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OFFICE OF PERSONNEL MANAGEMENT

5 CFR PART 370

RIN 3206-AJ91

Information Technology Exchange Program

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing final regulations to implement provisions contained in the E-Government Act of 2002. This law authorizes the temporary detail of employees in the field of information technology (IT) management from the Federal Government to private sector organizations. It also authorizes Federal agencies to accept private sector employees detailed under this program. This program is envisioned to promote the interchange of Federal and private sector workers to enhance skills and competencies.

DATES: Effective September 14, 2005.

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SUPPLEMENTARY INFORMATION: On January 15, 2004, OPM issued proposed regulations at 69 FR 2308-2310 to implement the Federal Information Technology Exchange Program (hereafter referred to as the Program), as authorized by the E-Government Act of 2002 (Act), Public Law 107-347, and requested comments by March 15, 2004. That part of the Act authorizes a Federal agency to detail an exceptional information technology employee to a private sector organization for purposes

of training and development. It also gives Federal agencies the authority to accept comparable information technology employees detailed from the private sector. The Program is codified in a new chapter 37 in title 5, United States Code (U.S.C.), and this regulation adds a corresponding part 370, Information Technology Exchange Program, to title 5 of the Code of Federal Regulations (CFR) in accordance with 5 U.S.C. 3707.

Comments

OPM received comments from 8 Federal agencies, 1 professional organization, 1 labor organization, and 22 individuals. Those comments are addressed below according to the corresponding sections of the regulations.

Purpose

One agency commented the Program would be more beneficial if it required a reciprocal exchange of employees, *i.e.*, a temporary exchange of a Federal employee with a private sector employee. OPM did not adopt this suggestion because requiring reciprocity would reduce agency flexibility in designing its Program. Under the final regulations, Federal agencies may detail their employees to the private sector with or without reciprocity.

One agency suggested the phrase, "to meet the personal interests of employees" be deleted from the last sentence of paragraph (b) of section 370.101 because any approved details should meet the needs of the agency as well as the employee. We agree and have modified the regulations to state, "Approved details must meet the strategic program goals of the agency. The benefits to the Federal agency and the private sector organization are the primary considerations in initiating details; not the desires or personal needs of an individual employee" in section 370.101(b).

One agency recommended the regulations provide more detail about the specific role of the Chief Information Officers (CIO) Council in administering the Program. We note the Act provides for assistance from the CIO Council, but we believe it is inappropriate to prescribe that role in regulations. Doing so would limit the flexibility of the CIO Council in providing assistance.

One labor organization suggested the regulations require agencies to develop

procedures for identifying which IT positions are designated for the Program through analyses or studies to determine the needs in those positions. We are not adopting this suggestion because the Act specifically refers to employees and not positions. The Program is intended to enhance the skills and competencies of an agency's IT employees. The regulations require agencies to establish estimated numbers of candidates needed to address IT workforce needs within the agency in accordance with section 370.109(b), and employee selection procedures in accordance with section 370.109(c).

A labor organization noted the proposed regulations fail to discuss the impact of the Program on Government employees who are not detailed. The regulations do not discuss this because the Program's impact on employees not detailed is beyond the scope of these regulations but falls under the agency's overall responsibility to manage its workforce.

Three agencies, one labor organization, and one individual commented the regulations should address performance measurement, feedback, and performance appraisals for detailees. We do not agree this is necessary because these areas are covered already under 5 CFR part 430, section 430.205(b), *Agency Performance Appraisal Programs*, which states, in part, "an agency program shall establish criteria and procedures to address employee performance for employees who are on detail * * *."

Two individuals suggested the Program be used for inter-agency exchanges in addition to private sector exchanges. OPM did not adopt this suggestion because inter-agency exchanges are not addressed in the Act.

Definitions

One agency stated OPM did not define "private sector organization" and asked if private sector organizations include academic institutions, non-profit organizations, and organizations covered by the Intergovernmental Personnel Act. OPM agrees that clarification is needed. We have added a definition of "private sector organization" as a profit-making business entity registered in the Central Contractor Registration (CCR) Database (<http://www.ccr.gov>). The CCR is an accepted standard that ensures private sector organizations meet established

requirements to conduct business with the Government. Details to non-profit and academic organizations are already covered under the Intergovernmental Personnel Act Program and are therefore not considered private sector organizations for the purposes of this program.

Two agencies, one labor organization, and one individual recommended the requirement in section 370.103 that a detailee be an "exceptional employee" is subjective and should be clearly defined. We agree and have added a definition of "exceptional employee" to mean "an employee who is rated at the highest levels of the applicable performance appraisal system or, in the case of an employee under an appraisal system that does not have a summary rating level above 'fully successful' or equivalent, is rated at the highest summary level used by the performance appraisal system and demonstrates sustained quality performance significantly above that expected in the type of position involved, as determined under performance related criteria established by the agency."

In order to ensure consistency across Government, OPM has clarified the definition of information technology management to mean "the planning, organizing, staffing, directing, integrating, or controlling of information technology as defined by Office of Management and Budget Circular A-130.

Eligibility

Two agencies and one individual requested employees in grades below GS-11 be allowed to participate. We are not implementing this request because the Act established the GS-11 level (or equivalent) as the minimum eligible grade.

One agency suggested the eligibility criteria include a requirement that an employee work in his or her position for a minimum of 1 year prior to participation in the Program to ensure the employee is well grounded in the organization before being allowed to represent the organization on a detail. We do not agree with this suggestion for Governmentwide implementation because such a requirement would overly restrict the ability of agencies to select employees for detail. However, individual agencies may impose such a requirement in their agency plan.

Two agencies commented section 370.103(a)(3) may imply a detail is a reward or career-enhancing detail and, upon returning to the agency, may result in advancement or promotion. These agencies suggested we add language to indicate an employee's eligibility for the

Program is not limited to the expectation of assuming increased responsibilities of IT in the future or that advancement or promotion will be a result of the detail. OPM disagrees the proposed language implies a detail is a reward or necessarily career-enhancing. In addition, we are not adopting this suggestion because the Act specifically states that individuals eligible to be detailed under this part are expected to assume increased responsibilities in IT management.

One agency recommended the final regulations be amended to clarify whether non-career Senior Executive Service (SES) members are eligible to serve on a detail. We agree clarification is needed concerning SES members and have amended the language in section 370.103 to state "only career members of the SES are eligible to be detailed under this part." We have excluded non-career SES employees because the Act stipulates eligible employees must be serving under a career or career-conditional appointment.

An individual questioned the appropriateness of allowing employees who are in specifically designated development programs, such as the Presidential Management Fellows Program, the Federal Career Intern Program, or the Student Career Experience Program, to participate. We share this concern and have excluded employees in specifically designated development programs by limiting the eligibility of excepted service employees in section 370.103(b) to those individuals on permanent appointments. Our rationale is we believe it is appropriate for these individuals to gain the full value of their participation in these developmental programs, which oftentimes is their initial Federal appointment, prior to participation in the IT Exchange Program.

A labor organization commented the regulations do not require private sector employers to send top performers into the Program, thereby creating a disparity relative to Federal employers, who are required to do so. OPM disagrees, noting section 370.103(a)(2) states to be eligible for a detail under this part, an individual must be considered an exceptional employee by the individual's current employer. This applies to both Federal and private sector employers.

One agency suggested the regulations permit participation by private sector candidates from companies not based in the U.S. OPM did not fully adopt this suggestion; however, we clarified this section by adding paragraph (c) to section 370.103 which states, "To be

eligible to participate in the Information Technology Exchange Program, a private sector organization must be registered in the Central Contractor Registration Database located at <http://www.ccr.gov>, or fall within one of the exceptions specified in section 4.1102 of the Federal Acquisition Regulation." This Governmentwide requirement pertains to both U.S. and foreign private sector organizations seeking to conduct business with the Government. As previously noted, the CCR is an accepted standard that ensures private sector organizations meet established requirements to conduct business with the Government. In addition, as a necessary measure against potential security risks we have amended section 370.103 to require private sector individuals detailed under this part to meet citizenship requirements for Federal employment. Even though these individuals will be on detail, they will be performing work similar to, and along side, Federal employees (oftentimes in secure IT environments) who are subject to these provisions.

Written Agreements

One individual commented employees detailed under this Program may have difficulty returning to their previous positions and Federal agencies may have difficulty reincorporating these persons back into their respective agencies. OPM believes the regulations, as proposed, adequately address any such concerns. The regulations address these situations in two separate sections: Section 370.105, *Written agreements*, generally requires a Federal employee to return to his or her employing agency upon completion of the detail for a period of time equal to the length of that detail; and section 370.109, *Agency plans*, requires agency plans to include return rights and continuing service requirements for Federal employees returning from details.

One agency and one labor organization recommended the written agreement describe the duties of the detailed employee and/or the developmental objectives of the assignment (e.g., projects, programs, systems). We agree, and have modified section 370.105 to require a description of the duties to be performed, a specification of the duration of the detail and the terms under which extensions to the detail may be granted, and individual development plans describing the core IT and other competencies the detailee is expected to acquire. However, the agency has the authority and flexibility to require additional information in the written

agreements and/or tailor agreements to the detail. In addition, we have added language to section 370.102, *Definitions*, that defines core IT competencies as those competencies identified by the Federal CIO Council. These competencies serve as a baseline for Federal agencies in meeting the Clinger-Cohen Act's requirement to determine the training and development needs of the Federal IT workforce.

One individual suggested the service agreement be pro-rated based on the employee's grade (*i.e.*, employees in higher grades have longer service commitments than employees in lower grades). OPM is not adopting this suggestion because the statutory requirement, as stated in 5 U.S.C. 3702, specifies the service requirements which cannot be changed by regulation.

Terms and Conditions

A labor organization expressed concerns about the protection of employees' rights when detailed to the private sector. This organization also stated there is an accountability gap between the agency and private sector organization if there is no requirement for an agreement between the agency and private sector organization. OPM notes section 370.106 states Federal employees will lose none of their rights while on detail. However, we agree there must be accountability between all parties, and have added language to section 370.105 *Written Agreements* which states, "The written agreement must be a three-party agreement between the Federal agency (agency head or designee), the individual (private or Federal), and the private sector organization."

Three agencies, one professional organization, and several individuals recommended OPM clarify how, and by whom, costs associated with this Program will be paid. OPM notes section 370.105(e) states the responsibilities and obligations, including as to costs, of all parties to a detail must be addressed in the written agreement. OPM will provide a sample written agreement and a set of frequently asked questions and answers guidance that will be posted on our Web site at <http://www.opm.gov>.

One agency asked if procedures for getting into the Program are negotiable with the union and, if so, how that affects a private sector organization that has no union.

Additionally, they suggested OPM address bargaining unit employees in the final regulations. Management selection of employees for this Program is not negotiable. However, selection procedures, to the extent consistent

with applicable laws and Governmentwide rules and regulations, may be negotiable. Bargaining unit employees detailed under this Program are not part of the bargaining unit while on detail. OPM does not agree there is a need to address the impact of this Program on bargaining unit employees in the final regulations because the rules for bargaining unit employees detailed under this Program are not different from other details.

Two agencies recommended OPM clarify whether Federal employees who serve with private sector organizations do so without loss of Federal equal employment opportunity (EEO) rights and private sector individuals retain their EEO protections while on detail to the Federal Government. OPM believes it would be inappropriate to address these issues in regulation because EEO rights are conferred by the relevant EEO statutes and regulations.

Two agencies requested the final regulations include general guidelines outlining reasons for which these details may be terminated by the Federal agency, the private sector organization, or the employee. The Act includes such guidelines and we have added section 370.106(e) which states, "Details may be terminated by the agency (agency head or designee) or private sector organization for any reason at any time."

One agency suggested OPM include a clause precluding a private sector company from hiring a detailed Federal employee for a period of 1 year following separation from Federal employment. The agency stated such a clause would block private sector companies that may be able to offer higher salaries and other recruitment benefits from hiring Federal employees without the costs of advertising, interviewing, and obtaining security clearances. We are not adopting this suggestion because the Act does not give OPM the authority to preclude private sector organizations from hiring Federal employees. However, post-employment restrictions for certain Federal employees as well as restrictions for Federal employees seeking other employment exist in current statutes. For instance, post-Federal employment restrictions are in 18 U.S.C. 207; the prohibition on negotiating with certain persons for post-Federal employment while still a Federal employee is in 18 U.S.C. 208. In addition, section 370.105(d) requires Federal employees to return to their employing agencies upon completion of the detail.

One labor organization stated its opposition to the absence of regulatory language governing the behavior of

private sector employers participating in this Program. OPM disagrees further clarification is necessary. Section 370.105 *Written Agreements* requires a three-part agreement which includes guidelines for private sector employer behavior and expectations as it relates to the detail. Agencies may add to the guidelines addressed in this section as appropriate.

Several agencies, as well as individuals, questioned the applicability of the legal and ethics provisions in the regulations to Federal and private sector employees. OPM notes the regulations state Federal employees remain subject to all legal and ethics provisions identified in the Act, and private sector employees detailed to Federal agencies under this part are considered Federal employees for the purposes of the legal and ethics provisions cited. Additionally, OPM will address these issues further in Questions and Answers guidance that will be posted on our Web site at <http://www.opm.gov>.

Small Business Concerns

One agency suggested we clarify whether reporting requirements in section 370.107 are based on the calendar or fiscal year. We agree that clarification is needed under the small business concern reporting requirement. Although the reporting requirement was referenced in the proposed regulation, for the convenience of the reader we have added section 370.107(c) which states, "For the purposes of this section, 'year' refers to the 12-month period beginning on the date of the enactment of the Act, December 17, 2002, and each succeeding 12-month period in which any assignments are made." Additionally, we have clarified agencies' semiannual reporting requirements to OPM under section 370.108 *Reporting Requirements*.

Agency Plans

One agency commented OPM requires agencies to have plans in place before details may be approved although the Act does not require this. This agency stated there may be situations where agencies would want to begin details before formal plans are developed. OPM does not share this view, noting agency plans and written implementation standards are critical to the success and evaluation of this Program. Agency plans must be in place before an agency may engage in a detail under this part. OPM has exercised similar authority when implementing other programs such as the Student Loan Repayment and Academic Degree Programs.

A professional organization recommended OPM add a provision to encourage agencies to act expeditiously in drafting and approving a plan. This organization suggested OPM consider requiring agencies to complete their agency plans within a specific time frame, such as 120 days or 180 days. OPM is not adopting this recommendation because use of the Program is discretionary and plans are only needed if the agency chooses to establish a Program under the Act.

One agency suggested section 370.109(b) be re-phrased to read, "The number of IT Exchange Candidates proposed for the agency," stating the phrase used in the proposed regulations could be construed to mean a number equal to an agency's entire IT staff. Another Federal agency suggested the requirement be eliminated from agencies' plans because IT requirements are constantly changing and plans of this nature are not frequently revised and could become outdated. OPM does not share this interpretation or view; agencies should craft and modify their plans based upon a realistic analysis of their IT workforce needs. However, to clarify the intent behind this section we have changed the language to read, "Estimated number of candidates needed, both private sector and Federal employees, to address IT workforce needs within the agency."

A labor organization commented on the absence of strategic goals for the Program stating without specific training goals, it will be difficult to determine if the Program has served its purpose. OPM disagrees additional language is needed in the regulation, and notes section 370.101(b) states the Governmentwide strategic goal for the Program. In addition, agency plans will address strategic goals for the Program to support the Governmentwide goal as applicable to individual agencies.

One agency requested we require agencies to compete detail opportunities using merit promotion procedures because details are considered to be career-enhancing. The agency also recommended we explain the types of recruitment methods to be used for attracting people to the Program. While the Act does not require details to be competed, nor is there a guarantee detailees would gain a competitive advantage in future merit promotion, we have modified section 370.109(c) to include provisions which require announcement, nomination, and review of nominations by appropriate selecting officials. Agencies will not be required to publish a formal vacancy announcement; something less formal is allowable. Agencies must publicize

these opportunities; but how they do so is left up to the agencies. The modified language is flexible enough to allow agencies to establish their own criteria for announcing details.

Executive Order 12866, Regulatory Review

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

Regulatory Flexibility Act

I certify 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.

Linda M. Springer,
Director.

■ Accordingly, OPM is adding part 370 to title 5 of the Code of Federal Regulations, as follows:

PART 370—INFORMATION TECHNOLOGY EXCHANGE PROGRAM

- Sec.
- 370.101 Purpose.
 - 370.102 Definitions.
 - 370.103 Eligibility.
 - 370.104 Length of details.
 - 370.105 Written agreements.
 - 370.106 Terms and conditions.
 - 370.107 Details to small business concerns.
 - 370.108 Reporting requirements.
 - 370.109 Agency plans.

Authority: Pub. L. 107-347, 116 Stat. 2923-2931 (5 U.S.C. 3707).

§ 370.101 Purpose.

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

(b) 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 circumvent personnel ceilings, or as a substitute for other more appropriate personnel decisions or actions. Approved details must meet the strategic program goals of the agency. The benefits to the Federal agency and the private sector organization are the primary considerations in initiating details; not the desires or personal needs of an individual employee.

§ 370.102 Definitions.

In this part: *Agency* means an Executive agency as defined in 5 U.S.C. 105, with the exception of the Government Accountability Office.

Core Competencies are those IT competencies identified by the Federal Chief Information Officer (CIO) Council as a baseline for use by Federal agencies in complying with the Clinger-Cohen Act, Public Law 104-106, to determine the training and development needs of the Federal IT workforce.

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 a private sector organization employee to an agency without a change of position from the private sector organization that employs the individual (5 U.S.C. 3701(2)(B)).

Exceptional employee means an employee who is rated at the highest levels of the applicable performance appraisal system or, in the case of an employee under an appraisal system that does not have a summary rating level above "fully successful" or equivalent, is rated at the highest summary level used by the performance appraisal system and demonstrates sustained quality performance significantly above that expected in the type of position involved, as determined under performance-related criteria established by the agency.

Information technology (IT) management means the planning, organizing, staffing, directing, integrating, or controlling of information technology as defined by Office of Management and Budget Circular A-130 which states, the term "information technology" means any equipment or interconnected system or subsystem of equipment, that is used in the automatic acquisition, storage, manipulation,

management, movement, control, display, switching, interchange, transmission, or reception of data or information by an executive agency. For purposes of the preceding sentence, equipment is used by an executive agency if the equipment is used by the executive agency directly or is used by a contractor under a contract with the executive agency which requires the use of such equipment, or requires the use, to a significant extent, of such equipment in the performance of a service or the furnishing of a product. The term "information technology" includes computers, ancillary equipment, software, firmware and similar procedures, services (including support services), and related resources. The term "information technology" does not include any equipment that is acquired by a Federal contractor incidental to a Federal contract. The term "information technology" does not include national security systems as defined in the Clinger-Cohen Act of 1996 (40 U.S.C. 1452).

OPM means the Office of Personnel Management.

Private sector organization means a profit-making business entity that is registered in the Central Contractor Registration Database (<http://www.ccr.gov>) as required for the conduct of business with the Government.

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, codified at 13 CFR 121. Federal agencies can find more information through the "Frequently Asked Questions" page on the SBA's Web site at <http://www.sba.gov>, which addresses small business size standards.

§ 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 employee by the individual's current employer; and

(3) Be expected by the individual's current employer to assume increased information technology management responsibilities 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 in a position at the GS-11 level or above (or equivalent), under a career or career-conditional appointment or an appointment of equivalent tenure in the

excepted service. For purposes of this part, positions of equivalent tenure in the excepted service are limited to permanent appointments. In addition, only career members of the Senior Executive Service are eligible to be detailed under this part.

(c) To be eligible to participate in the Information Technology Exchange Program, a private sector organization must be registered in the Central Contractor Registration Database located at <http://www.ccr.gov>, except as permitted by the Federal Acquisition Regulation (48 CFR 4.1102).

(d) To be eligible for a detail to a Federal agency under this part, a private sector employee, in addition to meeting the requirements of paragraph (a) of this section, must meet citizenship requirements for Federal employment in accordance with 5 CFR 7.3 and 338.101, as well as any other statutory limitation.

§ 370.104 Length of details.

(a) Details may be for a period of between 3 months and 1 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) For the life of the ITEP, 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 request of the agency head, or his or her designee.

§ 370.105 Written agreements.

Before the detail begins, the agency and private sector organization must enter into a written agreement with the individual(s) detailed. The written agreement must be a three-party agreement between the Federal agency (agency head or designee), the individual (private sector or Federal), and the private sector organization. The written agreement must include, but is not limited to, the following elements:

(a) The duties to be performed, duration, and terms under which extensions to the detail may be granted;

(b) An individual development plan describing the core IT competencies and technical skills that the detailee will be expected to enhance or acquire;

(c) Whether the individual will be supervised by a Federal or private sector employee; and a description of the supervision;

(d) The requirement for Federal employees to return to their employing agency upon completion of the detail for a period equal to the length of the detail including any extensions; and

(e) 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 if he or she had 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 Federal agency for purposes of:

(i) Title 5, United States Code, chapter 73 (Suitability, Security, and Conduct);

(ii) Title 18, United States Code, section 201 (Bribery of Public Officials and Witnesses), section 203

(Compensation to Members of Congress, Officers, and Others in Matters Affecting the Government), section 205 (Activities of Officers and Employees in Claims Against and Other Matters Affecting the Government), section 207 (Restrictions on Former Officers, Employees, and Elected Officials of the Executive and Legislative Branches), section 208 (Acts Affecting a Personal Financial Interest), section 209 (Salary of Government Officials and Employees Payable Only by the United States), section 603

(Making Political Contributions), section 606 (Intimidation to Secure Political Contributions), section 607 (Place of Solicitation), section 643 (Accounting Generally for Public Money), section 654 (Officer or Employee of United States Converting Property of Another), section 1905 (Disclosure of Confidential Information Generally), and section 1913 (Lobbying with Appropriated Moneys);

(iii) Title 31, United States Code, section 1343 (Buying and Leasing Passenger Motor Vehicles and Aircraft),

section 1344 (Passenger Carrier Use), and section 1349(b), (Adverse Personnel Actions);

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

(v) The Ethics in Government Act of 1978;

(vi) Internal Revenue Code of 1986, section 1043 (Sale of Property to Comply with Conflict-of-Interest Requirements); and

(vii) Title 41, United States Code, section 423 (Prohibition on Former Official's Acceptance of Compensation From Contractor).

(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 detailed;

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

(5) Is covered by 5 U.S.C. chapter 81, Compensation for Work Injuries, as provided in 5 U.S.C. 3704(c).

(c) Individuals detailed under this part may be supervised either by 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 an agency may be supervised by a Federal manager.

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

(e) Details may be terminated by the agency (agency head or designee) or private sector organization concerned for any reason at any time.

§ 370.107 Details to small business concerns.

(a) The head of each agency must take such actions as may be necessary to ensure that, of the details made to private sector organizations in each calendar 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 details to small business concerns needed to meet the requirements of this section. For example, if an agency detailed 11 individuals to private sector organizations during a given year, to meet the 20 percent requirement, that agency must have made at least 3

(rounded up from 2.2) of these details to small business concerns.

(c) For purposes of this section, "year" refers to the 12-month period beginning on date of the enactment of the Act, December 17, 2002, and each succeeding 12-month period in which any assignments are made. Assignments "made" in a year are those commencing in such year, in accordance with 5 U.S.C. 3703(e)(2).

(d) Agencies that 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 that makes fewer than five details to private sector organizations in any year is not subject to this section.

§ 370.108 Reporting requirements.

(a) Agencies using this part must prepare and submit to OPM semiannual reports in accordance with 5 U.S.C. 3706 which must include:

(1) The total number of individuals detailed to, and the total number of individuals detailed from, the agency during the report period;

(2) A brief description of each detail reported under paragraph (a)(1) of this section including:

(i) The name of the detailed individual, and the private sector organization and the agency (including the specific bureau or other agency component) to or from which such individual was detailed;

(ii) The respective positions to and from which the individual was detailed, including the duties and responsibilities and the pay grade or level associated with each; and

(iii) The duration and objectives of the individual's detail; and

(3) Such other information as OPM considers appropriate.

(b) Reports are due to OPM no later than April 7 and October 7 of each year for the immediately preceding 6-month periods ending March 31 and September 30, respectively.

(c) Agencies that 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) Designation of the agency officials with authority to review and approve details;

(b) Estimated number of candidates needed, both private sector and Federal employees, to address IT workforce needs within the agency;

(c) Criteria for the selection of agency employees for a detail under this part. At a minimum, each agency must:

(1) Announce the detail, including eligibility requirements, to all eligible employees;

(2) Provide for employee nomination by their organization or self-nomination, to include endorsement by their respective supervisor;

(3) Forward nominations to designated agency reviewing and approving official for final selection.

(4) Consider:

(i) The extent to which the employee's current competencies and skills are being utilized in the agency;

(ii) The employee's capability to improve, enhance, or learn skills and acquire competencies needed in the agency; and

(iii) The benefits to the agency which would result from selecting the employee for detail.

(d) Return rights and continuing service requirements for Federal employees returning from a detail; and

(e) Documentation and recordkeeping requirements sufficient to allow reconstruction of each action taken under this part to meet agency reporting requirements under § 370.108(a) and (b).

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2005-20515; Directorate Identifier 2005-CE-09-AD; Amendment 39-14221; AD 2005-17-01]

RIN 2120-AA64

Airworthiness Directives; Pilatus Aircraft Ltd. Models PC-6, PC-6-H1, PC-6-H2, PC-6/350, PC-6/350-H1, PC-6/350-H2, PC-6/A, PC-6/A-H1, PC-6/A-H2, PC-6/B-H2, PC-6/B1-H2, PC-6/B2-H2, PC-6/B2-H4, PC-6/C-H2, and PC-6/C1-H2 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA adopts a new airworthiness directive (AD) for all Pilatus Aircraft Ltd. (Pilatus) (also identified as Fairchild Republic Company and Fairchild Heli Porter) Model PC-6 airplanes. This AD requires