity or composition has been prescribed by regulation, or if its label fails to bear the name of the food specified in the standard and, if required, the common or usual names of optional ingredients, except for certain specified optional ingredients (21 U.S.C. 601(n)(7); 21 U.S.C. 453(h)(7)).

FSIS has prescribed by regulation 60 meat and poultry standards of identity and composition (9 CFR §§ 319 and 381, Subpart P, for meat and poultry products, respectively), under its statutory authorities set forth in 21 U.S.C. 607(c) and 457(b). These sections permit the Secretary of Agriculture, whenever the Secretary determines such action is necessary for the protection of the public, to prescribe definitions and