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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 300

RIN 3206–AE80

Employment (General); Use of Private Sector Temporaries

AGENCY: Office of Personnel Management.

ACTION: Final regulation.

SUMMARY: The Office of Personnel Management (OPM) is issuing final regulations to authorize Federal agencies to use private sector temporaries for 120 workdays instead of 120 calendar days. In addition, agencies are delegated authority to extend the use of private sector temporaries for up to an additional 120 workdays. Agencies 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.

EFFECTIVE DATE: June 3, 1996.

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

SUPPLEMENTARY INFORMATION: On September 8, 1995, (60 FR 46780) OPM published proposed regulations to permit agencies to use temporary help services for 120 workdays instead of 120 calendar days. Under the proposal, the new 120-workday limit would also apply to an agency's use of a *particular individual* from a firm, a change from the previous 45-workday limit.

These changes give agencies more flexibility to conduct their operations, as recommended by the National Performance Review. However, in exercising their discretion to use temporary help services, agencies must honor their labor relations obligations under Chapter 71 of Title 5 of the U.S. Code and Executive Order 12871.

OPM maintains its view that continuing work is most appropriately performed by permanent Federal employees. Thus, the final regulations continue the prohibitions on using temporary help services to displace Federal employees or in place of regular civil service procedures for permanent appointment. The regulations continue previous provisions permitting the use of temporary help services only when there are no current agency employees who could be spared to do the work, when there are no former employees available on the agency's reemployment priority list, or when there are no applicants available for temporary Federal employment within the timeframe needed.

In addition, the final regulations add two new prohibitions against use of temporary help services. First, agencies are not permitted to use such services to circumvent controls on employment levels. This means agencies could not use temporary help services merely because hiring was frozen or ceiling levels were insufficient. Second, agencies are not permitted to use temporary help services in lieu of appointing a surplus or displaced Federal employee as required by the President's memorandum of September 12, 1995, entitled ''Career Transition Assistance for Federal Employees.'' OPM regulations implementing the President's memorandum were published on December 29, 1995. These interim regulations in 5 CFR part 330 provide a new subpart F, Agency Career Transition Assistance Plans for Local Surplus and Displaced Employees and a new subpart G, Interagency Career Transition Assistance Plan for Displaced Employees.

The final regulations replace the annual reporting requirement with a provision for agencies to report to OPM on an as-requested basis. Agencies have to maintain the records necessary for such reports and for their own internal evaluations. Agency adherence to these regulations continues to be subject to review under OPM's oversight function.

Finally, the final regulations make several minor editorial changes.

Comments

We received comments from four Federal agencies, two unions, and one private sector temporary help services firm.

One agency commenter suggested permitting the use of private sector temporaries to accomplish project work to help management more adequately manage changing workloads. We have not adopted this suggestion because agencies can use temporary or term Federal appointments to handle project work. Agencies can make temporary appointments for up to 1 year with one extension of not more than 1 year. Agencies can make term appointments for more than 1 year up to 4 years. Further, the regulations already permit the use of private sector temporaries for temporary work which cannot be delayed because of critical need. If an agency could not accomplish a critical project with current employees or by hiring temporary or term employees, the agency could use private sector temporaries.

Two agency commenters suggested we drop the requirement for OPM approval when agencies need to continue the use of private sector temporaries beyond the 120-workday limit. We agree with this suggestion and have modified the regulations to delegate the agencies authority to extend their use of private sector temporaries for a second period of up to 120 workdays without OPM approval. This change also means that an agency could use a particular individual from a temporary help services firm for the initial 120 workdays plus any extension of up to 120 workdays, as approved by the agency, up to a maximum of 240 workdays in a 24-month period. This limitation on the use of a specific individual from a temporary help services firm applies to multiple situations where the use of temporary help services is appropriate. For example, a major headquarters component of an agency may use a specific individual, Mr. O, to fill in for an ill employee for up to a maximum of 240 workdays. That headquarters component could not use Mr. O again—under any temporary help services contract—until 24 months had passed from the first day of Mr. O's assignment.

One agency commenter suggested the regulations permit OPM to grant additional waivers to the 240-workday limit for major reorganizations due to downsizing, particularly when agencies need clerical support. We have not adopted this suggestion. The final regulations already provide for use of

temporary help services up to a maximum of 240 workdays (nearly a year). We believe the 240-workday maximum gives agencies ample time to locate and hire Federal employees, especially in light of the surplus and displaced Federal employees who will be available as the Government continues downsizing.

One agency commenter suggested we change the regulations to permit agencies to use private sector temporaries when employees are on vacation. Because downsizing has left many agencies shortstaffed, the commenter believes there may be situations where managers would need to use temporary help services when a key employee is on vacation.

We do not think this change is necessary because § 300.503(a)(2) already provides for the use of temporary help services for work which cannot be delayed in the judgment of the agency because of a critical need. Although we do not believe the use of temporary help service is generally appropriate to fill in for Federal employees on vacation, the need to carry out critical work would be sufficient justification for the use of temporary help services even if a particular employee were away on vacation.

One union commenter stated that Federal agencies should be able to use private sector temporaries only when there is a critical need to fill a position. Section 300.503 assures this is the case by permitting use of private sector temporaries 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 employment within the timeframe needed.

The same commenter objected to the lengthened time limits on use of temporary help services claiming that the longer timeframe would mean that the private sector temporary employees would become integrated into the day-to-day activities of the Federal office and thus become subject to Federal supervision. Alternatively, the commenter claimed that, as a result of using private sector temporaries for a longer period, agency operations and service would suffer because the Federal manager had *no* supervisory control over these individuals. The commenter suggested agencies be permitted to use private sector temporaries for periods longer than 120 calendar days only when justified by the kind of analysis required when positions are contracted out.

We have not adopted this suggestion. We believe that increasing the maximum time limit from 120 calendar days to 120 workdays, and permitting agencies to extend for up to another 120 workdays, does not pose any risk because the basic requirements and prohibitions of the original regulation remain intact: agencies cannot use temporary help services to displace Federal employees or to fill permanent jobs; agencies can use temporary help services only when the need could not be met with current employees, employees on the agency's reemployment priority list, or through the direct appointment of temporary Federal employees within the timeframe required by the agency. In addition, the final regulations contain additional prohibitions: agencies cannot use temporary help services to circumvent controls on employment levels or in lieu of hiring surplus or displaced Federal employee. Given these conditions, an agency manager would have to determine that using temporary help services is the only way to maintain necessary services and operations.

We have, however, changed a provision in response to the union's concerns. The proposed regulation permitted an agency to use the same individual from a temporary help services firm for up to 240 workdays, with OPM approval, in a 12-month period. Thus, the individual could have worked in an agency office for 240 out of a possible 260 workdays in each year. We have changed the limitation so that an individual from a firm could work in an agency office for only 240 workdays in a 24-month period. The limitation applies to a major organizational element (headquarters or field) of a agency.

The second union commenter suggested that the regulation require agencies to bargain on the use of temporary help services. We did not accept this suggestion because the Federal Labor Relations Authority (FLRA), not OPM, decides duty-to-bargain issues.

The comments from the private sector firm supported the change from 120 calendar days to 120 workdays.

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 entities 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 record keeping requirements, Selective Service System.

Office of Personnel Management.

James B. King,

Director.

Accordingly, OPM is amending 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. 7201, 7204, 7701; E.O. 11478, 3 CFR, 1966–1970 Comp., page 803.

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

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

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

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

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

2. Section 300.502 is revised to read as follows:

§ 300.502 Coverage.

(a) These regulations apply to the competitive service and to Schedules A and B in the excepted service.

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

3. In § 300.503, paragraphs (c)(3) and (c)(4) are added to read as follows:

§ 300.503 Conditions for using private sector temporaries.

* * * * *

(c) * * *

(3) To circumvent controls on employment levels.

(4) In lieu of appointing a surplus or displaced Federal employee as required by 5 CFR part 330, subpart F (Agency Career Transition Assistance Plan for Displaced Employees) and subpart G (Interagency Career Transition Assistance Plan for Displaced Employees.)

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

§ 300.504 Prohibition on employer-employee relationship.

* * * * *

(a) *Time limit on use of temporary help service firm.* An agency may use a temporary help service firm(s) in a single situation, as defined in § 300.503, initially for no more than 120 workdays. Provided the situation continues to exist beyond the initial 120 workdays, the agency may extend its use of temporary help services up to the maximum limit of 240 workdays.

(b) *Time limit on use of individual employee of a temporary help service firm.* (1) An individual employee of any temporary help firm may work at a major organizational element (headquarters or field) of an agency for up to 120 workdays in a 24-month period. The 24-month period begins on the first day of assignment.

(2) An agency may make an exception for an individual to work up to a maximum of 240 workdays only when the agency has determined that using the services of the same individual for the same situation will prevent significant delay.

* * * * *

5. 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.

6. 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 these regulations. As needed, OPM may require agencies to provide information on their use of temporary help service firms.

[FR Doc. 96–10739 Filed 5–1–96; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 28

[CN–96–001]

Revision of User Fees for 1996 Crop Cotton Classification Services to Growers

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Agricultural Marketing Service (AMS) is reducing user fees for cotton producers for 1996 crop cotton classification services under the Cotton Statistics and Estimates Act in accordance with the formula provided in the Uniform Cotton Classing Fees Act of 1987. The 1995 user fee for the classification service was $1.60 per bale. This final rule will reduce the fee for the 1996 crop to $1.50 per bale. The reduced fee is due to increased efficiency in classing operations, and it is sufficient to recover the costs of providing classification services, including costs for administration, supervision, and development and maintenance of standards.

EFFECTIVE DATE: July 1, 1996.

FOR FURTHER INFORMATION CONTACT: Lee Cliburn, 202–720–2145.

SUPPLEMENTARY INFORMATION: A proposed rule detailing the revisions was published in the Federal Register on February 29, 1996, (61 FR 7756). A 30-day comment period was provided for interested persons to respond to the proposed rule; no comments were received.

This final rule has been determined to be not significant for purposes of Executive Order 12866, and therefore it has not been reviewed by the Office of Management and Budget (OMB).

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. It is not intended to have retroactive effect. This rule would not preempt any state or local laws, regulations, or policies unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

The Administrator, Agricultural Marketing Service (AMS), has considered the economic impact of this final rule on small entities pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*).

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be disproportionately burdened. There are about 40,000 cotton growers who voluntarily submit their cotton for the classification service. The majority of the growers are small businesses under the criteria established by the Small Business Administration. The Administrator of AMS has certified that this action will not have a significant economic impact on a substantial number of small entities as defined in the RFA because:

(1) the fee reduction reflects a decrease in the cost-per-unit currently borne by those entities utilizing the services;

(2) the cost reduction will not affect competition in the marketplace; and

(3) the use of classification services is voluntary.

In compliance with OMB regulations (5 CFR part 1320) which implement the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.), the information collection requirements contained in the provisions amended by this final rule have been previously approved by OMB and were assigned OMB control number 0581–0009.*

The changes will be made effective July 1, 1996, as provided by the Cotton Statistics and Estimates Act.

Fees for Classification Under the Cotton Statistics and Estimates Act of 1927

The user fee charged to cotton producers for High Volume Instrument (HVI) classification services under the Cotton Statistics and Estimates Act (7 U.S.C. 473a) was $1.60 per bale during the 1995 harvest season as determined by using the formula provided in the Uniform Cotton Classing Fees Act of 1987, as amended by Public Law 102–237. The fees cover salaries, cost of equipment and supplies, and other overhead costs, including costs for administration, supervision, development, and maintenance of cotton standards.

This final rule establishes the user fee charged to producers for HVI classification at $1.50 per bale during the 1996 harvest season.

Public Law 102–237 amended the formula in the Uniform Cotton Classing Fees Act of 1987 for establishing the producer's classification fee so that the