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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 410

RIN 3206-AF99

Training

AGENCY: Office of Personnel Management.

ACTION: Interim rule with request for comments.

SUMMARY: The Office of Personnel Management (OPM) is issuing interim regulations governing Federal employee training. The regulations implement provisions of the Federal Workforce Restructuring Act, dated March 30, 1994 and provisions of the Federal Reports Elimination and Sunset Act of 1995, dated December 21, 1995; incorporate former provisionally retained FPM Letters; and reflect OPM's response to agency requests to restructure 5 CFR part 410. The interim rules provide agencies additional flexibility by implementing the National Performance Review recommendations to reduce restrictions on training and make it a more responsive management tool.

DATES: This interim rule becomes effective on May 13, 1996. Comments must be received on or before June 12, 1996.

ADDRESSES: Send or deliver written comments to Allan D. Heuerman, Associate Director, Human Resources Systems Service, Office of Personnel Management, Room 7412, 1900 E Street, NW., Washington, DC, 20415-0001.

FOR FURTHER INFORMATION CONTACT: Judith Lombard, 202-606-2431, FAX 202-606-2394.

SUPPLEMENTARY INFORMATION: These interim regulations affect the training of Government employees. They incorporate (1) Public Law 103-226 amendments to chapter 41 of title 5, United States Code; (2) Public Law 104-

66 amendments to chapter 41 of title 5, United States Code; (3) former provisionally retained FPM Letters; and (4) flexibilities requested by agencies. Decisions on what to include in the regulations were based on whether the requirement or authority was necessary to assure uniformity in training Federal employees and/or to protect employee rights.

Amendments to the Government Employees Training Act

The September 1993 Report of the National Performance Review (NPR) recommended (1) eliminating the distinction between Government and non-Government training to make training more market driven and (2) removing the restrictions on employee training to help develop a multi-skilled workforce in the Federal Government. These recommendations were included in Public Law 103-226 (Federal Workforce Restructuring Act of 1994) dated March 31, 1994, which amended 5 U.S.C. chapter 41 in the following ways.

In 5 U.S.C. 4101, the definition of training expands from training directly related to the performance of official duties to any training that improves individual and organizational performance and assists an agency in achieving its mission and performance goals.

5 U.S.C. 4103(a) requires the head of an agency to relate training programs and plans to agency mission and performance goals and to provide employees information about training selection and assignment and applicable training limitations and restrictions.

5 U.S.C. 4103(b)(1) allows agencies to train employees for placement in another agency when such training is in the interest of the Government.

5 U.S.C. 4105 eliminates the distinction between "Government" and "non-Government" training, thereby allowing managers to take full advantage of available training sources. Previously agencies had to use Government training facilities where possible.

5 U.S.C. 4106 is deleted, thereby eliminating both service requirements and restrictions on time-in-training. Previously, an employee had to have 1 year of current, continuous civilian service to be eligible for non-Government training. Previously, an

employee could spend only 1 year in training for every 10 years of Government service.

Section 2181(c) of Public Law 104-66 (Federal Reports Elimination and Sunset Act of 1995), dated December 21, 1995, repealed section 4113 of title 5, United States Code, eliminating the requirements for agencies to review the training needs of employees and to report their training programs and plans to OPM at least once every 3 years.

These interim regulations revise 5 CFR part 410 to reflect the changes in 5 U.S.C. chapter 41.

Former Provisionally Retained FPM Letters

One of the recommendations of the September 1993 Report of the National Performance Review was that the Federal Personnel Manual (FPM) should be "sunset." The Director of OPM abolished the FPM on December 31, 1993. Two FPM Letters on training were provisionally retained through December 31, 1994.

1. Training of Civilian Officials Appointed by the President

Provisionally retained FPM Letter 410-34, Training of Civilian Officials Appointed by the President, delegated to the heads of agencies the authority to designate Presidential appointees, other than themselves, for training. The interim regulation puts this delegation of authority into § 410.302(b).

2. Conferences as Training Activities

Provisionally retained FPM Letter 410-35, Conferences as Training Activities, implemented the February 10, 1993, Presidential memorandum and OMB Bulletin 93-11 on "Government Fiscal Responsibility and Reducing Perquisites," and the Federal Travel Regulations on "Conference Planning" (41 CFR part 301-16). They require that agencies exercise strict fiscal responsibility when selecting conference sites to minimize costs and to keep employee attendance to a minimum consistent with serving the public's interest. The interim regulations put language into 5 CFR 410 to assist agencies in determining if a conference is a training activity (§ 410.404). This will reduce Government costs by limiting Federal employee attendance to appropriate training conferences where participation fosters the achievement of agency

missions while enhancing employees' professional growth.

Summary of Major Proposed Changes to Training Regulations

OPM also is revising its training regulations in other ways to provide additional flexibilities, eliminate burdensome requirements, and clarify ambiguous language. The following list summarizes the substantive changes, including those discussed above.

Added Flexibilities and Reduced Requirements

1. The head of an agency has increased flexibility and authority in planning, implementing and evaluating training to meet mission-related needs. (§ 410.101(4), § 410.201)
2. Each agency determines what constitutes its mission-related training needs. (§ 410.101(4))
3. Each agency has increased flexibility for training employees for placement in other agencies. (§ 410.308)
4. Each agency determines when continued service agreements will be required. (§ 410.310)
5. Constraints on the use of non-Government training are eliminated.
6. Limitations on training employees through non-Government facilities are eliminated.
7. Limitations on subsistence payments for extended training assignments are eliminated. (§ 410.403)
8. Annual reporting requirements are eliminated and other reporting requirements are significantly reduced. (§ 410.701)

New Provisions

1. Authority to approve training of Presidential appointees is delegated to heads of agencies. (§ 410.302(b))
2. Integrating employee training and development with agency mission and performance goals is added and clarified. (§ 410.202)
3. Training related career transition assistance for displaced and surplus employees is added and clarified. (§ 410.308(d))
4. Criteria for determining if a conference is a training activity is added. (§ 410.404)

Waiver of Notice of Proposed Rulemaking

Pursuant to 5 U.S.C. 553(b)(3)(b), I find that good cause exists for waiving the general notice of proposed rulemaking. The notice is being waived and the regulation is being made effective in less than 30 days. Inconsistencies between the law and the currently published regulations have caused confusion and led Federal

managers, employees, and training officials to operate under outdated, and unnecessary, regulations. We find that delay in issuing updated regulations would be contrary to public interest and to National Performance Review recommendations.

Regulatory Flexibility Act

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

List of Subjects in 5 CFR Part 410

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

Accordingly, the Office of Personnel Management is revising 5 CFR part 410 as follows:

PART 410—TRAINING

Subpart A—General Provisions

Sec.
410.101 Definitions.

Subpart B—Planning for Training

Sec.
410.201 Responsibilities of the head of an agency.
410.202 Integrating employee training and development with agency strategic plans.
410.203 Assessing organizational, occupation, and individual needs.
410.204 Options for developing employees.

Subpart C—Establishing and Implementing Training Programs

Sec.
410.301 Scope and general conduct of training programs.
410.302 Responsibilities of the head of an agency.
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410.304 Funding training programs.
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410.306 Selecting and assigning employees to training.
410.307 Training for promotion.
410.308 Training for placement in other agency positions, in other agencies, or outside Government.
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410.310 Agreements to continue in service.
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410.401 Determining necessary training expenses.
410.402 Paying premium pay.
410.403 Subsistence payments for extended training assignments.
410.404 Determining if a conference is a training activity.

410.405 Protection of Government interest.
410.406 Records of training expenses.

Subpart E—Accepting Contributions, Awards, and Payments From Non-Government Organizations

Sec.
410.501 Scope.
410.502 Authority of the head of an agency.
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Subpart F—Evaluating Training

Sec.
410.601 Responsibility of the head of an agency.
410.602 Records.

Subpart G—Reports

Sec.
410.701 Reports.
Authority: 5 U.S.C. 4101, *et seq.*; E.O. 11348, 3 CFR, 1967 Comp., p. 275.

Subpart A—General Provisions

§ 410.101 Definitions.

In this part:

(a) *Agency, employee, Government facility, and non-Government facility* have the meanings given these terms in section 4101 of title 5, United States Code.

(b) Exceptions to organizations and employees covered by this subpart include:

- (1) Those named in section 4102 of title 5, United States Code, and
- (2) The U.S. Postal Service and Postal Rate Commission and their employees, as provided in Public Law 91-375, enacted August 12, 1970.

(c) *Training* has the meaning given to the term in section 4101 of title 5, United States Code, and includes planned activities which support and improve individual and organizational performance and effectiveness, such as on-the-job training, career development programs, professional development activities, or developmental assignments.

(d) *Mission-related training* is training that supports agency goals by improving organizational performance at any appropriate level in the agency, as determined by the head of the agency. This includes training that:

- (1) Supports the agency's strategic plan and performance objectives;
- (2) Improves an employee's current job performance;
- (3) Allows for expansion or enhancement of an employee's current job;
- (4) Enables an employee to perform needed or potentially needed duties outside the current job at the same level of responsibility; or
- (5) Meets organizational needs in response to human resource plans and re-engineering, downsizing, restructuring, and program changes.

(e) *Retraining* means training and development provided to address an individual's skills obsolescence in the current position and/or training and development to prepare an individual for a different occupation, in the same agency, in another Government agency, or in the private sector.

(f) *Continued service agreement* has the meaning given to service agreements in section 4108 of title 5, United States Code.

(g) *Interagency training* means training provided by one agency for other agencies or shared by two or more agencies.

(h) *State and local government* have the meanings given to these terms by section 4762 of title 42, United States Code.

Subpart B—Planning for Training

§ 410.201 Responsibilities of the head of an agency.

As stated in section 4103 of title 5, United States Code, and in Executive Order 11348, the head of each agency shall:

(a) Establish, budget for, operate, maintain, and evaluate a program or programs, and a plan or plans thereunder, for training agency employees by, in, and through Government and non-Government facilities;

(b) Determine policies governing employee training, including a statement of broad purposes for agency training, the assignment of responsibility for seeing that these purposes are achieved, and the delegation of training approval authority to the lowest possible level; and

(c) Establish priorities for training employees and provide for funds and staff according to these priorities.

§ 410.202 Integrating employee training and development with agency strategic plans.

(a) Agencies shall include training and development in agency strategic planning to ensure that:

(1) Agency training strategies and activities contribute to mission accomplishment; and

(2) Organizational performance goals are met.

(b) Agency human resource development programs and plans should:

(1) Improve employee and organizational performance; and

(2) Build and support an agency workforce capable of achieving agency mission and performance goals.

§ 410.203 Assessing organizational, occupational, and individual needs.

(a) Assessment. Executive Order 11348 specifies the responsibility of heads of agencies to assess agency training needs.

(b) Method. The method an agency uses to conduct training needs assessment shall meet the requirements of chapter 41 of title 5, United States Code, Executive Order 11348, and this subpart.

§ 410.204 Options for developing employees.

Agencies may use a full range of options to meet their organizational and employee development needs, including classroom training, on-the-job training, technology-based training, satellite training, employees' self-development activities, coaching, mentoring, career development counseling, details, rotational assignments, cross training, and developmental activities at retreats and conferences.

Subpart C—Establishing and Implementing Training Programs

§ 410.301 Scope and general conduct of training programs.

(a) Authority. The requirements for establishing training programs and plans are found in section 4103(a) of title 5, United States Code, and Executive Order 11348.

(b) Alignment with other human resource functions. Training programs established by agencies under chapter 41 of title 5, United States Code, should be integrated with other personnel management and operating activities, to the maximum possible extent.

§ 410.302 Responsibilities of the head of an agency.

(a) Specific responsibilities. (1) The head of each agency shall prescribe procedures to ensure that the selection of employees for training is made without regard to political preference, race, color, religion, national origin, sex, marital status, age, or handicapping condition, and with proper regard for their privacy and constitutional rights as provided by merit system principles set forth in 5 U.S.C. 2301(b)(2).

(2) The head of each agency shall prescribe procedures to ensure that the training facility and curriculum are accessible to employees with disabilities.

(3) The head of each agency shall not allow training in a facility that discriminates in the admission or treatment of students.

(b)(1) Training of Presidential appointees. The Office of Personnel Management delegates to the head of

each agency authority to authorize training for officials appointed by the President. In exercising this authority, the head of an agency must ensure that the training is in compliance with chapter 41 of title 5, United States Code, and with this part. This authority may not be delegated to a subordinate.

(2) Records. When exercising this delegation of authority, the head of an agency must maintain records that include:

(i) The name and position title of the official;

(ii) A description of the training, its location, vendor, cost, and duration; and

(iii) A statement justifying the training and describing how the official will apply it during his or her term of office.

(3) Review of delegation. Exercise of this authority is subject to U.S. Office of Personnel Management review.

(c) Training for the head of an agency. Since self-review constitutes a conflict of interest, heads of agencies must submit their own requests for training to the U.S. Office of Personnel Management for approval.

§ 410.303 Employee responsibilities.

Employees are responsible for self-development, for successfully completing and applying authorized training, and for fulfilling continued service agreements. In addition, they share with their agencies the responsibility to identify training needed to improve individual and organizational performance and identify methods to meet those needs, effectively and efficiently.

§ 410.304 Funding training programs.

Section 4112 of title 5, United States Code, provides for agencies paying the costs of their training programs and plans from applicable appropriations or funds available. Training costs associated with program accomplishment may be funded by appropriations applicable to that program area. In addition, section 4109(a)(2) of title 5, United States Code, provides authority for agencies and employees to share the expenses of training.

§ 410.305 Establishing and using interagency training.

An agency may extend training programs developed for its employees to employees of other agencies (and to employees of Federal organizations excepted by section 4102 of title 5, United States Code) when this would result in better training, improved service, or savings to the Government.

§ 410.306 Selecting and assigning employees to training.

(a) Each agency shall establish criteria for the fair and equitable selection and assignment of employees to training consistent with merit system principles specified in 5 U.S.C. 2301(b) (1) and (2).

(b) Persons on Intergovernmental Personnel Act mobility assignments may be assigned to training if that training is in the interest of the Government.

(c) Under the provisions of § 410.309(a) of this part, an agency may pay all or part of the training expenses of students hired under the Student Career Experience Program (see 5 CFR 213.3202(d)(10)).

§ 410.307 Training for promotion.

Under the authority of 5 U.S.C. 4103, and consistent with merit system principles set forth in 5 U.S.C. 2301(b) (1) and (2), an agency may provide training to career or career-conditional employees that in certain instances may lead to promotion. An agency must follow its competitive procedures under part 335 of this chapter when selecting a career or career-conditional employee for training that permits noncompetitive promotion after successful completion of the training.

§ 410.308 Training for placement in other agency positions, in other agencies, or outside Government.

(a) Under the authority of 5 U.S.C. 4103 and 5 U.S.C. 5364, an agency may train an employee to meet the qualification requirements of another position in the agency if the new position is at or below the grade the employee held before grade or pay retention.

(b) Under the authority of 5 U.S.C. 4103(b), and consistent with merit system principles set forth in 5 U.S.C. 2301, an agency may train an employee to meet the qualification requirements of a position in another agency if the head of the agency determines that such training would be in the interests of the Government.

(1) Before undertaking any training under this section, the head of the agency shall obtain verification that there exists a reasonable expectation of placement in another agency.

(2) When selecting an employee for training under this section, the head of the agency shall consider:

(i) The extent to which the employee's current skills, knowledge, and abilities may be utilized in the new position;

(ii) The employee's capability to learn skills and acquire knowledge and abilities needed in the new position; and

(iii) The benefits to the Government which would result from retaining the employee in the Federal service.

(c) Displaced or surplus employees as defined in 5 CFR 330.604 (b) and (f) may be eligible for training or retraining for positions outside Government through programs provided under 29 U.S.C.

1651, or similar authorities. An agency may use its appropriated funds for training displaced or surplus employees for positions outside Government only when specifically authorized by legislation to do so.

(d) Under 5 CFR 330.602, agencies are required to establish career transition assistance plans (CTAP) to provide career transition services to displaced and surplus employees.

(1) Under the authority of 5 U.S.C. 4109, an agency may:

(i) Train employees in the use of the CTAP services;

(ii) Provide vocational and career assessment and counseling services;

(iii) Train employees in job search skills, techniques, and strategies; and

(iv) Pay for training related expenses as provided in 5 U.S.C. 4109(a)(2).

(2) Agency CTAP's will include plans for retraining displaced or surplus employees covered by this part.

§ 410.309 Training to obtain an academic degree.

(a) Prohibition. (1) Under 5 U.S.C. 4107(a), an agency may not authorize training for an employee to obtain an academic degree, except for shortage occupations as defined in § 410.309(b).

(2) An agency may assign employees to academic training on a course-by-course basis. If, in the accomplishment of this training, an employee receives an academic degree, the degree is an incidental by-product of the training.

(b) Degree training to relieve recruitment and retention problems. (1) An agency may authorize academic degree training if the training:

(i) Is necessary to assist in recruiting or retaining employees in occupations in which the agency has or anticipates a shortage of qualified personnel, especially in occupations which it has determined involve skills critical to its mission, and

(ii) Meets the conditions of this section.

(2) In reviewing the need to provide training under this section, an agency shall give appropriate consideration to any special salary rate, student loan repayment, retention allowance, or other monetary inducement authorized by law already provided or being provided which contributes to the alleviation of the staffing problem in the occupation targeted by that training.

(3) In exercising the authority in this section, an agency shall, consistent with the merit system principles set forth in 5 U.S.C. 2301(b) (1) and (2), take into consideration the need to maintain a balanced workforce in which women and members of racial and ethnic minority groups are appropriately represented in the agency.

(4) The authority in this section shall not be exercised on behalf of any employee occupying, or seeking to qualify for appointment to, any position which is excepted from the competitive service because of its confidential, policy-determining, policy-making, or policy-advocating character.

(5) An agency's policies established under § 410.201 of this part shall cover decisions to authorize training under this section, to ensure that:

(i) The determination to pay for degree training is made at a sufficiently high level so as to protect the Government's interest; and

(ii) The authority is used to address the agency's recruitment and retention problems expeditiously through appropriate delegations of authority.

(c) Determining recruitment and retention problems. For the purposes of this section, a recruitment or retention problem exists if the criteria for a recruitment bonus under 5 CFR § 575.104(c)(2) or for a retention allowance under 5 CFR § 575.305(c)(3) applies.

(1) Recruitment problem. Before determining that an agency has or anticipates a problem in the recruitment of qualified personnel for a particular position, an agency shall make a reasonable recruitment effort, including factors in 5 CFR § 575.104(c)(2). In making a reasonable recruitment effort, an agency will consider the following:

(i) For a position in the competitive service, the results of requests for referral of eligibles from the appropriate competitive examination. For a position in the excepted service, the agency's objectives and staffing procedures.

(ii) Contacts with State Employment Service office(s) serving the locality concerned.

(iii) Contacts with academic institutions, technical and professional organizations, and other organizations likely to produce qualified candidates for the position, including women's and minority-group organizations.

(iv) The possibility of relieving the shortage through broader publicity and recruitment.

(v) The availability of qualified candidates within the agency's current work force.

(vi) The possibility of relieving the shortage through job engineering or training of current employees.

(2) Retention problem. Before determining that an agency has or anticipates a problem in the retention of qualified personnel in a particular occupation, an agency shall consider the factors in 5 CFR § 575.305(c)(3) and:

(i) The ease with which an agency could replace the employee with someone of comparable background;

(ii) The current and projected vacancy rates in the occupation;

(iii) The rate of turnover in the occupation; and

(iv) Technological changes affecting the occupation and long-range predictions affecting staffing for the occupation.

(d) Assessing continuing problems. A reassessment of a "continuing" recruitment or retention problem shall be made periodically.

(e) Authorizing training. (1) An agency may authorize full or part-time training to address a recruitment problem if—

(i) The training qualifies an employee for a shortage position identified under paragraph (c)(1) of this section; and

(ii) The agency expects to place the employee in the shortage position after the training.

(2) Training may be authorized under this section for the purpose of retaining an employee in a shortage occupation identified under paragraph(c)(2) of this section, if it involves a course of study selected mainly or its potential contribution to effective performance in that occupation.

(3) Agencies shall select employees for academic degree training according to competitive procedures as specified in § 410.307.

(f) Monitoring training. An Agency shall assess the contribution of training assignments under this section to resolving recruitment or retention problems in its shortage occupations.

(g) Documentation. (1) In exercising the authority in this section, an agency shall retain for a reasonable period:

(i) A record of employees assigned to training under this section and

(ii) A record of findings that the recruitment or retention problem is a continuing one.

(2) As a separate record, the servicing personnel office shall keep the following information for each employee assigned to training under this section:

(i) Nature and justification for the shortage determination;

(ii) Kind of training (e.g., career experience program, continuing professional and technical education,

retraining for occupational change); a description of the field of study; and the nature of any degree pursued under the training program; and

(iii) A written continued service agreement, if required.

§ 410.310 Agreements to continue in service.

(a) Authority. Continued service agreements are provided for in section 4108 of title 5, United States Code. Agencies have the authority to determine when such agreements will be required.

(b) Requirements. (1) The Head of the agency shall establish written procedures which cover the minimum requirements for continued service agreements. These requirements shall include procedures the agency considers necessary to protect the Government's interest should the employee fail to successfully complete training.

(2) An employee selected for training subject to an agency continued service agreement must sign an agreement to continue in service after training prior to starting the training. The period of service will equal three times the length of the training.

(c) Failure to fulfill agreements. With a signed agreement, the agency has a right to recover training costs, except for pay or other compensation, if the employee voluntarily separates from Government service. The agency shall provide procedures to enable the employee to obtain a reconsideration of the recovery amount or to appeal for a waiver of the agency's right to recover.

§ 410.311 Computing time in training.

For the purpose of chapter 41 of title 5, United States Code, and this subpart:

(a) An employee on an 8-hour day work schedule assigned to training is counted as being in training for the same number of hours he or she is in pay status during the training assignment. If the employee is not in pay status during the training, the employee is counted as being in training for the number of hours he or she is granted leave without pay for the purpose of the training.

(b) For any employee on an alternative work schedule, the agency is responsible for determining the number of hours the employees is in pay status during the training assignment. If the employee is not in pay status during the training, the employee is counted as being in training for the number of hours he or she is granted leave without pay for the purpose of the training.

(c) An employee on a 8-hour or an alternative work schedule assigned to

training on less than a full-time basis is counted as being in training for the number of hours he or she spends in class, in formal computer-based training, in satellite training, in formal self-study programs, or with the training instructor, unless a different method is determined by the agency.

§ 410.312 Records.

Agencies shall keep a record of training events authorized for each employee under this subpart.

Subpart D—Paying for Training Expenses

§ 410.401 Determining necessary training expenses.

(a) The head of an agency determines which expenses constitute necessary training expenses under section 4109 of title 5, United States Code.

(b) An agency may pay, or reimburse an employee, for necessary expenses incurred in connection with approved training as provided in section 4109(a)(2) of title 5, United States Code. Necessary training expenses do not include an employee's pay or other compensation.

§ 410.402 Paying premium pay.

(a) Prohibitions. Except as provided by paragraph (b) of this section, an agency may not use its funds, appropriated or otherwise available, to pay premium pay to an employee engaged in training by, in or through Government or non-government facilities.

(b) Exceptions. The following are excepted from the provision in paragraph (a) of this section prohibiting the payment of premium pay:

(1) Continuation of premium pay. An employee given training during a period of duty for which he or she is already receiving premium pay for overtime, night, holiday, or Sunday work shall continue to receive that premium pay. This exception does not apply to an employee assigned to full-time training at institutions of higher learning.

(2) Training at night. An employee given training at night because situations that he or she must learn to handle occur only at night shall be paid night pay.

(3) Cost savings. An employee given training on overtime, on a holiday, or on a Sunday because the costs of the training, premium pay included, are less than the costs of the same training confined to regular work hours shall be paid the applicable premium pay.

(4) Availability pay. An agency shall continue to pay availability pay during agency-sanctioned training to a criminal investigator who is eligible for it under

5 U.S.C. 5545(a) and implementing regulations. Agencies may, at their discretion, provide availability pay to investigators during periods of initial, basic training. (See 5 CFR § 550.185 (b) and (c).)

(5) Standby and administratively uncontrollable duty. An agency may continue to pay annual premium pay for regularly scheduled standby duty or administratively uncontrollable overtime work, during periods of temporary assignment for training as provided by 5 CFR § 550.162(c).

(6) Agency exemption. An employee given training during a period not otherwise covered by a provision of this paragraph may be paid premium pay when the employing agency has been granted an exception to paragraph (a) of this section by the U.S. Office of Personnel Management.

(c) An employee who is excepted under paragraph (b) of this section is eligible to receive premium pay in accordance with the applicable pay authorities.

(d) Overtime pay under the Fair Labor Standards Act (FLSA). (1) Time spent in training or preparing for training outside regular working hours shall be considered hours of work for the purpose of computing FLSA overtime if an agency requires the training to bring performance up to a fully successful, or equivalent, level or to provide knowledge or skills to perform new duties and responsibilities in the employee's current position. (Also see 5 CFR § 551.423.)

(2) The requirement of paragraph (d)(1) of this section does not pertain to training or preparing for training to:

(i) Improve a nonexempt employee's performance in his or her current position above a fully successful, or equivalent, level, provided such training is undertaken with the knowledge that the employee's performance or continued retention in his or her current position will not be adversely affected by nonenrollment in the training program; or

(ii) Provide a nonexempt employee with additional knowledge or skills for reassignment to another position or advancement to a higher grade. This includes any developmental training, even if such training is directed by the agency.

§ 410.403 Subsistence payments for extended training assignments.

An agency has the authority to pay all or part (if agreed to by the employee) of actual subsistence expenses of an employee assigned to training at a temporary duty station lasting more than 30 calendar days. The agreed rate

of payment shall be applicable from the 1st day of the assignment. An agency may adjust an agreed rate of payment when circumstances so justify, provided the employee agrees to any decrease. If the fees paid to the training institution include lodging or meal costs, an appropriate reduction shall be made from any standardized subsistence payments.

§ 410.404 Determining if a conference is a training activity.

Agencies may sponsor an employee's attendance at a conference as a developmental assignment under section 4110 of title 5, United States Code, when—

(a) The content of the conference is germane to improving individual and/or organizational performance, and

(b) Developmental benefits will be derived through the employee's attendance.

§ 410.405 Protection of Government interest.

The head of an agency shall establish such procedures as he or she considers necessary to protect the Government's interest when employees fail to complete, or to successfully complete, training for which the agency pays the expenses.

§ 410.406 Records of training expenses.

An agency shall maintain records of payments made for travel, tuition and fees, and other necessary training expenses.

Subpart E—Accepting Contributions, Awards, and Payments From Non-Government Organizations

§ 410.501 Scope.

(a) Section 4111 of title 5, United States Code, describes conditions for employee acceptance of contributions, awards, and payments made in connection with non-Government sponsored training or meetings which an employee attends while on duty or when the agency pays the training or meeting attendance expenses, in whole or in part.

(b) This subpart does not limit the authority of an agency head to establish procedures on the acceptance of contributions, awards, and payments in connection with any training and meetings that are outside the scope of this subpart in accordance with laws and regulations governing Government ethics and governing acceptance of travel reimbursements from non-Federal sources.

§ 410.502 Authority of the head of an agency.

(a) In writing, the head of an agency may authorize an agency employee to accept a contribution or award (in cash or in kind) incident to training or to accept payment (in cash or in kind) of travel, subsistence, and other expenses incident to attendance at meetings if

(1) The conditions specified in section 4111 of title 5, United States Code, are met; and

(2) In the judgment of the agency head, the following two conditions are met:

(i) The contribution, award, or payment is not a reward for services to the organization prior to the training or meeting; and

(ii) Acceptance of the contribution, award, or payment:

(A) Would not reflect unfavorably on the employee's ability to carry out official duties in a fair and objective manner;

(B) Would not compromise the honesty and integrity of Government programs or of Government employees and their official actions or decisions;

(C) Would be compatible with the Ethics in Government Act of 1978, as amended; and

(D) Would otherwise be proper and ethical for the employee concerned given the circumstances of the particular case.

(b) Delegation of authority. An agency head may delegate authority to authorize the acceptance of contributions, awards, and payments under this section. The designated official must ensure that—

(1) The policies of the agency head are reflected in each decision; and

(2) The circumstances of each case are fully evaluated under conditions set forth in § 410.502(a).

(c) Acceptance of contributions, awards, and payments. An employee may accept a contribution, award, or payment (whether made in cash or in kind) that falls within the scope of this section only when he or she has specific written authorization.

(d) When more than one non-Government organization participates in making a single contribution, award, or payment, the "organization" referred to in this subsection is the one that:

(1) selects the recipient; and

(2) administers the funds from which the contribution, award, or payment is made.

§ 410.503 Records.

An agency shall maintain, in such form and manner as the agency head considers appropriate, the following records in connection with each

contribution, award, or payment made and accepted under authority of this section: The recipient's name; the organization's name; the amount and nature of the contribution, award, or payment and the purpose for which it is to be used; and a copy of the written authorization required by § 410.502(a).

Subpart F—Evaluating Training

§ 410.601 Responsibility of the head of an agency.

Under provisions of chapter 41 of title 5, United States Code, and Executive Order 11348, the agency head shall evaluate training to determine how well it meets short and long-range program needs by occupations, organizations, or other appropriate groups. The agency head may conduct the evaluation in the manner and frequency he or she considers appropriate.

§ 410.602 Records.

An agency head shall keep records of these evaluations as he or she considers appropriate.

Subpart G—Reports

§ 410.701 Reports.

Each agency shall maintain records of its training plans, expenditures and activities and report its plans, expenditures and activities to the Office of Personnel Management and at such times and in such form as the Office prescribes.

[FR Doc. 96-11863 Filed 5-10-96; 8:45 am]
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5 CFR Parts 831 and 842

RIN 3206-AG16

Retirement; Alternative Forms of Annuity

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing final regulations on alternative forms of annuity. The regulations establish a new standard for determining what constitutes a critical medical condition and implement the changes made by the Omnibus Budget Reconciliation Act of 1993. Under this law the alternative form of annuity was repealed for employees whose annuities commence on or after October 1, 1994, except for employees who have a life-threatening affliction or other critical medical condition. The regulations also revise the list of critical medical conditions that are qualifying.

EFFECTIVE DATE: June 12, 1996.

FOR FURTHER INFORMATION CONTACT: Harold L. Siegelman, (202) 606-0299.

SUPPLEMENTARY INFORMATION: On October 25, 1995, we published (at 60 FR 54585) interim regulations on alternative forms of annuity to change the standard for determining what constitutes a critical medical condition. Our previous regulations used a 1-year-or-less life expectancy as the standard, but the interim regulations adopted a 2-year-or-less standard. The interim regulations also make effective the previously proposed regulations (published on November 4, 1994, at 59 FR 55211) on alternative forms of annuity (AFA) to implement the changes in sections 8343a and 8420a of title 5, United States Code, made by the Omnibus Budget Reconciliation Act of 1993, Pub. L. 103-66. The Act included a provision terminating this benefit for employees whose annuities commence on or after October 1, 1994, except for employees who have a life-threatening affliction or other critical medical condition. The interim regulations also made effective a revised list of critical medical conditions. This revised list was included in the 1994 general notice of proposed rulemaking. We received no comments on the interim regulations. We addressed the one comment that we received on the 1994 proposed regulations in the supplementary information section of the interim regulations.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because the regulation will only affect Federal employees and agencies and retirement payments to retired Government employees and their survivors.

List of Subjects in 5 CFR Parts 831 and 842

Administrative practice and procedure, Air traffic controllers, Claims, Disability benefits, Firefighters, Government employees, Income taxes, Intergovernmental relations, Law enforcement officers, Pensions, Reporting and recordkeeping requirements, Retirement.

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

Accordingly, under authority of 5 U.S.C. 8347 and 8467, OPM is adopting its interim rules amending 5 CFR parts 831 and 842, published on October 25,

1995, at 60 FR 54585, as final rules without change.

[FR Doc. 96-11864 Filed 5-10-96; 8:45 am]
BILLING CODE 6325-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 96-ASO-7]

Amendment to Class D and E2 Airspace and Establishment of Class E4 Airspace; Jackson, TN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment modifies Class D and E2 Airspace and establishes Class E4 Airspace at Jackson, TN, for the McKellar-Sipes Regional Airport. This amendment is necessary because the arrival extension, which is currently part of the Class D surface area airspace, is greater than 2 miles and must, by regulation, be designated as Class E4 airspace.

EFFECTIVE DATE: 0901 UTC, August 15, 1996.

FOR FURTHER INFORMATION CONTACT: Benny L. McGlamery, System Management Branch, Air Traffic Division, Federal Aviation Administration, PO Box 20636, Atlanta, Georgia 30320; telephone (404) 305-5570.

SUPPLEMENTARY INFORMATION:

History

On March 18, 1996, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR Part 71) by modifying Class D and E2 and establishing Class E4 airspace at Jackson, TN 61 FR 10908). This action would provide adequate Class E airspace for IFR operations at the McKellar-Sipes Regional Airport.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class D airspace designations, Class E airspace designations for airspace areas designated as a surface area for an airport and Class E airspace designations for airspace areas designated as an extension to a Class D surface area are published in Paragraphs 5000, 6002 and 6004, respectively, of FAA Order 7400.9C, dated August 17, 1995, and effective September 16, 1995,