

Rules and Regulations

Federal Register

Vol. 63, No. 221

Tuesday, November 17, 1998

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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 316

RIN 3206-AH47

Temporary and Term Employment

AGENCY: Office of Personnel Management.

ACTION: Final regulation.

SUMMARY: As part of continuing efforts to streamline the appointing system, the Office of Personnel Management (OPM) is issuing final regulations on nonpermanent employment. These regulations eliminate "outside-the-register authority" for term appointments; permit OPM 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 regulations also add several 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 also clarifies 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 regulations permit the reappointment of injured non-permanent employees to any position for which qualified.

EFFECTIVE DATE: December 17, 1998.

FOR FURTHER INFORMATION CONTACT: Diane Tyrrell or Michael Mahoney on 202-606-0830, FAX 202-606-2329, or TDD 202-606-0023.

SUPPLEMENTARY INFORMATION: On September 9, 1996 (61 FR 47450), OPM

published proposed regulations and received comments from four Federal agency headquarters, three agency components, and three employee organizations. Following is a summary of each regulatory provision and the relevant comments.

Eliminating the Outside-the-Register Hiring Mechanism for Term Appointments

Two agency headquarters objected to the elimination of outside-the-register procedures for term appointments on the basis that agencies should have the flexibility to select from "immediately available and qualified candidates * * * using the latest computer technology." We have not adopted these comments.

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. Now, however, OPM has delegated full examining authority to agencies. Agencies can announce individual positions as needed and can tailor examining procedures as appropriate. Further, since term appointees may serve for long periods of time and have benefits similar to those enjoyed by permanent employees, it is appropriate that term and permanent employees be appointed in the same manner. We have, therefore, adopted the proposal to eliminate outside-the-register procedures for term appointment.

Extending Term Appointments

We proposed to permit OPM to extend term appointments beyond the 4-year limit without the need for a variation to the regulation under Civil Service Rule 5.1 as currently required. In response, three agency headquarters and two employee organizations recommended OPM delegate the extension authority to agencies. One agency field component recommended that the regulations authorize agencies to make term appointments for up to 5-7 years through the end of 2001, or permit the noncompetitive reappointment of individuals who have served the maximum time for term appointment in order to complete the work for which they were hired. A third employee organization objected to any expansion of the term authority on the

basis that term appointments are not specifically authorized by law.

After considering these dissimilar comments, we believe our original proposal represents a reasonable compromise. Therefore, the final regulations permit OPM to extend term appointments beyond the 4-year limit. The purpose of term appointments remains the same as defined in 5 CFR 316.301; such appointments are appropriate when the need for an employee's services is not permanent, e.g., for project work, extraordinary workload, scheduled abolishment, reorganization, contracting out of the function, uncertainty of future funding, or the need to maintain permanent positions for placement of permanent employees who would otherwise be displaced.

Agencies should determine whether a permanent appointment may be more appropriate if there is a need for continuing the term appointment for an extended period of time. Overly long extensions or consecutive term appointments reflect a permanent need and, therefore, must be staffed accordingly. When seeking OPM approval to extend term appointments, agencies must document the reasons for the continued need of the individual. The requirement to make such requests using the variation process is no longer necessary.

We are also adopting the proposal 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.

Trial Period for Term Appointment

There were no comments on our proposal to require crediting prior service toward the trial period required for term appointment in the same way that prior service is credited for the probationary period in 5 CFR 315.802, i.e., same agency, same line of work, and no more than a single break in service not exceeding 30 days. The final regulations have adopted the proposal with no changes.

Crediting Excepted Service Toward Time Limit for Term Appointment

One agency commented on our proposal to allow former excepted service employees whose positions were brought into the competitive service when OPM revoked an excepted appointing authority to serve up to the full 4-year period for term appointments rather than have the amount of their prior time-limited excepted service subtracted from the maximum time limit for term appointment. The agency suggested that the regulatory language itself contain a fuller explanation. We have adopted this suggestion in 5 CFR 316.702.

Categories Eligible for Noncompetitive Term and Temporary Appointments

One agency headquarters commented on the proposal to add four categories of individuals eligible for noncompetitive term and temporary appointments based on their eligibility for permanent appointment under various authorities. The agency recommended the final regulations permit noncompetitive term appointments of mentally retarded and disabled employees who have successfully performed while employed under excepted service appointments, 5 CFR 213.3102 (t) and (u). We have not adopted this suggestion. Individuals who serve under these two excepted service authorities are eligible for conversion to career or career-conditional appointments under 5 CFR 315.709 if there is no break in service between their excepted service and the career or career-conditional appointment. A term appointment would constitute a break in service for this purpose and would prevent conversion. Also, since an individual can serve indefinitely under the (t) and (u) authorities unless the appointment is made with a specific time limitation, a term appointment in the competitive service would be less advantageous to the employee since it has a fixed ending date.

Selecting Term Employees for Permanent Positions

Although no specific regulatory language was proposed, two agencies questioned our interpretation of Civil Service Rule 3.1 and parallel regulation 5 CFR 315.703. One agency component recommended a new Executive Order (E.O.) to change Civil Service Rule 3.1 so that term employees could more easily be converted to permanent appointments. In our proposal we pointed out that conversion is possible only when all the conditions of 5 CFR 315.703 are met, including the

requirement that the term employee has been within reach for permanent appointment. We explained that in this context, within reach means that the term employee could have been selected for a permanent position *that was actually announced and filled*. We explained that it was 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.

In commenting on our explanation, the two agencies suggested that when positions are announced as "term, may become permanent," the conversion from term to permanent is made based on a prior competitive selection from a *register which was used to make appointments conferring competitive status*. According to the agencies' reasoning, the conversion from term to permanent would thus be based on prior competition and would, therefore, be in keeping with merit system requirements since all applicants knew of the possible conversion and had a fair opportunity to apply. These agencies see the term appointment as an interim step necessary because of funding constraints.

OPM's view is that *unless permanent appointments were actually made from the register referred to above*, it cannot be said that the register was used to make appointments conferring competitive status. An amendment to E.O. 10577 or enactment of a Federal statute would be necessary before we could issue regulations authorizing individuals to be converted from term to permanent on the basis of a vacancy announcement that said an individual selected for a term appointment might later be converted to permanent appointment.

Two employee organizations recommended OPM seek legislative change to permit temporary and term employees to compete for permanent positions under agency merit promotion procedures. This is a matter outside the scope of the regulations in 5 CFR part 316.

Temporary Employees Injured on the Job

Two agencies commented (one by telephone) on the proposed provision to permit agencies to noncompetitively reappoint 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. (Other former temporary employees who were *not* injured on the job may be noncompetitively reappointed only to their original positions or one with the same qualification requirements.) For all reappointments, 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.

One agency recommended that we allow agencies to reappoint former temporary employees who are injured on the job for a minimum of 120 days, even if they had less time remaining under their original temporary appointment. This 120 days would not count toward time remaining under the original temporary appointment. The 120-day period would provide the necessary time for the Department of Labor to calculate a "loss of wage earning capacity." Without such a determination, individuals would return to the long term workers' compensation rolls after expiration of the temporary appointment, and Federal agencies would not have reduced their costs for workers' compensation.

On the basis of this comment, we have changed the regulatory provision to permit reappointment of former temporary employees injured on the job for a minimum of 120 days. See 5 CFR 316.402.

Eliminating the TAPER Authority

In response to the Governmentwide need in connection with the President's initiative to provide opportunity for welfare recipients to enter the workforce, OPM will not eliminate the TAPER (temporary appointment pending establishment of a register) authority at this time. We recognize the need to retain a more simple and flexible examining process required by agencies when filling Worker-Trainee (GS-1 and WG-1 and -2) positions with applicants with limited education and experience. This appointing authority and examining process will continue to be monitored and evaluated to determine the necessity for its continuation.

Editorial

One agency objected to our proposed deletion of 5 CFR 316.305 relating to the eligibility of certain term employees for within-grade increases. Because the section duplicates material already included in 5 CFR part 531, subpart D, we have not adopted the agency's suggestion.

We have made editorial changes in 5 CFR 316.201 of the regulations to clarify

that Worker-Trainee promotions are authorized under these regulations when they are consistent with 5 CFR 330.501; in 5 CFR 316.403(b)(1) of the regulations to correct a reference to retired disabled veterans; and in 5 CFR 316.701(b)(1) and 5 CFR 316.702(b)(1) of the regulations, which permit agencies to retain employees whose public or private enterprise or excepted positions are brought into the competitive service. This language makes it clear that if they are retained in continuing positions, they are given status quo appointments. We have also removed reference to temporary and term appointments made based on eligibility under 5 U.S.C. 3304(c) ("Ramspeck appointments") due to the repeal of the Ramspeck Act.

Other

One agency commented that agencies be allowed to make excepted service appointments on a term basis. Excepted appointments are not covered by 5 CFR part 316. However, unless the specific excepted service authority provides otherwise, agencies may make an excepted appointment on a time limited basis for more than 1 year. Such excepted appointments are comparable to term appointments in the competitive service, but there is no maximum time limit unless specified by a particular excepted service authority. (Excepted appointments not-to-exceed 1 year are defined in 5 CFR 213.104(a)(1) as temporary and are subject to the maximum time limits 5 CFR 213.104(b)(1).

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.

Office of Personnel Management.

Janice R. Lachance,

Director.

Accordingly, OPM is amending 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, 3302; E.O. 10577, 3 CFR, 1954–1958 Comp., p. 218.

2. In § 316.201, paragraph (b) is revised to read as follows:

§ 316.201 Purpose and duration.

* * * * *

(b) *Specific authority for Worker-Trainee positions.* Agencies may make TAPER appointments to positions at GS-1, WG-1, and WG-2 and may reassign or promote the appointees to other positions through grade GS-3, WG-4, or equivalent grades in the Federal Wage System consistent with § 330.501 of this chapter. Agencies are authorized to reassign or promote Worker-Trainees under this authority.

3. Section 316.301 is revised to read as follows:

§ 316.301 Purpose and duration.

(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, 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) OPM may authorize exceptions beyond the 4-year limit when the extension is clearly justified and is consistent with applicable statutory provisions. Requests to make and/or extend appointments beyond the 4-year limit must be initiated by the employing office and sent to the appropriate OPM service center.

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 of this chapter, to an individual who is qualified for the position and who is eligible for:

(1) Reinstatement under § 315.401 of this chapter;

(2) Veterans readjustment appointment (VRA) under § 307.103 of this chapter. Term appointments under this section are permitted only at the grade levels authorized for VRA appointments. Such appointments are

competitive service appointments not excepted VRA appointments and do not lead to conversion to career-conditional appointment;

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

(6) Appointment under 28 U.S.C. 602 for current and former employees of the Administrative Office of the U.S. Courts;

(7) Reappointment on the basis of having left a term appointment prior to serving the 4-year 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 4-year limit; or

(8) 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 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 § 316.304, paragraph (a) is revised to read as follows:

§ 316.304 Trial period.

(a) The first 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.

* * * * *

§ 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 when there are insufficient eligibles on the appropriate register.

(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 of this chapter, to an individual who is qualified for the position and who is eligible for:

(1) Reinstatement under § 315.401 of this chapter;

(2) Veterans readjustment appointment under § 307.103 of this chapter. 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) Appointment under 31 U.S.C. 732(g) for current and former employees of the General Accounting Office;

(6) Appointment under 28 U.S.C. 602 for current and former employees of the Administrative Office of the U.S. Courts;

(7) 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;

(8) Reappointment on the basis of being a former temporary employee 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. Reappointment must be for a minimum of 120 days.

(c) Extension of temporary appointments. 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 § 316.403, paragraph (b)(1) is revised to read as follows:

§ 316.403 Designation of provisional appointments.

* * * * *

(b) * * *

(1) Noncompetitive temporary appointments of disabled veterans under § 316.402(b)(5), when the appointments are intended to afford eligibility for conversion in accordance with § 315.707 of this chapter and section 3112 of title 5, United States Code;

* * * * *

9. In § 316.701, paragraph (b)(1) is revised to read as follows:

§ 316.701 Public or private enterprise taken over by Government.

* * * * *

(b) * * *

(1) When an agency retains an employee under paragraph (a) of this section in a position which it determines to be a continuing one, the agency gives the employee a status quo appointment and shall decide on a timely basis whether it will convert that individual's employment to career or career-conditional under § 315.701 of this chapter.

* * * * *

10. In § 316.702, paragraphs (b)(1) and (d) are revised to read as follows:

§ 316.702 Excepted positions brought into the competitive service.

* * * * *

(b)(1) When an agency retains an employee under paragraph (a) of this section who was serving in an excepted position under an indefinite appointment or an appointment without time limit, the agency gives the employee a status quo appointment and may convert that employee's appointment to career or career-conditional under § 315.701 of this chapter.

* * * * *

(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. Service under excepted appointment does not count against the maximum time limit for term appointment in the competitive service.

[FR Doc. 98-30613 Filed 11-16-98; 8:45 am]

BILLING CODE 6325-01-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98-CE-108-AD; Amendment 39-10882; AD 98-23-01]

RIN 2120-AA64

Airworthiness Directives; Parker Hannifan Airborne Dry Air Pumps, Conversion Kits, and Coupling Kits

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This document publishes in the Federal Register an amendment adopting Airworthiness Directive (AD) 98-23-01, which was sent previously to all known U.S. owners and operators of aircraft and engines equipped with certain Parker Hannifan Airborne dry air pumps, conversion kits, and coupling kits, utilizing part number (P/N) B1-19-1 flexible coupling that has a date code resembling a clockface and indicating a manufacture date of either "12/97" or "5-6/98". This AD requires replacing the affected flexible coupling with P/N B1-7-3 flexible coupling (part of Parker Hannifan flexible coupling kit, Airborne P/N 350). The AD resulted from reports