

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-AG 62

Bringing Nonpermanent Excepted Positions Into the Competitive Service

AGENCY: Office of Personnel Management.

ACTION: Proposed rule.

SUMMARY: The Office of Personnel Management (OPM) proposes to revise its regulations governing retention of employees whose excepted positions are brought into the competitive service to permit the employees to receive term appointments if their excepted appointments had time limits longer than 1 year. This would avoid hardship to the employees, who could otherwise be retained only as temporary employees without benefits.

DATES: Comments must be received on or before June 6, 1995.

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

FOR FURTHER INFORMATION CONTACT: Tracy E. Spencer, (202) 606-0830, or fax (202) 606-2329.

SUPPLEMENTARY INFORMATION: Civil Service Rule III (5 CFR 3.1) authorizes OPM to prescribe conditions under which "a person who occupies a permanent position when it is placed in the competitive service * * * or is otherwise made subject to competitive examination" may acquire a competitive status. OPM's regulations implementing this authority are found in 5 CFR 315.701, 316.701, and 316.702. Those regulations permit nonpermanent employees whose positions are brought into the competitive service to be retained only under temporary appointments limited to 1 year or less.

When the regulations were written, almost all nonpermanent positions

inside and outside the Federal Government were filled by such temporary appointments. Giving those employees temporary appointments in the competitive service permitted them to continue serving, with no change in employment conditions, until they completed the work for which they were hired. That is still generally true when positions are brought into the service from outside the Federal Government.

In the Federal excepted service, however, an increasing number of excepted positions are filled under appointments with time limits longer than 1 year (comparable to term appointments in the competitive service). Those positions may be brought into the competitive service by revocation of a statutory appointing authority or an exception under Schedule A, B, or C, or by an OPM determination that the authority no longer covers the positions.

Employees whose excepted appointments have limits longer than 1 year are eligible for within-grade increases, promotions and reassignments, and retirement and insurance benefits that are not available to temporary employees in the competitive service. The logical way to allow those employees to complete their work with no change in employment conditions would be to retain them under term appointments. The proposed regulations would add provision for such term appointments. The regulations would also make editorial changes and would remove obsolete references to the Federal Personnel Manual.

Regulatory Flexibility Act

I certify that these regulations will 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 apply only to Federal employees.

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 5 CFR part 316 as follows:

PART 316—TEMPORARY AND TERM EMPLOYMENT

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

Authority: 5 U.S.C. 3301, 3302, and E.O. 10577 (3 CFR 1954-1958 Comp., p. 218); § 316.302 also issued under 5 U.S.C. 3304(c), 38 U.S.C. 2014, and E.O. 12362, as revised by E.O. 12585; § 316.402 also issued under 5 U.S.C. 3304(c) and 3312, 22 U.S.C. 2506 (93 Stat. 371), E.O. 12137, 38 U.S.C. 2014, and E.O. 12362, as revised by E.O. 12585 and E.O. 12721.

2. In § 316.701, paragraph (c) is revised to read as follows:

§ 316.701 Public or private enterprise taken over by the Government.

* * * * *

(c) An agency may retain an employee under paragraph (a) of this section in a position that it determines is noncontinuing under a temporary appointment. That appointment may be made for a period not to exceed 1 year and will be subject to the time limits set out in § 316.402.

3. In § 316.702, paragraphs (b)(1) and (c) are revised and a new paragraph (d) is added 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 may convert that employee's appointment to career or career-conditional under § 315.701.

* * * * *

(c) An employee who was serving under an excepted appointment limited to 1 year or less may be retained as a temporary employee under paragraph (a) of this section until the scheduled expiration date of the employee's excepted appointment. Extension of the employee's temporary appointment beyond that date will be subject to the provisions of § 316.402.

(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 appointment will be subject to all conditions generally applicable to term appointments and may be extended up to the maximum limit for term appointments established

under § 316.301. Service under the employee's excepted appointment counts against the maximum limit for the term appointment.

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[FR Doc. 95-8597 Filed 4-6-95; 8:45 am]

BILLING CODE 6325-01-M

FEDERAL TRADE COMMISSION

16 CFR Part 436

Request for Comments Concerning Trade Regulation Rule on Disclosure Requirements and Prohibitions Concerning Franchising and Business Opportunity Ventures

AGENCY: Federal Trade Commission.

ACTION: Request for public comments.

SUMMARY: The Federal Trade Commission (the "Commission") is requesting public comments on its Trade Regulation Rule on Disclosure Requirements and Prohibitions Concerning Franchising and Business Opportunity Ventures ("the Franchise Rule" or "the Rule"). The Commission is requesting comments about the overall costs and benefits of the Rule and its overall regulatory and economic impact as a part of its systematic review of all current Commission regulations and guides. The Commission also is requesting comment on whether the Rule should be modified to: Replace the Rule's disclosure requirements with those set forth in the revised Uniform Franchise Offering Circular Guidelines, approved by the Commission on December 30, 1993; modify the scope of disclosure requirements for business opportunity ventures; clarify the applicability of the Rule to trade show promoters; and require the disclosure of earnings information. All interested persons are hereby given notice of the opportunity to submit written data, views, and arguments concerning the Rule.

DATES: Written comments will be accepted on or before August 11, 1995.

ADDRESSES: Comments should be directed to: Secretary, Federal Trade Commission, Room H-159, Sixth and Pennsylvania Ave., NW., Washington, DC 20580. Comments about the Franchise Rule should be identified as "16 CFR Part 436—Comment."

Notification of interest in the Public Workshop-Conference should be submitted in writing to Myra Howard, Division of Marketing Practices, Federal Trade Commission, Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Steven Toporoff, (202) 326-3135, or

Myra Howard, (202) 326-2047, Division of Marketing Practices, Bureau of Consumer Protection, Federal Trade Commission, Washington, DC 20580.

SUPPLEMENTARY INFORMATION: The Commission has determined, as part of its oversight responsibilities, to review Rules and guides periodically. These reviews seek information about the costs and benefits of the Commission's Rules and guides and their regulatory and economic impact. The information obtained assists the Commission in identifying Rules and guides that warrant modification or rescission.

The Commission is currently seeking comment on several issues specific to the Franchise Rule. The Commission recognizes that there have been changes in the franchise industry since the Rule was promulgated in 1978. Among these changes is the modification of the Uniform Franchise Offering Circular ("UFOC") Guidelines by the North American Securities Administrators Association ("NASAA"). In 1986, NASAA revised Item 19 of the Guidelines to require franchisors who make earnings claims to have a reasonable basis for such claims. On April 25, 1993, NASAA revised the entire UFOC Guidelines. The Commission approved the revised UFOC Guidelines on December 30, 1993. The Commission now seeks comment on the desirability of replacing the current Rule disclosure requirements with those set forth in the revised UFOC Guidelines. The Commission also seeks comment on the desirability of modifying the scope of the Rule as it pertains to the sale of business opportunities. In addition, the Commission seeks comment on whether it should revoke the current conditional exemption for trade show promoters and whether it should modify the Rule to add specific disclosure requirements or prohibitions concerning trade show promoters. Finally, there has been considerable discussion in the franchise industry and among franchise regulators about requiring the disclosure of earnings information to prospective investors. The Commission solicits comment on the desirability of modifying the Rule to require the disclosure of earnings information, and if so, what form those disclosures should take.

A. Background

The Franchise Rule was promulgated by the Commission on December 21, 1978. 43 Fed. Reg. 59,614. The Rule makes it an unfair or deceptive act or practice for franchisors and franchise brokers to fail to disclose to prospective

franchisees specific information about the franchisor, franchise business, and terms of the franchise agreement. Franchisors and franchise brokers must disclose additional information if they make any claim about actual or potential earnings to prospective franchisees or to the media. The Rule sets forth both the form and content of the required disclosures. Franchisors must provide prospective franchisees with the required disclosures before any sale is made.

B. Issues for Comment

1. The Revised UFOC

The Franchise Rule sets forth the content and form of the required disclosures. 16 CFR 436.1(a)-(e). In lieu of the Rule's format, the Commission has accepted the UFOC Guidelines originally adopted by the Midwest Securities Commissioners Association on September 5, 1975. 44 FR 49,966, 49,970, and as subsequently amended by NASAA on November 27, 1986. 52 FR 22,686. Most recently, NASAA petitioned the Commission to approve new amendments to the UFOC Guidelines, which NASAA adopted on April 25, 1993. See Extra Edition, Bus. Fran. Guide (CCH), Rpt. No. 161 (May 25, 1993). The Commission approved the use of the new UFOC on December 30, 1993. 58 FR 69,224. The new amendments are the product of a comprehensive revision of the UFOC Guidelines. The Commission is concerned about costs and other potential disadvantages to franchisors and franchisees that may result from a lack of uniformity between federal and state regulations. Accordingly, the Commission solicits comments on whether it is desirable to revise the Rule by replacing the current Rule disclosure requirements with those set forth in the revised UFOC Guidelines.

2. The Application of the Franchise Rule to Business Opportunities

The Franchise Rule applies to both franchises and business opportunities. The Rule currently does not provide a specific definition of the term "business opportunity." Rather, the Rule's definition of the term "franchise" includes some forms of business opportunities. Specifically, if the following three conditions are met, a business opportunity will be deemed a franchise:

(A) A person (hereinafter "franchisee") offers, sells, or distributes to any person other than a "franchisor" (as hereinafter defined), goods, commodities, or services which are: