

Rules and Regulations

Federal Register

Vol. 61, No. 243

Tuesday, December 17, 1996

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OFFICE OF PERSONNEL MANAGEMENT

5 CFR PART 410

RIN: 3206-AF99

Training

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing final 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 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.

EFFECTIVE DATE: This rule becomes effective on December 17, 1996.

FOR FURTHER INFORMATION CONTACT: Judith Lombard, 202-606-2431, E-MAIL jmlombard@opm.gov, or FAX 202-606-2394.

SUPPLEMENTARY INFORMATION: Under section 4118 of title 5, United States Code, as amended, OPM is responsible for prescribing regulations for the training of Government employees. Inconsistencies between current training law and previously published regulations caused confusion and led Federal managers, employees, and training officials to operate under outdated, and unnecessary regulations. OPM found that delay in issuing updated regulations would be contrary to public interest, and published an

interim revision of its regulations in the May 13, 1996, Federal Register (61 FR 21947-21953) for a 30-day public comment period.

Comments were received from 14 sources, including one labor organization and one individual. OPM reviewed the comments with members of the Human Resource Development Council's Policy and Legislation Subcommittee, and collaborated with them on OPM's response. The following summarizes the comments, suggestions and actions taken in each subpart.

Subpart A—General Provisions

Section 410.101—Definitions. The labor organization felt training was adequately defined in section 4101 of title 5, United States Code, and that the clarifying language in § 410.101(c) of the interim regulation was restrictive and should be stricken. Response: Since similar information is included in § 410.204, options for developing employees, the definition has been revised to read: "Training has the meaning given to the term in section 4101 of title 5, United States Code."

Subpart B—Planning for Training

Section 410.202—Integrating employee training and development with agency strategic plans. One agency suggested that accountability and cost-benefit be added to § 410.202(a)(1) by adding alignment of training plans to agency performance indicators. Response: Although the idea has merit, it places a regulatory burden on training operations that properly belongs to other levels of the organization as well. We believe that the existing language is sufficient and that additional language is unnecessary.

Section 410.202(b)(1)—Agency human resource development programs. One agency suggested that accountability and cost-benefit be included by adding that human resource development plans should represent targeted investments in the workforce that are cost-beneficial and make efficient use of resources. Response: We believe the existing language is sufficient to assure accountability and efficiency and that additional language is unnecessary.

Subpart C—Establishing and Implementing Training Programs

Section 410.302—Responsibilities of the head of an agency.

1. One agency proposed that the word "procedures" in § 410.302(a) (1) and (2) is more onerous and burdensome than the word "policy" and recommended that the word procedures be dropped. Response: The wording in the interim regulation could be interpreted to mean that the agencies had to prescribe procedures, which was not our intent. Previously published 5 CFR part 410 regulations used the phrase, "shall prescribe procedures as are necessary to assure * * *". This wording gives agencies the flexibility to determine when procedures are necessary. We have changed § 410.302 of the interim regulations to include the "as are necessary to ensure" phrase.

2. One agency felt the subsection on training Presidential appointees represented a departure from FPM 410-34 which delegated OPM's training approval authority to heads of agencies. The agency asked that the requirement in § 410.302(c) for agency heads to submit requests for their own training to OPM be eliminated. Response: The President delegated authority to OPM to approve the training of Presidential appointees. The FPM letter delegated that authority, with conditions, to agency heads. Because we believed that self-review constituted a conflict of interest, the FPM letter required agency heads to have their training requests reviewed by OPM. Subsections 401.302 (b) and (c) of the interim regulation delegate authority to approve training of Presidential appointees under the conditions of the FPM Letter. Because we continue to believe that self-review constitutes a conflict of interest, heads of agencies shall continue to submit requests for their non-Government sponsored training to OPM for review.

3. Another agency suggested that the responsibility of the head of an agency to maintain records of the agency's training plans, expenditures and activities be included in subsection § 410.302. Response: This is clarifying suggestion which we have adopted. The text has been revised by adding a subsection: "(d) The head of the agency shall establish the form and manner of maintaining agency records related to training plans, expenditures, and activities."

4. An agency also suggested that the requirement from § 410.310(b) for the agency head to publish written procedures on continued service

agreement be added to § 410.302.

Response: This is a clarifying suggestion which we have adopted. The text has been revised by adding a subsection: "(e) The head of the agency shall establish written procedures which include the minimum requirements for continued service agreement. (See also 5 CFR 410.310.)"

Section 410.304—Funding training programs. One agency recommended including a statement which indicates that funding for employee training and development is an investment in the future of the individual and the organization. Response: The statement has merit, but it is a philosophical idea which OPM is not including in regulation.

Section 410.305—Establishing and using interagency training. One agency asked for clarification of interagency training and agencies eligible for interagency training. Response: OPM has no objection to further clarifying this subsection by revising it to read: "Executive departments, independent establishments, Government corporations subject to chapter 91 of title 31, the Library of Congress, and the Government Printing Office may provide or share training programs developed for its employees to employees of other agencies under section 4102 of title 5, United States Code, when this would result in better training, improved service, or savings to the Government. Section 302(d) of Executive Order 11348 allows agencies excluded from section 4102 of title 5, United States Code, to also receive interagency training when this would result in better training, improved service, or savings to the Government. Section 201(e) of Executive Order 11348 provides for the Office of Personnel Management coordination of interagency training conducted by and for agencies (including agencies and portions of agencies excepted by section 4102(a) of Title 5, United States Code)."

Section 410.306(b)—Training persons on Intergovernmental Personnel Act (IPA) mobility assignments. One agency asked that OPM clarify this subsection by stating if the authority to assign individuals on mobility agreements to training applies to both non-Federal persons on IPA appointment or on detail to a Federal agency. Response: Since this authority is not specified elsewhere, OPM agrees that it should be clarified here. This subsection has been revised to read: "(b) Persons on Intergovernmental Personnel Act mobility assignments may be assigned to training if that is in the interest of the Government.

(1) A State or local government employee given an appointment in a Federal agency under the authority of section 3374(b) of title 5 of the United States Code, is deemed an employee of the Federal agency. The agency may provide training for the State or local government employee as it does for other agency employees.

(2) A State or local government employee on detail to a Federal agency under the authority of section 3374(c) of title 5 of the United States Code, is not deemed an employee of the Federal agency. However, the detailed State or local government employee may be admitted to training programs the agency has established for Federal personnel and may be trained in the rules, practices, procedures and/or systems pertaining to the Federal government."

Section 410.307—Training for promotion. 1. One agency asked for guidance on when training agreements are necessary for accelerated promotions. Another agency asked that reference be made in § 410.307 and § 410.308 to the Modified Qualification provision contained in OPM's Qualification Standards Operating Manual. Response: OPM agrees that it is helpful (i) to refer to agency authority to modify qualifications and to provide intensive training so employees may acquire qualifications at an accelerated rate, and (ii) to refer to time in grade regulations. We are merging § 410.307 and § 410.308 into a single section, retitling the section, adding a new paragraph (a) as shown below, and renumbering the subpart. The new paragraph reads as follows:

Section 410.307—Training for promotion or placement in other positions.

(a) General. In determining whether to provide training under this section, agencies should take into account:

(1) Agency authority to modify qualification requirements in certain situations as provided in the OPM Operating Manual for Qualification Standards for General Schedule Positions;

(2) Agency authority to establish training programs that provide intensive and directly job-related training to substitute for all or part of the experience (but not education, licensing, certification, or other specific credentials), required by OPM qualification standards. Such training programs may be established to provide employees with the opportunity to acquire the experience and knowledge, skills, and abilities necessary to qualify for another position (including at a higher grade) at an accelerated rate; and

(3) Time-in-grade restrictions on advancement (see 5 CFR 300.603(b)(6))."

2. To further clarify training an employee subject to grade or pay retention to qualify for another position, we have amended the language in the former § 410.308 and renumbered it § 410.307(c)(1). It reads, "(1) Grade or pay retention. 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 retained grade or the grade of the position the employee held before pay retention."

3. One agency also suggested adding some guidance about employer paid educational expenses and tax liability to § 410.307. Response: This area is subject to tax law which will change this year. OPM feels it is a matter better explained in a handbook or in guidance. The subsection will not be revised to address tax liability for Government paid educational expenses.

Section 410.309(a)—Prohibition on training to obtain an academic degree. One agency felt that the language in the interim regulation, § 410.309(a)(2), prohibited an agency from providing graduate and post graduate level academic training for its employees who must register for entire degree programs at certain desired institutions or not at all. The agency noted that former OPM guidance existed in this area and requested that this subsection be revised to reflect permitted agency actions. Response: It was not OPM's intent to place new restrictions on agencies. We have renumbered that section as § 410.308 and revised § 410.308(a)(2) to read:

"(2)(i) The prohibition on academic degree in 5 U.S.C. 4107(a)(2) is not to be construed as limiting the authority of agencies to approve and pay for training expenses to develop knowledge, skills, and abilities directly related to improved individual performance. If, in the accomplishment of such training, an employee receives an academic degree, the degree is an incidental by-product of the training.

(ii) Paying an additional rate of tuition because a student is a degree candidate is prohibited. An agency is only authorized to pay the tuition and fees charged for a nondegree student, even though the employee is enrolled as a degree candidate. If it is not possible to distinguish between costs associated with the acquisition of knowledge and skills and the costs associated with the acquisition of an academic degree at an institution, an agency is authorized to pay in full the tuition of an employee

participating in an authorized program of training at that institution.”

Section 410.309(b)—Degree training to relieve recruitment and retention problems.

1. Two agencies thought that interim regulation § 410.309(b) was too long, addressed non-training issues, and should be rewritten. Response: OPM agrees that the subsection is quite long, but it is guidance for implementing an exception to training law that applies to staffing as well as to training. Since the guidance only appears in 5 CFR part 410, we will retain it to assure Governmentwide uniformity in making exceptions to the statute.

2. An individual asked that OPM include persons with disabilities, including disabled veterans, in accordance with the requirements of titles 5, 29, and 38 to § 410.309(b) in the interim regulation. Response: Although the suggestion has merit, the current language reflects what is stated in training law. Since § 410.302(a) specifies that selection for training shall be made without regard to handicapping condition, OPM feels it is unnecessary to include it in this subsection.

3. One agency asked that interim regulation § 410.309(g)(2) be eliminated, suggesting it is inconsistent with the policy on personnel recordkeeping which allows agencies to determine the types and kinds of training that should be documented in an employee's individual record. Response: OPM does not feel that the language is inconsistent with filing rules. § 410.309(g)(2) asks that agencies keep records on individual employees assigned to training under this section. As a good management practice, we believe agencies should keep this information for a reasonable length of time. Where the records are maintained is a matter of agency discretion.

Section 410.310—Agreements to continue in service.

1. The labor organization asked that the words “reasonably and not in a arbitrary and capricious manner” be added to the sentence in interim regulation § 410.310(a) about establishing agency policy for continued service agreements. Response: Since agency policies and procedures must be established, and administered, in a uniform and non-arbitrary manner, OPM believes the additional language is unnecessary. However, OPM has renumbered the section as § 410.309.

2. One agency pointed out that interim regulation § 410.310(b)(2) contains the statement that the “period of service will equal three times the length of the training.” The agency correctly notes that this places a

condition on continued service agreements that was not previously in regulation. Response: It was not OPM's intent to be more restrictive in this area. OPM has renumbered the section as § 410.309(b)(2) and revised it to read: “(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 at least three times the length of the training.”

3. Another agency asked for guidance on how to use continued service agreements in interim regulation § 410.310 for short term, but high priced training. Response: OPM feels this is a matter for agencies to address, if desired, in their internal policies and procedures for continued service agreements.

Section 410.311—Computing time in training. One agency asked what was meant by interim regulation § 410.311(a) and (b). Specifically, the agency questioned documenting leave without pay (LWOP) hours used for training. It asked, “Since training is official duty, how can the person attending the training be on LWOP?” Response: This provision is included for agencies that need to compute time of employees in training for continued service agreements. Continued service agreements cover training expenses (other than salary) for which the agency may require repayment. Agencies may grant employees LWOP for the purpose of training and may pay all, some or none of the costs of the training. If an agency pays for the training, it may subject the employee to a continued service agreement. OPM agrees that clarifying language is needed. We have renumbered this subsection as § 410.310 and revised it to read, “For the purpose of computing time in training for continued service agreements under section 4108 of title 5, United States Code:”

Section 410.312—Records. Five agencies commented on 5 CFR 410.312, keeping records of individual employees' training. Two asked for clarification on the type of training data to keep, what its format should be, how it should be filed, and how long it should be retained. A third asked that the regulations specify that training of less than eight hours need not be recorded if the agency so chooses. A fourth said the language was unclear. The fifth suggested rewording the subsection. Response: OPM has determined that agencies shall no longer file training documents permanently in Official Personnel Folders. Agency policy should address the filing and

retention of training documents to meet the agency's needs for internal review and control. To clarify this authority, OPM has renumbered the section as 5 CFR 410.311 and revised it to read: “Agencies shall retain, in such form and manner as the agency head considers appropriate, a record of training events authorized under this subpart for a reasonable period of time.”

Subpart D—Paying for Training Expenses

Section 410.402—Paying premium pay.

1. One agency pointed out that meaning of § 410.402(b)(2), exemption to prohibition on premium pay for training at night, is not consistent with previous OPM regulations. Response: We agree, and OPM has revised it to read: “an employee given training at night because situations that he or she must learn to handle occur only at night shall be paid by the applicable premium pay.”

2. The labor organization felt that § 410.402(d)(1) and (2), exception to prohibition premium pay for employees nonexempt from the Fair Labor Standards Act, were inconsistent with § 551.423(a)(2). The organization suggested eliminating § 410.402(d)(2) and revising § 410.402(d) to read: “(d) Overtime pay under that Fair Labor Standards Act (FLSA). Time spent in training for 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 (See also 5 CFR 551.423.)” Response: OPM has determined that the language is correct as written, but is adding a reference to Department of Labor regulations on the subject, 29 CFR 785.27 through 785.32 that may help clarify any questions. To clarify the regulations, we are amending the regulation to read:

“(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. (See also 5 CFR 551.423 and 29 CFR 785.27 through 785.32.)

(2) Time spent in training or preparing for training outside the employee's regular working hours for the following purposes is not hours of work:

(i) Training to 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) Training to provide a nonexempt employee with additional knowledge or skills for reassignment to another position or advancement to a higher grade in another position, even if such training is directed by the agency. (See also 29 CFR 785.27 through 785.32)."

3. Two agencies asked that OPM address the issue of overtime pay for travel to and from training assignments in the regulations. Response:

Compensation for travel is subject to compensation law and regulations. OPM addresses compensation for travel in 5 CFR 550.112(g) and 5 CFR 551.422. However, OPM has no objection to referencing travel for training regulations in 5 CFR part 410. We have added § 410.402(e), which reads:

"(e) Compensation for time spent traveling to and from training. (1) Compensation provisions are contained in 5 CFR 550.112(g) for time spent traveling for employees subject to title 5 of the United States Code.

(2) Compensation provisions are contained in 5 CFR 551.422 for time spent traveling for employees covered by the Fair Labor Standards Act. (See also 29 CFR 785.33 through 785.41)."

Section 410.403—Subsistence payments for extended training assignments. Two agencies asked for additional clarification of agency authority to pay training expenses under training law. Since training law provides for paying expenses of temporary duty training assignments not found in other law, OPM agrees with the comments and has retitled this subsection and revised it to read:

Section 410.403—Payments for temporary duty training assignments.

Section 4109(a)(2) of title 5, United States Code, provides that an agency may pay, or reimburse an employee for, all or a part of the necessary expenses of training, including the necessary costs of travel; per diem expenses; or limited relocation expenses including transportation of the immediate family, household goods and personal effects.

(a) If an agency chooses to pay per diem, or in unusual circumstances the actual subsistence, expenses for an employee on a temporary duty training assignment, payment must be in accordance with 41 CFR part 301-7 or 41 CFR part 301-8 (or, for

commissioned officers of the National Oceanic and Atmospheric Administration, in accordance with sections 404 and 405 of title 37, United States Code, and the Joint Federal Travel Regulations for the Uniformed Services).

(b) An agency may pay a reduced per diem rate, such as a standardized payment less than the maximum per diem rate for a geographical area. If a reduced or standardized per diem rate was not authorized in advance of the travel and the fees paid to a training institution include lodging or meal costs, an appropriate deduction shall be made from the total per diem rate payable on the travel voucher (see 41 CFR 301-7.12).

(c) An agency may pay limited relocation expenses for the transportation of the employee's immediate family, household goods and personal effects, including packing, crating, temporarily storing, draying, and unpacking the household goods in accordance with section 5724 of title 5, United States Code (or, for commissioned officers of the National Oceanic and Atmospheric Administration, in accordance with sections 406 and 409 of title 37, United States Code, and the Joint Federal Travel Regulations for the Uniformed Services). Limited relocation expenses are payable only when the estimated costs of transportation and related services are less than the estimated aggregate per diem or actual subsistence expense payments for the period of training. An employee selected for temporary duty training may receive travel and per diem (or actual subsistence expenses) for the period of the assignment or payment of limited relocation expenses, but not both."

Section 410.404—Determining if a conference is a training activity. Two agencies said the wording of the interim regulation was too broad to be of much assistance in determining if a conference is a training activity. Both suggested further clarification. Response: OPM agrees that the language is too broad and has revised the subsection to read:

"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 announced purpose of the conference is educational or instructional;

(b) More than half of the time is scheduled for a planned, organized exchange of information between presenters and audience which meets

the definition of training in section 4101 of title 5, United States Code;

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

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

Section 410.406—Records of training expenses. One agency suggested revising the subsection so that it would read similarly to other subsections on recordkeeping. Response: For uniformity, the subsection has been revised to read: "Agencies shall retain, in such form and manner as the agency head considers appropriate, a record of payments made for travel, tuition, fees and other necessary training expenses for a reasonable period of time."

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

OPM received no comments on this subpart.

Subpart F—Evaluating Training

Section 410.601—Responsibility of the head of an agency to evaluate training. One agency suggested that cost-effectiveness be added to this subsection. Response: Since evaluating cost-effectiveness is an inherent component of evaluation, we believe the additional language is unnecessary.

Section 410.602—Records. One agency suggested revising the subsection so that it would read similarly to others on recordkeeping. Response: For uniformity, this subsection has been revised to read: "An agency head shall retain records of these evaluations in such form and manner as the agency head considers appropriate."

Subpart G—Reports

Section 410.701—Reports. One agency suggested that subpart G be renamed "Records and Reports" and be rewritten to incorporate the several sections on recordkeeping (§ 410.312, § 410.406, § 410.503, and § 410.602). Another agency recommended that the requirement for agencies to provide information to OPM in the form that OPM prescribes be dropped. Response: The structure of the regulation has been left intact. However, for clarity, the subsection has been revised to cite the recordkeeping provisions. Section 4118(a)(7) of title 5 United States Code, requires the agencies to submit reports to the Office of Personnel Management on the results and effects of training programs and plans and economies resulting therefrom, including estimates of costs of training. Although OPM will

work with the agencies regarding the form of these reports, OPM, as part of its oversight responsibilities, must retain its authority to prescribe the form of the reports. Section 410.701 has been revised to read: "Each agency shall maintain records of its training plans, expenditures and activities as required in § 410.302(d), § 410.312, § 410.406, § 410.503, and § 410.602 and report its plans, expenditures and activities to the Office of Personnel Management at such times and in such form as the Office prescribes."

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

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

Subpart C—Establishing and Implementing Training Programs

410.301 Scope and general conduct of training programs.
410.302 Responsibilities of the head of an agency.
410.303 Employee responsibilities.
410.304 Funding training programs.
410.305 Establishing and using interagency training.
410.306 Selecting and assigning employees to training.
410.307 Training for promotion and placement in other positions.
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410.309 Agreements to continue in service.
410.310 Computing time in training.
410.311 Records.

Subpart D—Paying for Training Expenses

410.401 Determining necessary training expenses.
410.402 Paying premium pay.

410.403 Payments for temporary duty 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

410.501 Scope.
410.502 Authority of the head of an agency.
410.503 Records.

Subpart F—Evaluating Training

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

Subpart G—Reports

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, 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 Pub. L. 91-375, enacted August 12, 1970.

(c) *Training* has the meaning given to the term in section 4101 of title 5, United States Code.

(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/or 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 mission-related 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.* Section 303 of Executive Order 11348 specifies the responsibility of heads of agencies to assess agency training needs annually.

(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 mission-related organizational and employee development needs, such as 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, under administrative agreements as appropriate, 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 as are necessary 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 as are necessary 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.

(d) The head of the agency shall establish the form and manner of maintaining agency records related to training plans, expenditures, and activities.

(e) The head of the agency shall establish written procedures which cover the minimum requirements for continued service agreements. (See also 5 CFR 410.310.)

§ 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 from other 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.

Executive departments, independent establishments, Government

corporations subject to chapter 91 of title 31, the Library of Congress, and the Government Printing office may provide or share training programs developed for its employees of other agencies under section 4120 of title 5, United States Code, when this would result in better training, improved service, or savings to the Government. Section 302(d) of Executive Order 11348 allows agencies excluded from section 4102 of title 5, United States Code, to also receive interagency training when this would result in better training, improved service, or savings to the Government. Section 201(e) of Executive Order 11348 provides for the Office of Personnel Management to coordinate interagency training conducted by and for agencies (including agencies and portions of agencies excepted by section 4102(a) of Title 5, United States Code).

§ 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.

(1) A State or local government employee given an appointment in a Federal agency under the authority of section 3374(b) of title 5 of the United States Code, is deemed an employee of the Federal agency. The agency may provide training for the State or local government employee as it does for other agency employees.

(2) A State or local government employee on detail to a Federal agency under the authority of section 3374(c) of title 5 of the United States Code, is not deemed an employee of the Federal agency. However, the detailed State or local government employee may be admitted to training programs the agency has established for Federal personnel and may be trained in the rules, practices, procedures and/or systems pertaining to the Federal government.

(c) Subject to the prohibitions 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 or placement in other positions.

(a) *General.* In determining whether to provide training under this section, agencies should take into account:

(1) Agency authority to modify qualification requirements in certain situations as provided in the OPM Operating Manual for Qualification Standards for General Schedule Positions;

(2) Agency authority to establish training programs that provide intensive and directly job-related training to substitute for all or part of the experience (but not education, licensing, certification, or other specific credentials), required by OPM qualification standards. Such training programs may be established to provide employees with the opportunity to acquire the experience and knowledge, skills, and abilities necessary to qualify for another position (including at a higher grade) at an accelerated rate; and

(3) Time-in-grade restrictions on advancement (see 5 CFR 300.603(b)(6)).

(b) *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 non-temporary 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 non-temporary employee for training that permits noncompetitive promotion after successful completion of the training.

(c) *Training for placement in other agency positions, in other agencies, or outside Government.*—(1) *Grade or pay retention.* 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 retained grade or the grade of the position the employee held before pay retention.

(2) *Training for placement in another agency.* 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 interest of the Government.

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

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

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

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

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

(3) *Training displaced or surplus employees.* 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.

(4) *Career transition assistance plans.* 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.

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

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

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

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

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

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

§ 410.308 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 § 410.308(b).

(2)(i) The prohibition on academic degree in 5 U.S.C. 4107(a)(2) is not to be construed as limiting the authority of agencies to approve and pay for training expenses to develop knowledge, skills, and abilities directly related to improved individual performance. If, in the accomplishment of such training, an employee receives an academic degree, the degree is an incidental by-product of the training.

(ii) Paying an additional rate of tuition because a student is a degree candidate is prohibited. An agency is only authorized to pay the tuition and fees charged for a nondegree student, even though the employee is enrolled as a degree candidate. If it is not possible to

distinguish between costs associated with the acquisition of knowledge and skills and the costs associated with the acquisition of an academic degree at an institution, an agency is authorized to pay in full the tuition of an employee participating in an authorized program of training at that institution.

(b) *Academic degree training to relieve recruitment and retention problems.* (1) 5 U.S.C. 4107(b) allows an agency to 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 for 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 § 410.306.

(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.

§ 410.309 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 include 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 prior to starting the training. The period of service will equal at least 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 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.

§ 410.310 Computing time in training.

For the purpose of computing time in training for continued service agreements under section 4108 of title 5, United States Code:

(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 an employee on an alternative work schedule, the agency is responsible for determining the number of hours the employee 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 an 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.

§ 410.311 Records.

Agencies shall retain, in such form and manner as the agency head considers appropriate, a record of training events authorized under this subpart for a reasonable period of time.

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 by the applicable premium 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. 5545a 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. (See also 5 CFR 551.423 and 29 CFR 785.27 through 785.32.)

(2) Time spent in training or preparing for training outside the employee's regular working hours for the following purposes is not hours of work:

(i) Training to 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) Training to provide a nonexempt employee with additional knowledge or skills for reassignment to another position or advancement to a higher grade in another position, even if such training is directed by the agency. (See also 29 CFR 785.27 through 785.32).

(e) Compensation for time spent traveling to and from training. (1) Compensation provisions are contained in 5 CFR 550.112(g) for time spent traveling for employees subject to title 5 of the United States Code.

(2) Compensation provisions are contained in 5 CFR 551.422 for time spent traveling for employees covered by the Fair Labor Standards Act. (See also 29 CFR 785.33 through § 785.41.)

§ 410.403 Payments for temporary duty training assignments.

Section 4109(a)(2) of title 5, United States Code, provides that an agency may pay, or reimburse an employee for, all or a part of the necessary expenses of training, including the necessary costs of travel; per diem expenses; or limited relocation expenses including transportation of the immediate family, household goods and personal effects:

(a) If an agency chooses to pay per diem, or in unusual circumstances the actual subsistence, expenses for an employee on a temporary duty training assignment, payment must be in accordance with 41 CFR part 301-7 or 41 CFR part 301-8 (or, for commissioned officers of the National Oceanic and Atmospheric Administration, in accordance with sections 404 and 405 of title 37, United States Code, and the Joint Federal travel Regulations for the Uniformed Services).

(b) An agency may pay a reduced per diem rate, such as a standardized payment less than the maximum per diem rate for a geographical area. If a reduced or standardized per diem rate

was not authorized in advance of the travel and the fees paid to a training institution include lodging or meal costs, an appropriate deduction shall be made from the total per diem rate payable on the travel voucher (see 41 CFR 301-7.12).

(c) An agency may pay limited relocation expenses for the transportation of the employee's immediate family, household goods and personal effects, including packing, crating, temporarily storing, draying, and unpacking the household goods in accordance with section 5724 of title 5, United States Code (or, for commissioned officers of the National Oceanic and Atmospheric Administration, in accordance with sections 406 and 409 of title 37, United States Code, and the Joint federal travel Regulations for the uniformed Services). Limited relocation expenses are payable only when the estimated costs of transportation and related services are less than the estimated aggregate per diem or actual subsistence expense payments for the period of training. An employee selected for temporary duty training may receive travel and per diem (or actual subsistence expenses) for the period of the assignment or payment of limited relocation expenses, but not both.

§ 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 announced purpose of the conference is educational or instructional;

(b) More than half of the time is scheduled for a planned, organized exchange of information between presenters and audience which meets the definition of training in section 4101 of title 5, United States Code;

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

(d) Development 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.

Agencies shall retain, in such form and manner as the agency head considers appropriate, a record of payments made for travel, tuition, fees and other necessary training expenses for a reasonable period of time.

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 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, awards, 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 retain records of these evaluations in such form and manner as he or she considers appropriate.

Subpart G—Reports**§ 410.701 Reports.**

Each agency shall maintain records of its training plans, expenditures and

activities as required in § 410.302(d), § 410.312, § 410.406, § 410.503, and § 410.602 and report its plans, expenditures and activities to the Office of Personnel Management at such times and in such form as the Office prescribes.

[FR Doc. 96-31975 Filed 12-16-96; 8:45 am]

BILLING CODE 6325-01-M

DEPARTMENT OF AGRICULTURE**Food Safety and Inspection Service****9 CFR Part 381**

[Docket No. 94-022F-2]

RIN 0583-AC24

Use of the Term "Fresh" on the Labeling of Raw Poultry Products

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: The Food Safety and Inspection Service (FSIS) is amending the poultry product inspection regulations to prohibit the use of the term "fresh" on the labeling of raw poultry products whose internal temperature has ever been below 26°F. Raw poultry products whose internal temperature has ever been below 26°F, but is above 0°F, are not required to bear any specific, descriptive labeling terms, including "hard chilled" or "previously hard chilled." These products may contain optional, descriptive labeling, provided the optional, descriptive labeling does not cause the raw poultry products to be misbranded. Products whose internal temperature has ever been at or below 0°F will continue to be labeled with the term "frozen." The rule also establishes a temperature tolerance below the 26°F standard for labeling product as "fresh."

FSIS is taking this action in response to legislation enacted by the United States Congress directing FSIS to issue a revised final rule about the labeling of raw poultry products.

EFFECTIVE DATE: Effective upon December 17, 1996 9 CFR 381.129(b)(6) is stayed through December 16, 1997. The amendatory changes in this rule will be effective December 17, 1997.

FOR FURTHER INFORMATION CONTACT: Charles R. Edwards, Director, Facilities, Equipment, Labeling & Compounds Review Division; (202) 418-8900.

SUPPLEMENTARY INFORMATION:**Background**

On January 17, 1995, FSIS published a proposed rule in the Federal Register