

# 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 370

RIN 3206-AK28

### Information Technology Exchange Program

**AGENCY:** Office of Personnel Management.

**ACTION:** Proposed rule.

**SUMMARY:** The Office of Personnel Management (OPM) is issuing proposed regulations to implement provisions contained in the E-Government Act of 2002. This law authorizes the temporary assignment of employees in the field of information technology management (IT) between the Federal Government and private sector organizations. It also authorizes Federal agencies to accept, on a volunteer basis, the services of non-Federal IT employees.

**DATES:** We will consider comments received on or before March 15, 2004.

**ADDRESSES:** Send, deliver or fax, written comments to Ms. Leah M. Meisel, Deputy Associate Director for Talent and Capacity Policy, U.S. Office of Personnel Management, Room 6551, 1900 E Street NW., Washington, DC 20415-9700; e-mail [employ@opm.gov](mailto:employ@opm.gov); fax: (202) 606-2329.

**FOR FURTHER INFORMATION CONTACT:** Mr. Michael J. Mahoney at 202-606-0960 or by e-mail at [mjmahone@opm.gov](mailto:mjmahone@opm.gov). Mr. Mahoney may also be contacted by TTY at (202) 418-3134, or by fax at (202) 606-2329.

**SUPPLEMENTARY INFORMATION:** On December 17, 2002, the President signed the E-Government Act of 2002 (Act), Public Law 107-347, into law. The Act authorizes the Federal Information Technology Exchange Program, under which a Federal agency may detail an exceptional employee to a private organization as well as receive a private sector employee on detail to the agency. It also authorizes Federal agencies to accept services volunteered by persons in the information technology

management field. The Act adds a new chapter 37 to title 5, United States Code, and this regulation adds a corresponding part, part 370, Information Technology Exchange Program, to the Code of Federal Regulations in accordance with 5 U.S.C. 3707. The new part has nine sections, as follows:

#### Purpose

This section explains the purpose of this regulation which is to implement Section 209(b)(6) of the Act as well as 5 U.S.C. chapter 37, as enacted by Section 209(c) of the Act, in order to improve the competency of the Federal workforce in using information technology to deliver Government information and services. It also explains that details under this subpart allow Federal employees to serve with private sector organizations for a limited time period without loss of employee rights and benefits.

#### Definitions

This section contains terms defined in 5 U.S.C. chapter 37. To avoid redundancy, we refer readers to the law where appropriate. It also contains a definition of information technology management which will aid agencies in determining an individual's eligibility for assignment under this part.

#### Eligibility

This section explains the criteria under which individuals may be eligible for detail under this part. For the convenience of the reader, we have restated criteria contained in the Act. This section clarifies that members of the Senior Executive Service are eligible for assignment under this part. This section also clarifies that, for purposes of this part, appointments of equivalent tenure in the excepted service include appointments that have non-competitive conversion eligibility to the competitive service. These include, but are not limited to, Veterans' Recruitment Appointments (VRA) and appointments made under the Presidential Management Fellows program, the Federal Career Intern program, and the Student Career Experience program.

#### Length of Details

This section explains the time limits (including extensions) for details made under this part. It also reminds agencies they may not begin or extend details

after December 17, 2007. It explains, however, that individuals serving on details prior to this date may continue to do so as long as the detail began or was extended on or before December 17, 2007.

This section also establishes a lifetime limit of 6 years on the total number of years a Federal employee may be detailed under this part. This lifetime limit makes this part consistent with the limit for assignments made under the Intergovernmental Personnel Act Mobility Program.

#### Written Agreements

This section requires an agency to enter into a written agreement before any detail under this part begins. It also explains the criteria that a written agreement must contain: Duties, duration, whether the individual will be supervised by a Federal or private sector employee, and employee responsibilities after the detail ends.

#### Terms and Conditions

This section clarifies that a Federal employee serving on a detail under this part remains a Federal employee, and thus, retains all rights, benefits, and considerations he or she normally would have possessed if the detail had not been accepted.

This section explains that a Federal employee on detail to a private sector organization may be supervised by private sector managers during the detail. An individual detailed from the private sector to a Federal agency may be supervised by Federal personnel. In either case, whoever will supervise the detailee must be described in the written agreement.

This section also explains that private sector employees are considered to be employees of the agency for purposes of corruption statutes, ethics, financial disclosure, injury compensation, and tort claims.

Lastly, this section explains that private sector organizations may not charge the Federal Government for the pay or benefits paid by the organization to an employee detailed to a Federal agency under this part. For the convenience of the reader, we have restated criteria contained in the Act.

#### Assignments to Small Business Concerns

This section explains that agencies must ensure that 20 percent of

assignments to private organizations be made to small business concerns when an agency makes five or more assignments in any year. Agencies that do not meet this requirement must submit a report to Congress, which is in addition to any documentation and reports which OPM may require of them. This section also provides guidance and examples for agencies to follow for computing 20 percent of assignments to private sector organizations.

### Reporting Requirements

This section describes the Office of Personnel Management's obligations for submitting reports to Congress consistent with 5 U.S.C. 3706. It also specifies the dates by which agencies must report to OPM. This section also reminds agencies of their obligation to report to Congress consistent with 5 U.S.C. 3703(e)(3) and their obligation under 5 U.S.C. 3706(d) to provide OPM with whatever information OPM may require to fulfill its own Congressional reporting responsibility.

### Agency Plans

This section explains that the head of an agency must establish an agency plan before using this part. An agency plan must include, but is not limited to, a designation of the agency officials with authority to review and approve assignments; the number of candidates needed to satisfy the agency's information technology needs; procedures for selecting and identifying agency employees for detail; expected costs and benefits of each detail; return rights and obligations for agency employees selected for detail; and documentation and recordkeeping requirements sufficient to allow reconstruction of each action taken under this part.

### Executive Order 12866, Regulatory Review

This proposed rule has been reviewed by the Office of Management and Budget in accordance with Executive Order 12866.

### Regulatory Flexibility Act

I certify that these regulations would 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 would only apply to Federal agencies and employees.

### List of Subjects in 5 CFR Part 370

Claims. Government employees. Reporting and recordkeeping requirements.

U.S. Office of Personnel Management.

**Kay Coles James,**  
*Director.*

Accordingly, OPM proposes to add part 370 to title 5 of the Code of Federal Regulations, as follows:

### PART 370—INFORMATION TECHNOLOGY EXCHANGE PROGRAM

Sec.

- 370.101 Purpose.
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- 370.108 Reporting requirements.
- 370.109 Agency plans.

**Authority:** Pub. L. 107–347, 116 Stat. 2924 (5 U.S.C. 3701–3707).

#### § 370.101 Purpose.

(a) The purpose of this part is to implement the objectives of sections 209(b)(6) and (c) of the E–Government Act of 2002 (Pub. L. 107–347) which authorizes the Office of Personnel Management to establish an Information Technology Exchange Program. This statute authorizes the temporary assignment of information technology employees between the Federal Government and private sector organizations. The statute also authorizes agencies to accept, on a volunteer basis, the services of private sector information technology employees detailed under the Information Technology Exchange Program.

(b) Under this part, agency heads, or their designees, may approve details as a mechanism for improving the Federal workforce's competency in using information technology to deliver Government information and services. Details under this part allow Federal employees to serve with private sector organizations for a limited time period without loss of employee rights and benefits. Agencies may not make details under this part to meet the personal interests of employees, to circumvent personnel ceilings, or as a substitute for other, more appropriate personnel decisions or actions.

#### § 370.102 Definitions.

In this part:

*Agency* means an Executive agency as defined in 5 U.S.C. 105, with the

exception of the General Accounting Office.

*Detail* means:

- (1) The assignment or loan of an employee of an agency to a private sector organization without a change of position from the agency that employs the individual (5 U.S.C. 3701(2)(A)), or
- (2) The assignment or loan of an employee of a private sector organization to an agency without a change of position from the private sector organization that employs the individual (5 U.S.C. 3701(2)(B)).

*Information technology management* means the planning, organizing, staffing, directing, integrating, or controlling of systems and services used in the automated acquisition, storage, manipulation, management, movement control, display, switching, interchange, transmission, assurance, or reception of information. Information technology includes computers, network components, peripheral equipment, software, firmware, services, and related resources.

*OPM* means the Office of Personnel Management.

*Small Business Concern* means a business concern that satisfies the definitions and standards specified by the Administrator of the Small Business Administration (SBA), under section 3(a)(2) of the Small Business Act. SBA standards and definitions are codified at 13 CFR part 121. Agencies can find more information on the SBA's Web site at <http://www.sba.gov/size>, including a list of the six SBA area offices that have size specialists who deal with Federal agencies on size matters daily at <http://www.sba.gov/size/indexcontacts.html>. SBA's table of size standards is located at <http://www.sba.gov/size/indextableofsize.html>.

#### § 370.103 Eligibility.

(a) To be eligible for a detail under this part, an individual must:

(1) Work in the field of information technology management;

(2) Be considered an exceptional performer by the individual's current employer; and

(3) Be expected by the individual's current employer to assume increased responsibilities for the management of information technology in the future.

(b) To be eligible for a detail under this part, a Federal employee, in addition to meeting the requirements of paragraph (a) of this section, must be serving at the GS–11 level or above (or equivalent), which includes members of the Senior Executive Service, under a career or career-conditional appointment or an appointment of

equivalent tenure in the excepted service. For purposes of this part appointments of equivalent tenure in the excepted service include, but are not limited to, Veterans' Recruitment Appointments and appointments made under the Presidential Management Intern program, the Federal Career Intern program, and the Student Career Experience program.

#### § 370.104 Length of details.

(a) Assignments under this part may be for a period of between 3 months and one year, and may be extended in 3-month increments for a total of not more than 1 additional year, in accordance with 5 U.S.C. 3702(d).

(b) Agencies may not approve or extend details after December 17, 2007. An individual serving on a detail prior to this date may continue to do so as long as the detail began or was extended on or before December 17, 2007.

(c) A Federal agency may not send on assignment an employee who has served on a detail under this part for more than 6 years during his or her Federal career. OPM may waive this provision upon the request of the agency head, or his or her designee.

#### § 370.105 Written agreements.

Before the detail begins, an agency must enter into a written agreement with any individual detailed under this part. The written agreement must specify:

(a) The terms and conditions of the detail (e.g., duties, duration, including the terms on which extensions may be granted, if applicable);

(b) Whether the individual will be supervised by a Federal or private sector employee;

(c) The requirement for Federal employees to remain in the civil service upon completion of the assignment, for a period equal to the length of the assignment including any extension; and

(d) The obligations and responsibilities of all parties as described in 5 U.S.C. 3702 through 3704.

#### § 370.106 Terms and conditions.

(a) A Federal employee detailed under this part:

(1) Remains a Federal employee without loss of employee rights and benefits attached to that status. These include, but are not limited to:

(i) Consideration for promotion;

(ii) Leave accrual;

(iii) Continuation of retirement benefits and health, life, and long-term care insurance benefits; and

(iv) Pay increases the employee otherwise would have received had he or she not been detailed;

(2) Remains covered for purposes of the Federal Tort Claims Act, and for purposes of injury compensation as described in 5 U.S.C. chapter 81; and

(3) Is subject to any action that may impact the employee's position while he or she is detailed.

(b) An individual detailed from a private sector organization under this part:

(1) Is deemed to be an employee of the agency for purposes of:

(i) 5 U.S.C. chapter 73;

(ii) 18 U.S.C. 201, 203, 205, 207, 208, 209, 603, 606, 607, 643, 654, 1905, and 1913;

(iii) 31 U.S.C. 1343, 1344, and 1349(b);

(iv) The Federal Tort Claims Act and any other Federal tort liability statute;

(v) The Ethics in Government Act of 1978;

(vi) Section 1043 of the Internal Revenue Code of 1986;

(vii) Section 27 of the Office of Federal Procurement Policy Act; and

(2) Does not have any right or expectation for Federal employment solely on the basis of his or her detail;

(3) May not have access to any trade secrets or to any other nonpublic information which is of commercial value to the private sector organization from which he or she is assigned;

(4) Is subject to such regulations as the President may prescribe; and

(5) Shall be covered by 5 U.S.C. chapter 81 as provided in 5 U.S.C. 3704(c).

(c) Individuals detailed under this part may be supervised by either Federal or private sector managers. For example, a Federal employee on detail to a private sector organization may be supervised by a private sector manager. Likewise, a private sector employee on detail to a Federal agency may be supervised by a Federal employee. The supervision of the duties of an individual detailed under this part must be described in the written agreement.

(d) As provided in 5 U.S.C. 3704(d), a private sector organization may not charge the Federal Government for the costs of pay or benefits paid by the organization to an employee assigned to an agency under this part.

#### § 370.107 Assignments to small business concerns.

(a) The head of each agency shall take such actions as may be necessary to ensure that, of the assignments made to private sector organizations in each year, at least 20 percent are to small business concerns, in accordance with 5 U.S.C. 3703(e)(1).

(b) Agencies must round up to the nearest whole number when calculating the percentage of assignments to small business concerns needed to meet the requirements of this section. For example, an agency assigned 11 individuals to private sector organizations during a given year. To meet the 20 percent requirement, the agency must have made at least three (rounded up from 2.2) of these assignments to small business concerns. As another example, an agency assigned 19 individuals to private sector organizations during a given year. To meet the 20 percent requirement, the agency must have made at least four (rounded up from 3.8) of these assignments to small business concerns.

(c) For purposes of this section, assignments made in a year are those commencing in that year, in accordance with 5 U.S.C. 3703(e)(2)(C).

(d) Agencies which do not meet the requirements of this section are subject to the reporting requirements in 5 U.S.C. 3703(e)(3).

(e) An agency in any year which makes fewer than five assignments to private sector organizations is not subject to this section.

#### § 370.108 Reporting requirements.

(a) OPM must prepare and submit to Congress semiannual reports in accordance with 5 U.S.C. 3706.

(b) Federal agencies using this part must prepare and submit to OPM semiannual reports in accordance with 5 U.S.C. 3706, including such other information as OPM considers appropriate, in accordance with 5 U.S.C. 3706(b)(3) and (d). These reports are due to OPM no later than April 7 and October 7 of each year for the immediately preceding 6-month period ending March 31 and September 30, respectively.

(c) Federal agencies which do not meet the requirements of § 370.107 must prepare and submit annual reports to Congress in accordance with 5 U.S.C. 3703(e)(3), as appropriate.

#### § 370.109 Agency plans.

Before detailing agency employees or receiving private sector employees under this part, an agency must establish an Information Technology Exchange Program plan. The plan must include, but is not limited to, the following elements:

(a) A designation of the agency officials with authority to review and approve assignments;

(b) The number of candidates needed to satisfy the agency's information technology needs;

(c) Procedures for selecting and identifying exceptional agency employees for detail;

(d) Return rights and obligations for agency employees selected for detail; and

(e) Documentation and recordkeeping requirements sufficient to allow reconstruction of each action taken under this part.

[FR Doc. 04-862 Filed 1-14-04; 8:45 am]

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 71

[Docket No. FAA-2003-16596; Airspace Docket No. 03-ASO-20]

#### Proposed Amendment of Class D, E2, and E4 Airspace; Columbus Lawson AAF, GA, and Class E5 Airspace; Columbus, GA

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This notice proposes to amend Class D, E2 and E4 airspace at Columbus Lawson AAF, GA, and Class E5 airspace at Columbus, GA. As a result of the relocation of the Lawson AAF Instrument Landing System (ILS) and the extension of Runway (RWY) 15-33, it has been determined a modification should be made to the Columbus Lawson AAF, GA, Class D, E2 and E4 airspace, and to the Columbus, GA, Class E5 airspace areas to contain the ILS RWY 33, Standard Instrument Approach Procedure (SIAP) to the Lawson AAF Airport. Additional surface area airspace and controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to contain the SIAP.

**DATES:** Comments must be received on or before February 17, 2004.

**ADDRESSES:** Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590-0001. You must identify the docket number FAA-2003-16596/ Airspace Docket No. 03-ASO-20, at the beginning of your comments. You may also submit comments on the Internet at <http://dms.dot.gov>. You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal

holidays. The Docket office (telephone 1-800-647-5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division, Federal Aviation Administration, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337.

#### FOR FURTHER INFORMATION CONTACT:

Walter R. Cochran, Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305-5627.

#### SUPPLEMENTARY INFORMATION:

##### Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. FAA-2003-16596/Airspace Docket No. 03-ASO-20." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

##### Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at <http://dms.dot.gov>. Recently published rulemaking documents can also be accessed through the FAA's web page at <http://www.faa.gov> or the Superintendent of Document's web page at <http://www.access.gpo.gov/nara>. Additionally, any person may obtain a copy of this notice by submitting a

request to the Federal Aviation Administration, Office of Air Traffic Airspace Management, ATA-400, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267-8783. Communications must identify both docket numbers for this notice. Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking, (202) 267-9677, to request a copy of Advisory Circular No. 11-2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

##### The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to amend Class D, E2 and E4 airspace at Columbus Lawson AAF, GA, and Class E5 airspace at Columbus, GA. Class D airspace designations for airspace areas extending upward from the surface of the earth and Class E airspace designations for airspace designated as surface areas and airspace areas extending upward from 700 feet or more above the surface of the earth are published in Paragraphs 5000, 6002, 6004 and 6005 respectively, of FAA Order 7400.9L, dated September 2, 2003, and effective September 16, 2003, which is incorporated by reference in 14 CFR 71.1. The Class D and E airspace designations listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

##### List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

##### The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration