



# Federal Register

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Wednesday,  
January 5, 2005

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## Part IV

### Office of Personnel Management

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5 CFR Parts 353, 530, et al.

**Restoration to Duty From Uniformed Service or Compensable Injury; Payrates and Systems (General); Pay Under the General Schedule; Pay Administration (General); Pay Administration Under the Fair Labor Standards Act; Recruitment and Relocation Bonuses; Retention Allowances; Supervisory Differentials; Hours of Duty; and Absence and Leave; Proposed Rule**

**OFFICE OF PERSONNEL  
MANAGEMENT**

**5 CFR Parts 353, 530, 531, 550, 575,  
610, and 630**

RIN 3206-AK61

**Restoration to Duty From Uniformed  
Service or Compensable Injury;  
Payrates and Systems (General); Pay  
Under the General Schedule; Pay  
Administration (General); Pay  
Administration Under the Fair Labor  
Standards Act; Recruitment and  
Relocation Bonuses; Retention  
Allowances; Supervisory Differentials;  
Hours of Duty; and Absence and Leave**

**AGENCY:** Office of Personnel  
Management.

**ACTION:** Proposed rule.

**SUMMARY:** The Office of Personnel Management is issuing proposed regulations to amend the rules concerning the determination of official duty station for location-based pay entitlements, compensatory time off for religious observance, hours of work and alternative work schedules, and absence and leave. In addition, the proposed regulations are being issued to aid and support the standardization of pay policies under the e-Payroll initiative. The regulations have been rewritten and, in some instances, reordered to enhance reader understanding.

**DATES:** Comments must be received on or before March 7, 2005.

**ADDRESSES:** Send or deliver comments to Donald J. Winstead, Deputy Associate Director for Pay and Performance Policy, Strategic Human Resources Policy Division, Office of Personnel Management, Room 7H31, 1900 E Street NW., Washington, DC 20415, FAX: (202) 606-0824, or e-mail them to *pay-performance-policy@opm.gov*.

**FOR FURTHER INFORMATION CONTACT:** Sharon Herzberg by telephone at (202) 606-2858; by fax at (202) 606-0824; or by e-mail at *pay-performance-policy@opm.gov*.

**SUPPLEMENTARY INFORMATION:** The Office of Personnel Management (OPM) is issuing proposed regulations to revise the rules concerning the determination of official duty station for location-based pay entitlements, compensatory time off for religious observances, hours of work and alternative work schedules, and absence and leave. Except as otherwise stated in this supplementary information, the purpose of these revisions is to standardize and simplify pay, leave, and hours of work rules to simplify payroll processing under the e-Payroll initiative and in general to aid

agencies in the administration of these programs. We are also taking this opportunity to make these parts more readable. As part of this rewriting effort, the proposed regulations have been reorganized and renumbered to aid in accessibility. In addition, we have replaced the verb "shall" with "must" for added clarity and readability. We intend that any provision using the verb "must" has the same meaning and effect as previous provisions using "shall."

**Military Leave**

Section 353.208 of title 5, Code of Federal Regulations, states that an employee on military leave is permitted, upon request, to use any accrued annual leave (or sick leave, if appropriate), or military leave during such service. However, the Uniformed Services Employment and Reemployment Rights Act of 1994, Public Law 103-353, December 12, 1994, which was implemented by this regulation, states that an employee must be permitted during a period of military service to use any vacation, annual, or similar leave with pay accrued by the person before the commencement of such service. We do not believe that sick leave is similar to annual leave in this context. Sick leave is intended to provide income to an employee who must be excused from work on account of sickness. Long-standing Comptroller General opinions have held an employee who is already on extended leave without pay cannot be said to be prevented from working by a period of sickness and therefore is not entitled to use sick leave. Likewise, an employee on extended leave without pay for military service cannot be said to be prevented from working at his civilian job by a period of illness. Therefore, we are proposing to delete the reference to sick leave from § 353.208.

In addition, the last sentence of § 353.208 states that an employee may not use military leave for inactive duty training. However, authority to use military leave for inactive duty training was added by section 1106 of the National Defense Authorization Act for Fiscal Year 2000 (Public Law 106-65, October 5, 1999). Section 1106 amended 5 U.S.C. 6323(a)(1) to permit an employee to use his or her entitlement to 15 days of military leave for "inactive-duty training" (as defined in section 101 of title 37, United States Code) in addition to active duty and active duty training. Therefore, we are proposing the deletion of the last sentence of § 353.208 consistent with this change in law.

**Official Duty Station**

We are proposing to add a new 5 CFR 531.605 to specifically define the requirements for determining an employee's official duty station for location-based pay entitlements, including special salary rates under 5 CFR part 530, subpart C, special pay for law enforcement officers under 5 CFR part 531, subpart C, and locality based comparability payments under 5 CFR part 531, subpart F. New § 531.605 also addresses the official duty station determination for employees temporarily working at another location or teleworking from an alternative worksite. Under § 531.605, the official duty station is the location where the employee regularly performs his or her duties. For employees who telework, the official duty station is the employee's telework site. However, if an agency schedules an employee to report at least once a week to the regular work site (*i.e.*, the location of his or her assigned organization), the official duty station is the regular worksite. Agencies may make temporary exceptions to this requirement in appropriate circumstances.

We are proposing to revise the definition of *official duty station* at §§ 531.301 and 531.602 to refer to the new requirements found at revised § 531.605. In addition, we propose to add the definition of *position of record* to §§ 531.301 and 531.602. The definition of *position of record* builds on the language found in current regulations in § 530.303(i) and clarifies that the term incorporates employing agency, grade, occupational series, and position duties—all of which may be relevant in determining an employee's coverage under a special rate schedule. In addition, we propose to revise § 530.303(i), which concerns conditions for coverage under special salary rates, to incorporate these new definitions. Finally, we are adding the definitions of *telework* and *telework arrangement* to § 531.602.

**Time Limits for Use of Compensatory Time Off**

The consolidation of payroll systems has revealed varying policies among agencies concerning time limits for the use of compensatory time off. As part of our effort to support consolidation through standardization of payroll processes, we are proposing to amend the regulations at 5 CFR 550.114 and 551.531 to provide a consistent 26-pay period time limitation on the period during which an employee may use compensatory time off. Under current regulations at § 550.114(d), the head of

an agency may require that an employee who is not covered by the Fair Labor Standards Act must use earned compensatory time off within a certain time period or risk forfeiture of unused compensatory time off, unless failure to use the compensatory time off is due to an exigency of the service beyond the employee's control. Under this discretionary authority, many agencies have established policies to provide payment for unused compensatory time off upon expiration of the agency's established time limit. The proposed regulations would establish a Governmentwide time limit of 26 pay periods for using earned compensatory time off, but agencies would retain their discretionary authority to provide payment for, or require forfeiture of, compensatory time off that is not used within the 26-pay period time limit. The proposed regulations also would require that if an employee who is not covered by the Fair Labor Standards Act separates or goes on extended leave without pay to perform service in one of the uniformed services or because of an on-the-job injury with entitlement to injury compensation under 5 U.S.C. chapter 81, he or she would be entitled to receive pay for the overtime work at the overtime rate in effect for the period during which compensatory time off was earned.

Under the proposed regulations at § 551.531, if an employee who is covered by the Fair Labor Standards Act fails to use compensatory time off earned under paragraph (a) or (b) of that section within 26 pay periods, or if the employee separates before the earned compensatory time off is used, he or she must be paid for the overtime work at the overtime rate in effect for the period during which the compensatory time off was earned. In addition, the proposed regulations require that if an employee who is covered by the Fair Labor Standards Act goes on extended leave without pay to perform service in one of the uniformed services or because of an on-the-job injury with entitlement to injury compensation under 5 U.S.C. chapter 81, he or she is entitled to receive pay for the overtime work at the overtime rate in effect for the period during which compensatory time off was earned. To aid payroll providers in transitioning to the new time limitations, the proposed regulations provide that employees with unused compensatory time off to their credit under § 550.114 or § 551.531 as of the effective date of the final regulations would have 26 pay periods after the effective date of the final regulations to use such compensatory time off. Time

limitations for paying earned compensatory time off to employees covered by the Federal Wage System will be discussed by the Federal Prevailing Rate Advisory Committee before OPM issues final regulations.

#### **Compensatory Time Off for Religious Observances**

We are proposing to add definitions of three terms in 5 CFR 550.1002. The term *employee* is used in defining coverage. The term *rate of basic pay* is used in proposed § 550.1008 in the context of determining the monetary value of compensatory time off for religious observances. The term *scheduled tour of duty for leave purposes* is used in proposed § 550.1001 to make clear that religious compensatory time off is used in place of hours within the employee's tour of duty as established for leave purposes.

Proposed § 550.1003 provides that an agency may require documentation to ensure that an employee's request for compensatory time off for religious observances is legitimate. Also, this section empowers agencies to require employees who are submitting requests for this time off to make the requests sufficiently in advance to allow for work schedule adjustments that may be required to accommodate the time off. These provisions are consistent with the past guidance we have given agencies concerning the administration of this program.

Proposed § 550.1004 includes a new requirement that, if an employee fails to perform compensatory overtime work within 3 pay periods after using advanced compensatory time off, the agency should charge the employee annual leave to eliminate the negative balance. This is consistent with longstanding OPM policy. In addition, proposed § 550.1005 provides that agencies may allow employees to accumulate only the number of hours of earned compensatory time off needed to cover past absences and anticipated absences for specifically identified religious observances. While agencies have always been able to require employees to identify specific future religious observances as a condition for allowing them to earn religious compensatory time off, this new section now makes it *mandatory* that agencies require employees to identify the specific future religious observances for which the compensatory time off will be used. This requirement is intended to prohibit the practice of "stockpiling" religious compensatory time off and ensures that this benefit will be used as intended by law.

Proposed § 550.1007 includes a new sentence documenting the fact that earned compensatory time off for religious observances under 5 U.S.C. 5550a is not considered in applying the premium pay limitations in 5 U.S.C. 5547 and 5 CFR 550.105–550.107. (See 62 CG 590, July 26, 1983.) In contrast, the dollar value of overtime work resulting in earned compensatory time off under 5 U.S.C. 5543 is considered to be premium pay in applying those limitations.

Proposed § 550.1008 provides rules regarding how an agency must deal with employees who have a negative or positive balance of earned compensatory time off for religious observances when they separate from an agency. Consistent with previous OPM policy, in converting earned but unused compensatory time off to a monetary value, agencies must use the rates of basic pay in effect at the time the religious compensatory overtime work was performed.

If an employee has a negative balance of religious compensatory time off hours upon separation from the agency, the employee's annual leave balance would be reduced by the amount of the negative balance of hours to the extent possible. If it is necessary for the agency to determine the monetary value of the employee's negative balance, that value would be computed using the employee's rate of basic pay in effect at the time the religious compensatory time was taken.

#### **Federal Wage System**

OPM is proposing to revise its regulations in 5 CFR part 550, subpart L, on lump-sum payments for accumulated and accrued annual leave for employees who separate from Federal service (64 FR 36763, July 8, 1999) to ensure consistency with the guidance provided in the OPM Operating Manual on the Federal Wage System. This change ensures that a lump-sum payment for employees who work a regular rotating schedule involving work on both day and night shifts is calculated as if the employee had continued to work beyond the effective date of separation. To further ensure that the regulations are consistent with the guidance provided in the Operating Manual, we are proposing to amend the definition of *rate of basic pay* in the regulations at 5 CFR 575.103, 575.203, and 575.303 for purposes of recruitment and relocation bonuses and retention allowances. The revised definition will clarify that night pay and environmental differential pay under the Federal Wage System are not

included in the definition of rate of basic pay for those purposes.

### Weekly and Daily Scheduling of Work

In 5 CFR 610.102, we are proposing to add the definitions of *authorized agency official* and *unpaid meal period*. In addition, we propose to change the reference in § 610.111 from “overtime pay” in paragraph (a)(1)(ii) to “premium pay” to be consistent with other references within the section. We are also proposing to add paragraph (e) to § 610.121 to clarify that the regulations on work schedules do not apply to employees on flexible and compressed work schedules in those areas where the law and regulation on flexible and compressed work schedules conflict with the requirements of this section.

In § 610.123, we are proposing to change the word “shall” to “should” to indicate that while an agency official may require an employee to travel outside duty hours, every effort should be made to avoid doing so. In addition, we are clarifying that an agency may not adjust the regular working hours of an employee solely for the purpose of including time spent traveling as hours of work. We are also proposing the addition of § 610.124 to clarify that agencies have authority to establish a mandatory unpaid break for meal periods under 5 U.S.C. 6101(a)(3)(F) and that there is no explicit entitlement to a meal period. An agency may require or permit unpaid meal periods during overtime hours, and the policy may be different from that for the basic workweek. An unpaid meal period may not be counted as hours of work.

### Holidays

In 5 CFR 610.201, we are proposing the addition of the definitions of *administrative workweek*, *agency*, *authorized agency official*, *basic workday*, *basic workweek*, *employee*, *rate of basic pay*, and *the United States*. In addition, we are revising § 610.202 to clarify when an employee is entitled to a paid holiday. This section reflects the requirements of Executive Order 11582 and previous OPM guidance. We are also proposing the revision of § 610.203(b) to clarify how to determine holidays for employees, as provided by 5 U.S.C. 6103(b) and (d) and Executive Order 11582. In addition, we are proposing to add a note to new § 610.203(c), to clarify that an employee on a compressed work schedule is not entitled to an additional “in-lieu-of” holiday if his or her duty station is closed by an administrative action (if for example, the installation is closed due to inclement weather) on a day that has been designated as his or her alternate

legal holiday. We are also proposing to move parts of former §§ 610.405 and 610.406 to § 610.203(d) for ease of administration. New § 610.203(d) clarifies that part-time employees on flexible or compressed work schedules are not entitled to an “in-lieu-of” holiday when the holiday falls on their regularly scheduled nonworkday.

We are also proposing to add new § 610.204 in response to numerous inquiries OPM receives from agencies and employees as to an employee’s entitlement to pay for a holiday when the employee has been in a nonpay status before and/or after the holiday. Employees normally are paid on a holiday on which they do not work under the assumption that, but for the holiday, they would have worked and received pay. It is logical to assume that employees who are in a nonpay status on the workdays before and after a holiday would not have worked on the holiday itself. However, it may also be assumed that employees who are in a pay status for a portion of the day before or after the holiday would have been in a pay status on the holiday. Therefore, we are proposing to clarify that if an employee is in a pay status for at least 4 hours on the day before or after the holiday, he or she is entitled to be paid for the holiday.

### Administrative Dismissals of Daily, Hourly, and Piecework Employees

We are proposing to revise the definition of *regular employees* in 5 CFR 610.302 to clarify that 5 CFR part 610, subpart C, does not apply to employees who have a scheduled annual rate of pay—for example, employees paid from the General Schedule. We are also proposing to revise § 610.303 to make clear that Federal Wage System employees are not covered by subpart C, consistent with Public Law 92–392.

### Flexible and Compressed Work Schedules

Unless otherwise stated, the additions to 5 CFR 610.401 through 610.411 codify current OPM policy and interpretation of law (5 U.S.C. chapter 61, subchapter II) as published in the “Handbook on Alternative Work Schedules.” In § 610.402 we are proposing the addition of *alternative work schedule*, *basic work requirement*, *compressed work schedule*, *core hours*, *flexible hours*, *flexible work schedule*, *rate of basic pay*, and *tour of duty*. We are also proposing to add language to § 610.403 to make it clear that there is no authority that would allow an agency to combine elements from flexible and compressed work schedules to create a “hybrid” schedule. In addition, we

propose to add § 610.411 to stipulate that overtime hours under a flexible work schedule must be officially ordered in advance.

By law (5 U.S.C. 6124 and 6128) employees on a flexible work schedule are entitled to 8 hours of paid absence on a holiday, while employees on a compressed schedule are entitled to the number of hours of paid absence equal to the number of hours they are scheduled to work. We are proposing to revise current § 610.405, which will be renumbered as § 610.412, to add language to stipulate that full-time employees under a flexible work schedule are entitled to 8 hours of holiday pay and that part-time employees are entitled to holiday pay for the number of hours regularly scheduled for that day, not to exceed 8 hours. In addition, we are proposing to add § 610.413 to clarify that full-time employees on a flexible work schedule who perform work on a holiday are entitled to up to 8 hours of holiday premium pay, their rate of basic pay for nonovertime hours within the basic work requirement, and, if applicable, overtime pay for hours in excess of the basic work requirement that are officially ordered and approved. In addition, this section also explains that part-time employees who perform work on a holiday are entitled to holiday premium pay for hours of work performed during their basic work requirement on a holiday, not to exceed 8 hours. Finally, this section clarifies that part-time employees scheduled to work on a day designated as an “in lieu of” holiday for full-time employees are not entitled to holiday premium pay.

We are proposing the addition of § 610.414 to clarify the treatment of credit hours earned under a flexible work schedule. We propose to make clear that full-time employees may carry forward up to 24 credit hours from one pay period to the next and part-time employees may carry forward a proportional amount. Paragraph (a) incorporates language currently found in § 610.408, which prohibits members of the Senior Executive Service from earning credit hours.

We are proposing to add § 610.421 to clarify that, for full-time employees who are not covered by the Fair Labor Standards Act (FLSA) (FLSA-exempt employees) and have compressed work schedules, overtime hours are those officially ordered and approved in excess of the compressed schedule for the day. For part-time FLSA-exempt employees, overtime hours are those officially ordered and approved but must be in excess of 8 hours in a day or 40 hours in a week. For full-time

employees who are covered by the FLSA (FLSA-non-exempt employees), overtime hours are those in excess of the compressed work schedule that are officially ordered and approved or "suffered or permitted." For part-time FLSA-nonexempt employees, overtime hours are those in excess of the compressed schedule for the day that are officially ordered and approved but must be in excess of 8 hours in a day or 40 hours in a week. Full-time and part-time employees may not be credited with FLSA overtime hours on the basis of periods of duty in excess of 8 hours in a day when the hours are *not* hours of work for purposes of computing overtime pay under 5 CFR 410.402, 5 CFR Parts 550 or 532 and 5 U.S.C. 5544 (*e.g.*, suffered or permitted overtime work). Suffered or permitted overtime work is always credited towards an employee's weekly FLSA overtime standard. The daily overtime standard applies only to hours of work that would be considered overtime hours under title 5, United States Code, for General Schedule or prevailing rate (wage) employees.

#### Leave and Overtime Hours

We have been asked whether an employee whose tour of duty includes regularly scheduled overtime work may earn or be charged leave during those overtime hours. Leave cannot be earned or charged during overtime hours, except as provided in 5 CFR 630.204 for employees on uncommon tours of duty. We propose to revise §§ 630.202 and 630.205 to clarify that both full-time and part-time employees earn and use leave based on their regularly scheduled administrative workweek, exclusive of overtime hours. In addition, for clarity and consistency, the term "regularly scheduled administrative workweek" and "intermittent work schedule" are defined in § 630.201.

#### Charging Leave for Part-Time Employees

We have been asked whether part-time employees should be charged leave for additional hours outside their "normal" work schedule if they are unable to work the additional hours. We propose to revise § 630.205 to make clear that a part-time employee earns leave based on the number of nonovertime hours (*i.e.*, hours less than 8 hours in a day and 40 hours in a week) in a pay status, without regard to the number of hours in his or her regularly scheduled workweek. Thus, a part-time employee would be charged leave for any nonovertime hours the employee is unable to work during the regularly scheduled workweek, as long as the

employee's work schedule is established in advance of the pay period. However, a part-time employee would not be charged leave for hours not worked that were scheduled in addition to the employee's regularly scheduled administrative workweek after the beginning of the pay period. For example, if a part-time employee who is scheduled to work 62 hours in a pay period is required to work a total of 70 hours, he or she would earn leave based on the 70-hour total. However, if the employee is not able to work more than 62 hours, he or she could not be charged leave for the excess 8 hours because it was not scheduled in advance of the pay period.

A part-time employee who has hours in a pay status that are fewer than the number of hours necessary to accrue 1 hour of leave is entitled to have those hours in a pay status carried forward into the next pay period and credited toward leave accrual. For example, an employee who is entitled to accrue 1 hour of leave for every 13 hours in a pay status and who works 56 hours is credited with 4 hours of leave, and the remaining 4 hours in a pay status must be carried forward. Therefore, we are proposing to add § 630.205(d) to clarify that, for part-time employees, hours in a pay status that are insufficient to accrue 1 hour of leave must be carried forward into the next pay period and credited toward leave accrual.

In addition, we are adding a new § 630.301 to clarify that, for both part-time and full-time employees whose duty station is the United States, the maximum amount of annual leave that may be carried over from one leave year into the next is 240 hours (30 days). This limitation is found in law at 5 U.S.C. 6304(a) and is being restated in regulation for clarification. The maximum amount of annual leave that may be carried over by an employee who transfers from an overseas assignment is prescribed in 630.302(c).

#### Leave for Employees on Uncommon Tours of Duty

New 5 CFR 630.204 would give agencies the authority to require that employees with uncommon tours of duty accrue and use leave based on that uncommon tour. We propose to revise paragraphs (a) and (b) of § 630.204 to clarify that for employees who accrue and use leave on the basis of an uncommon tour of duty, the ceiling on the amount of annual leave that may be carried over into the next leave year under 5 U.S.C. 6304(a), (b), or (c), or the amount of annual or sick leave that may be advanced under 5 U.S.C. 6302(d) or 6307(d), must be adjusted along with

accrual rates and leave balances to reflect the uncommon tour of duty. For example, when an uncommon tour of duty is established for a firefighter with a 144-hour biweekly tour of duty, the annual leave ceiling for that firefighter must be adjusted to 432 hours ( $144/80 \times 240$  hours).

In addition, consistent with the "directly proportional rule" applied in § 630.204, the amount of sick leave that may be advanced to an employee with an uncommon tour of duty must be calculated using the ratio of the employee's biweekly hours to an 80-hour pay period. For example, for a firefighter with a biweekly tour of duty of 144 hours, the maximum amount of sick leave that may be advanced is 432 hours ( $144/80 \times 240$ ). The amount of annual leave that may be advanced is equal to the amount of annual leave such firefighters would earn during the remainder of the current leave year.

The proposed revision of § 630.204 also provides that when an employee is converted to a different tour of duty, the employee's leave accrual rates, leave balances, advanced leave, and leave ceiling must be converted simultaneously. Lastly, we propose to revise § 630.905 (currently found at § 630.906(c)) to permit an agency that has employees who earn and use annual leave on the basis of an uncommon tour of duty to establish procedures for administering the transfer of annual leave to or from such employee under both the leave transfer and leave bank programs established under 5 U.S.C. chapter 63, subchapters III and IV.

#### 90-Day Appointment

Agencies have requested clarification from OPM on the annual leave accrual status of an employee who has been appointed for a term limited to less than 90 days. Section 6303(b) of title 5, United States Code, limits the annual leave accrual of employees whose current appointment is limited to less than 90 calendar days. However, employees may accrue annual leave if they receive consecutive appointments, all less than 90 days, that cumulatively total more than 90 calendar days of employment without a break in service. We are proposing to add a new 5 CFR 630.206 to clarify that an employee who receives an initial appointment limited to less than 90 days is not eligible to accrue annual leave. However, if the appointment is extended or the employee receives one or more successive appointments without a break in service, the employee becomes eligible to accrue annual leave on the 90th day of employment, and in addition, the employee is entitled to the

annual leave that would have accrued during the initial 90-day period. Employees whose appointments are not limited to less than 90 days are not subject to this provision, nor are employees who are serving in a less-than-90-day appointment to which they transferred, without a break in service, from a leave-earning position. Also, the limits on leave accrual for an employee who has been appointed to a less-than-90-day appointment applies only to annual leave. Such employees earn 4 hours of sick leave in each biweekly pay period of the appointment.

#### Fractional Pay Periods and Reduction in Leave Credits

We are proposing to revise 5 CFR 630.207 to provide that when an employee's service is interrupted by a *non-leave-earning* period, such as a period of intermittent employment or a period during which an employee receives benefits from the Department of Labor's Office of Workers' Compensation Programs (OWCP), he or she earns leave on a prorated basis for that portion of each pay period during which he or she is eligible to earn leave as long as there is no break in Federal service. An employee who moves back and forth between part-time and intermittent employment has periods when he or she is eligible to earn leave and periods when he or she is not. This change in eligibility to earn leave also occurs when an employee is carried in a leave without pay status while receiving disability compensation (*i.e.*, workers' compensation) and is not eligible to earn leave under the rules governing dual compensation. Agencies must credit a prorated amount of annual and sick leave to employees who become *ineligible* to accrue leave in the middle of a pay period.

However, employees who begin an extended period of leave without pay in the middle of a pay period (*e.g.*, extended leave for military service or under the Family and Medical Leave Act) are entitled to accrue leave in that pay period. By law, employees accrue leave when they are employed for a full biweekly pay period. Proposed § 630.202 states that a full-time employee earns leave during each full biweekly pay period while in a pay status or in a combination of a pay status and a nonpay status. The effect of leave without pay on the accrual of annual and sick leave is addressed in new § 630.208, which requires reduction in leave credits for excess hours in a nonpay status. A full-time employee who is *eligible to earn leave* under § 630.202 may, through the intermittent or extended use of leave

without pay, accumulate a number of hours in a nonpay status. When this number equals the number of hours in the pay period, the employee forfeits the leave that would have been earned in that pay period. For example, employee A earns 8 hours of annual leave in each full biweekly pay period. He or she is intermittently on leave without pay during the months of February through the last pay period in September, but has continued during this period to earn 8 hours of annual leave and 4 hours of sick leave each pay period. In the last pay period in September, the employee's leave without pay balance reaches 80 hours (the number of hours in the pay period), and he or she must forfeit the hours of annual and sick leave he or she would have accrued. In effect, the employee earns no leave in the last pay period in September. (Any hours in a nonpay status that are not offset by the forfeiture of annual and sick leave will be carried forward to the next pay period.) The employee continues to earn annual and sick leave at his or her regular rate until the leave without pay total again reaches 80 hours (the number of hours in the pay period). If an employee who earns 6 hours of annual leave in a pay period reaches 80 hours of leave without pay during the last full biweekly pay period of the year (the pay period during which he or she would receive an additional 4 hours), the employee forfeits the full 10 hours.

Employee B is carried on the rolls in a leave without pay status while receiving disability compensation. The rules governing dual compensation state that an employee who is receiving disability compensation is not entitled to earn leave. Since employee B is in a "non-leave earning period," no reduction in leave credits is required. Employee B may earn leave on that portion of a pay period during which he or she is eligible to earn leave under § 630.207.

Employee C is on continuous leave without pay and is actually still earning leave at his or her normal rate. However, the employee is simultaneously forfeiting the leave he or she would have earned each time he or she reaches a number of hours of leave without pay that is equal to twice the number of hours in the regularly scheduled workweek. Since the employee's leave without pay reaches 80 hours of leave without pay each pay period, he or she earns no annual or sick leave.

If, at the end of the leave year, an employee has an accumulation of hours of leave without pay that is less than the number of hours in the pay period, the agency must drop those hours. An employee may have one or more breaks

in service in a year, during which he or she is ineligible to accrue leave (*e.g.*, as a result of the employee's intermittent status or receipt of workers' compensation). However, when counting hours of leave without pay, an agency may count only those hours in a nonpay status that occurred during those periods in which the employee was eligible to accrue leave, including fractional pay periods under § 630.207.

#### Minimum Charge for Leave

Section 630.205 of title 5, Code of Federal Regulations, currently states that the minimum charge to an employee's leave account is 1 hour, unless an agency establishes a minimum charge of less than 1 hour, or establishes a different minimum charge through negotiations. As a result, agencies have established policies that have resulted in leave being charged in a variety of increments ranging from 1 minute to 1 hour. OPM, as the managing partner of e-Payroll consolidation and standardization is proposing to establish a uniform, Governmentwide policy on the minimum charge to leave. In § 630.209, we are proposing to provide two alternatives for charging leave. Agencies may charge leave in increments of one-tenth of an hour (6 minutes) or one-quarter of an hour (15 minutes). Limiting the charge to leave to just two methods will simplify time and attendance recording and further our goal to standardize payroll processing. In addition, this change will further the work scheduling flexibilities available to agencies and employees. The final issuance of the new rules for charging leave will not invalidate the provisions of any existing collective bargaining agreement (CBA). If the leave provisions of a CBA were proper under the regulations existing at the time they were negotiated, but conflict with the proposed changes, the existing provisions will stand for the duration of the agreement. Upon expiration of the CBA, no provision that conflicts with the new regulations may be renewed.

We are also proposing to modify the regulation concerning the transfer of leave from one agency to another at § 630.501, to standardize and simplify that procedure. New § 630.501 states that when an employee transfers to a position covered by a different leave accounting system, his or her leave must be converted by the gaining agency into the minimum increment that can be accommodated.

#### Advancing Leave

In response to requests for clarification on the amount of annual leave that may be advanced to an

employee, we are proposing to add 5 CFR 630.210 to provide that an employee (full-time or part-time) may be advanced, at the beginning of the leave year or at any time thereafter, only the amount of annual leave that he or she is expected to accrue during the remainder of the leave year.

A full-time employee may be advanced up to 30 days (240 hours) of sick leave for serious disability or ailment or for purposes related to the adoption of a child. Section 6302(c) of title 5, United States Code, establishes that a part-time employee is entitled to leave benefits under section 6307 (sick leave) on a pro rata basis. Therefore, § 630.210(b) would also provide that the maximum amount of sick leave that may be advanced to a part-time employee or an employee on an uncommon tour of duty is prorated according to the number of hours in the employee's regularly scheduled administrative workweek. For example, since a full-time employee is limited to a maximum of 240 hours (6 weeks × 40 hours = 240) of advanced sick leave, an employee who has a regularly scheduled administrative workweek of 24 hours may be advanced up to 144 hours (6 weeks × 24 hours = 144) of sick leave for serious disability or ailment (including childbirth and its recuperation) or for purposes relating to the adoption of a child.

We have been asked to clarify how an employee may repay advanced leave. We propose to add paragraph (d) to § 630.210 to clarify that an employee may liquidate a debt for advanced leave through the retroactive substitution of paid leave or through a cash payment that equals the amount paid to the employee for the period of advanced leave. In addition, we are proposing to add a definition of advanced leave to § 630.201 to clarify that advance of annual or sick leave is left to the discretion of the employing agency.

#### **Leave for Bone-Marrow and Organ Donation**

Section 629 of Public Law 103-329, the Treasury, Postal Service and General Government Appropriations Act for fiscal year 1995, added section 6327 to title 5, United States Code, to provide employees with an entitlement of up to 7 days of paid leave each calendar year (in addition to annual and sick leave) to serve as a bone-marrow or organ donor. The law provides that an employee is entitled to use this leave without loss of or reduction in pay, leave to which otherwise entitled, credit for time or service, or performance or efficiency rating. Public Law 106-56, the "Organ Donor Leave Act," amended section

6327 to increase the amount of paid time off available for Federal employees to serve as organ donors from 7 days to 30 days each calendar year. The amount of leave available for bone-marrow donation remains at 7 days each calendar year under 5 U.S.C. 6327.

We have been asked how these "days" of leave should be charged for a full-time employee who works other than 8-hour days (e.g., an employee on a flexible or compressed work schedule) or for a part-time employee or an employee who has an uncommon tour of duty. We are proposing the addition of 5 CFR 630.215 to make clear that a full-time (80-hour per pay period) employee is entitled to 56 hours (7 days) of leave each calendar year for bone-marrow donation purposes and 240 hours (30 days) of leave each calendar year to serve as an organ donor. These amounts are prorated for part-time employees and employees on uncommon tours of duty. In addition, we have been asked whether bone-marrow or organ donation leave is appropriate for absences related to compatibility testing that does not ultimately result in the employee's actual donation. The legislative history of Public Law 103-329 makes clear that this legislation was enacted in an effort to encourage Federal employees to be tested for and participate in bone-marrow and organ donation programs. It was hoped that giving time off for testing would increase the pool of possible donors and the chances of finding a match for someone in need of a transplant. Therefore, proposed § 630.215 states that the employee is entitled to this leave for compatibility testing purposes even if he or she ultimately does not become a bone-marrow or organ donor.

We are also proposing to add a final paragraph establishing OPM's authority to make future determinations that other medical procedures are sufficiently similar to bone-marrow or organ donation to permit the use of bone-marrow or organ donor leave for those purposes. For example, we believe that peripheral blood stem cell donation is sufficiently similar to bone-marrow donation in the commitment required from an individual in the time needed for testing and actual donation to warrant granting of bone-marrow donor leave. We believe that similar medical procedures may be developed that will allow more Federal employees to become part of the donation process and that it is within the spirit of the legislation creating this program to grant OPM the flexibility to approve the future use of bone-marrow or organ donor leave for such donations.

#### **Restoration of Annual Leave**

Section 6304(d), of title 5, United States Code, provides that annual leave in excess of the maximum limitations that is forfeited as a result of exigencies of the public business or sickness of the employee must have been scheduled in advance to be eligible for restoration. Current 5 CFR 630.308(a) provides that such annual leave must have been scheduled in writing before the start of the third biweekly pay period prior to the end of the leave year. In the interest of clarity and simplicity, OPM is proposing to provide that such annual leave may be considered for restoration if the leave is scheduled in writing before November 15 of each leave year. (See new § 630.304(a).) Specifying a single, uniform date greatly simplifies the process for both employees and agencies.

#### **Accrual and Use of Sick Leave**

We are proposing to add 5 CFR 630.205 to clarify the accrual rates of sick leave for part-time employees. In addition, we are proposing to modify § 630.401 to remove the requirement that an employee must maintain 80 hours of sick leave in his or her sick leave account in order to use more than 40 hours of his or her sick leave for family care or bereavement purposes. Removing the 80-hour sick leave balance requirement greatly simplifies the administration of this policy and eliminates the need for manual recordkeeping of employee sick leave balances. Employees are responsible for managing their use of sick leave to ensure that they retain enough sick leave for personal needs. An employee would continue to be limited to 13 days of sick leave each leave year for general family care and bereavement purposes and a maximum of 12 weeks of sick leave each leave year to care for a family member with a serious health condition. In addition, removing the 80-hour sick leave balance requirement would permit agencies to advance up to 30 days of sick leave to an employee so that he or she may care for a family member with a "serious disability or ailment."

We are also proposing to modify § 630.403(b) to establish a Governmentwide policy on the time limit for the receipt of medical documentation for an employee's use of sick leave. The proposed regulation states that an employee must provide the written medical certification required by the agency for use of sick leave under § 630.401, signed by the health care provider, no later than 15 calendar days after the date his or her agency requests such medical

certification. This will ensure that all employees are treated equitably and aid in establishing standardized Governmentwide pay and leave policies. We have also defined "healthcare provider" at § 630.201 as well as 630.903 (Voluntary Leave Transfer Program) and 630.1003 (Voluntary Leave Ban Program), using the definition currently used in the Family and Medical Leave regulations at § 630.1204, so that the term is used consistently throughout part 630.

#### Recredit of Leave

OPM has received inquiries from agencies and employees concerning the transfer of annual and sick leave balances when an employee transfers from a position in the U.S. Postal Service to a position covered by chapter 63 of title 5, United States Code. We propose to add 5 CFR 630.502(b) and 630.503(d) to state that an individual who transfers from the U.S. Postal Service to a position covered by chapter 63 is entitled to have his or her annual and sick leave transferred to the new agency. This is consistent with section 1005(f) of Public Law 91-375, August 12, 1970, which permits the continuation of leave benefits provided in chapter 63 to Postal Service employees unless specifically changed by the U.S. Postal Service.

The maximum amount of annual leave that may be transferred from the U.S. Postal Service to the new agency may not exceed the maximum annual leave limitation allowed for the employee's former position in the U.S. Postal Service. If the amount of annual leave transferred exceeds the maximum annual leave accumulation limitations in 5 U.S.C. 6304(a), (b), or (f), as applicable, the agency must establish a personal leave ceiling for the employee, subject to reduction in the same manner as provided in 5 U.S.C. 6304(c) until the employee's accumulated annual leave is equivalent to or less than the maximum limitation for the new position.

Under 5 U.S.C. 6301, employees of the Congress are not covered by the Federal leave system established under 5 U.S.C. chapter 63. Therefore, leave earned as an employee of the Congress cannot be transferred to a position in an executive agency. We are proposing to add paragraph (c) to § 630.502 and paragraph (e) to § 630.503 to clarify that employees of the House or Senate, or both, may not have annual leave or sick leave transferred to an executive branch agency.

#### Application To Become a Leave Recipient Under the Leave Transfer/Leave Bank Programs

Agencies have asked whether they may establish a time limit for accepting an application to become a leave recipient from an employee who was affected by a medical emergency that has since terminated (*e.g.*, for the birth of a child that occurred in a previous year). We are proposing to revise 5 CFR 630.906(a) and 630.1010(b) to clarify that agencies may designate a time period during which employees must submit an application to become a leave recipient under the voluntary leave transfer or leave bank programs if the employee was unable to submit the application before the medical emergency terminated. (Agencies and employees may download forms for donating or requesting annual leave from OPM's Web site at <http://www.opm.gov/FORMS/html/opm.asp>.)

Agencies have also questioned whether they must allow an employee to use transferred annual leave indefinitely when there is a need to fill the employee's position and there is little or no likelihood that the employee will return to work. Agencies have discretion to approve or disapprove an employee's requests to use donated annual leave and the use of donated leave should be treated in the same manner as the use of accrued annual leave. Participation in the leave transfer program was not meant to be a substitute for disability retirement. If there is little likelihood that an employee will be able to return to work, either because of his or her own medical emergency or that of a family member, we do not believe the agency should be obligated to carry the employee in a transferred leave status indefinitely. In addition, a decision by the United States Court of Appeals, Federal Circuit, affirmed an agency's authority to deny the use of donated leave when there is little likelihood that the employee will return to Federal service. (*See F. Paul Jones v. Department of Transportation*, 295 F. 3d 1298 (Fed.Cir. 2002).) Therefore, we are proposing to add new §§ 630.914(f) and 630.1012(f) to provide that an agency may choose to establish a maximum period of time, not less than 6 months, during which an employee may remain a qualified leave recipient for any particular medical emergency. When the applicant is approved for leave transfer, the agency is required to notify him or her in writing of the maximum period of time during which he or she may continue to be an approved leave recipient, if the agency

has chosen to establish such a time limit.

#### Definition of a Medical Emergency Under the Leave Transfer/Leave Bank Programs

In response to agency requests for assistance in recognizing what constitutes a medical emergency under the voluntary leave transfer and leave bank programs, we are proposing to clarify the definition of *medical emergency* in 5 CFR 630.903. We are proposing to define a *medical emergency* as a *serious health condition* as that term is defined in § 630.1204 (Family and Medical Leave) that affects an employee or a family member of such employee and is likely to require the employee's absence from duty for a prolonged period of time and to result in a substantial loss of income to the employee because of the unavailability of paid leave. We are also adding the definition of *transferred leave* to § 630.903.

#### Annual Leave That May Be Donated

We have received questions from agencies on whether employees may donate restored annual leave or annual leave that has been advanced under the voluntary leave transfer and leave bank programs. We are proposing to clarify in new 5 CFR 630.910(a) and 630.1008(a) that an employee may donate his or her accrued annual leave, including annual leave restored under 5 U.S.C. 6304(d) and 5595(b)(1)(B)(i) (back pay), but excluding annual leave advanced to an employee under 5 U.S.C. 6302(d).

An agency also asked whether a Presidential appointee whose annual leave is being held in abeyance under 5 U.S.C. 5551(b) may donate that leave to another employee. We are proposing to add § 630.910(b) to permit an employee to donate the leave held in abeyance as long as the leave was earned under 5 U.S.C. chapter 63. In addition, we are proposing to limit in new § 630.912(c) the amount of annual leave a leave donor who is no longer covered by chapter 63 may donate to no more than one-half the amount of annual leave he or she was entitled to accrue in the last leave year the donor was covered by chapter 63. An agency may waive this limitation in the same manner that current limitations on donated leave may be waived under the voluntary leave transfer and leave bank programs.

#### Use of Donated Annual Leave

Agencies have questioned whether a leave recipient may use donated annual leave for a purpose other than that for which the leave was donated—*e.g.*, to care for a different family member. We



have also received questions about whether an employee on leave restriction continues to be subject to the conditions of the restriction notice when using donated annual leave.

We have added language to proposed §§ 630.914 and 630.1012 to clarify that donated leave may be used only for the particular medical emergency for which it is donated. In addition, these sections would make it clear that an employee on an official notice of leave restriction continues to be subject to the terms and conditions of the leave restriction notice when requesting and using donated leave.

#### **Accrual of Annual and Sick Leave While Using Donated Leave**

Some agency officials have expressed confusion regarding the statutory requirement in 5 U.S.C. 6337 to establish separate “set-aside” accounts for leave recipients using donated leave under the voluntary leave transfer and leave bank programs. Section 6337(b)(1)(A) and (B) provide that the maximum amount of annual or sick leave which may be accrued by an employee while using donated leave “in connection with any particular emergency” may not exceed 5 days (*i.e.*, 40 hours of annual leave and 40 hours of sick leave). Therefore, we propose to revise 5 CFR 630.916 to clarify that “set-aside” leave accrual is limited to 40 hours of annual leave and 40 hours of sick leave for each medical emergency. If a leave recipient gains the use of leave in his or her set-aside accounts, as provided in § 630.917, before he or she reaches the 40-hour limit, the recipient, in the event of receiving more donated leave, continues to accrue leave in the set-aside account until the total amount accrued during the particular medical emergency has reached 40 hours of annual leave and 40 hours of sick leave. Once the employee uses all of the 40 hours of annual leave and 40 hours of sick leave allowable in the set-aside account, the set-aside account is terminated and no more leave may be accrued by the employee while using donated leave for that particular emergency.

In addition, we propose to revise § 630.918 to clarify that when a leave recipient’s employing agency advances leave at the beginning of the leave year and 40 hours of that advanced leave are placed in a set-aside account, the employee may accrue leave while using donated leave only to the extent necessary to liquidate the debt incurred by placing that advanced leave in the set-aside account.

The rules concerning set-aside accounts under the leave bank program

are identical to those for the leave transfer program, and the maximum accruals allowed under 5 U.S.C. 6337 apply to the total leave accrued under both the leave transfer and leave bank programs. Therefore, we propose to remove the instructions for set-aside accounts under the leave bank program at current § 630.1008. Instead, new § 630.1013 refers the reader to the applicable sections of the leave transfer regulations at §§ 630.915 through 630.919.

#### **Inclusion of “Excepted Agencies” in the Leave Transfer Program**

New section 322 of Public Law 107–307 (November 27, 2002) revised 5 U.S.C. 6339 to add a new paragraph (c)(1) which provides that the head of an excepted agency may establish a program under which an individual employed in or under an excepted agency may participate in a leave transfer program. Under the provisions of section 322, a previously excluded agency may now establish a voluntary leave transfer program. The new provisions also provide previously excluded agencies with the authority to establish procedures for administering a leave transfer program, consistent with OPM’s regulations governing the administration of the Voluntary Leave Transfer Program.

We have added § 630.922(a) to make it clear that the head of an excepted agency may establish a program under which an individual employed in or under such excepted agency may participate in the leave transfer program under subpart I, including provisions permitting the transfer of annual leave accrued or accumulated by such employee to, or permitting such employee to receive transferred leave from, an employee of any other agency (including another excepted agency). In addition, we have added § 630.922(b) to clarify that an excepted agency’s policy may include provisions that protect the anonymity of its employees. Other agencies (including other excepted agencies that choose to participate in the leave transfer program) must accept leave from such an excepted agency, regardless of whether the donating employee is identified.

#### **Records and Reports**

We are proposing to delete the reporting requirement at 5 CFR 610.122(c) concerning variations in work schedules for educational purposes. In addition, we are proposing to delete the reporting requirement currently in § 630.211(d). The responsibility to make decisions on excluding certain Presidential

appointees from entitlement to annual and sick leave consistent with requirements and criteria in § 630.211 has been delegated to the heads of agencies, and we no longer require reports on these exclusions. The agency must continue to maintain records of exclusions or revocations of exclusions.

We are proposing to remove the reporting requirements in current § 630.408 and to reduce the amount of information that agencies must maintain on the use of sick leave for family care purposes. Agencies would be required to maintain records sufficient to ensure that employees do not exceed their entitlement to sick leave for family care purposes.

We are proposing to delete the reporting requirements currently in §§ 630.913 and 630.1012 on the voluntary leave transfer and leave bank programs. Agencies would be required to maintain sufficient records to permit the transfer of donated leave when a leave recipient transfers to a new agency.

We are also proposing to remove the reporting requirements for family and medical leave currently in § 630.1211. Agencies would be required to maintain sufficient records to ensure that employees do not exceed their entitlement to family and medical leave.

#### **Miscellaneous**

We are proposing to revise § 630.101 to affirm OPM’s authority to administer Governmentwide leave policies and procedures. We are also proposing to delete § 630.407(b) concerning the holiday premium pay entitlement of an employee on a compressed work schedule. This section was numbered in error and the information is properly found in current § 610.407(b).

We are also proposing to delete § 630.203 which gives instructions for earning leave in other than biweekly pay periods, since we have been assured by the Government’s payroll providers that there are no longer any employees to which such procedures would apply. We are proposing to delete the procedures currently in § 630.409 for the retroactive substitution of sick leave for annual leave used for adoption related purposes between September 1991 and September 1994. The time limit for retroactive substitution under this section expired on September 30, 1996, making this information obsolete.

We are also proposing to delete current §§ 630.301(d)(1), (d)(2), and (e) concerning the treatment of members of the Senior Executive Service (SES) in 1994 when SES leave ceilings were first established. Similarly, we are proposing to delete § 630.309, which dealt with the

treatment of Y2K essential personnel during the leave years 1999 and 2000.

We are also proposing to delete subpart M of part 630, the Reservist Leave Bank, since these regulations now are obsolete. These regulations implemented section 331 of Public Law 102-25, the Department of Defense Desert Storm Supplemental Authorization and Military Personnel Benefits Act for Fiscal Year 1991, April 6, 1991. The regulations established a leave bank to provide time off for Federal civilian employees returning from active military duty in Operation Desert Storm and Operation Desert Shield in 1991. OPM collected annual leave donations and divided the total amount contributed among all eligible returnees in 1991.

In addition, we are proposing to delete the prohibitions against coercion in the voluntary leave transfer and leave bank programs currently in §§ 630.912 and 630.1011, since these sections are restatements of the law at 5 U.S.C. 6338 and 6370. Similarly, we propose to delete paragraphs (c) and (d) currently in § 630.1208 concerning employee protections under the Family and Medical Leave Act, since these also are restatements of the law at 5 U.S.C. 6384(c). Finally, we propose to revise the procedures in current § 630.1108 for recrediting unused annual leave donated to the donors under the emergency leave transfer program. New § 630.1120 would eliminate the requirement to return unused leave to the donors if the number of hours of unused leave is less than the number of eligible donors. This provision would simplify the administration of the emergency leave transfer program and make its administration consistent with the procedures for the voluntary leave transfer program at § 630.921.

**E.O. 12866, Regulatory Review**

This rule has been reviewed by the Office of Management and Budget in accordance with E.O. 12866.

**Regulatory Flexibility Act**

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

**List of Subjects in 5 CFR Parts 353, 530, 531, 550, 551, 575, 610, and 630**

Administrative practice and procedure, Claims, Government employees, Holidays, Law enforcement officers, Reporting and recordkeeping requirements, Wages.

U.S. Office of Personnel Management.

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

Accordingly, OPM is proposing to amend 5 CFR parts 353, 530, 531, 550, 575, 610, and 630 to read as follows:

**PART 353—RESTORATION TO DUTY FROM UNIFORMED SERVICE OR COMPENSABLE INJURY**

1. The authority citation for part 353 continues to read as follows:

**Authority:** 38 U.S.C. 4301 *et seq.*, and 5 U.S.C. 8151.

**Subpart B—Uniformed Service**

2. Section 353.208 is revised to read as follows:

**§ 353.208 Use of paid leave during uniformed service.**

An employee performing service with the uniformed services must be permitted, upon request, to use any accrued annual leave or military leave during such service.

**PART 530—PAY RATES AND SYSTEMS (GENERAL)**

3. The authority citation for part 530 continues to read as follows:

**Authority:** 5 U.S.C. 5305 and 5307; E.O. 12748, 56 FR 4521, 3 CFR, 1991 Comp., p. 316; Subpart B also issued under secs. 302(c) and 404(c) of the Federal Employees Pay Comparability Act of 1990 (Pub. L. 101-509), 104 Stat. 1462 and 1466, respectively; Subpart C also issued under sec. 4 of the Performance Management and Recognition System Termination Act of 1993 (Pub. L. 103-89), 107 Stat. 981.

**Subpart C—Special Salary Rate Schedules for Recruitment and Retention**

4. In § 530.303, paragraph (i) is revised to read as follows:

**§ 530.303 Establishing and adjusting special salary rate schedules.**

\* \* \* \* \*

(i) The determination as to whether an employee is covered by a special salary rate schedule must be based on the employee's position of record and the official duty station for that position as those terms are defined in 5 CFR 531.602.

**PART 531—PAY UNDER THE GENERAL SCHEDULE**

5. The authority citation for part 531 continues to read as follows:

**Authority:** 5 U.S.C. 5115, 5307, and 5338; sec. 4 of Pub. L. 103-89, 107 Stat. 981; and E.O. 12748, 56 FR 4521, 3 CFR, 1991 Comp., p. 316.

Subpart B also issued under 5 U.S.C. 5303(g), 5333, 5334(a), and 7701(b)(2);

Subpart C also issued under 5 U.S.C. 5304, 5305, and 5553; sections 302 and 404 of the Federal Employees Pay Comparability Act (FEPCA), Pub. L. 101-509, 104 Stat. 1462 and 1466; and section 3(7) of Pub. L. 102-378, 106 Stat. 1356;

Subpart D also issued under 5 U.S.C. 5335(g) and 7701(b)(2);

Subpart E also issued under 5 U.S.C. 5336; Subpart F also issued under 5 U.S.C. 5304, 5305(g)(1), and 5553; and E.O. 12883, 58 FR 63281, 3 CFR, 1993 Comp., p. 682; and E.O. 13106, 63 FR 68151; 3 CFR 1998 Comp., p. 224;

Subpart G also issued under 5 U.S.C. 5304, 5305, and 5553; section 302 of FEPCA, Pub. L. 101-509, 104 Stat. 1462; and E.O. 12786, 56 FR 67453, 3 CFR, 1991 Comp., p. 376.

**Subpart C—Special Pay Adjustments for Law Enforcement Officers**

6. In § 531.301 the definition of *position of record* is added in alphabetical order, and the definition of *official duty station* is revised to read as follows:

**§ 531.301 Definitions.**

\* \* \* \* \*

*Official duty station* means the duty station for the law enforcement officer's position of record where the officer performs his or her duties as determined by the requirements in § 531.605.

*Position of record* has the same meaning given that term in § 531.602.

\* \* \* \* \*

**Subpart F—Locality-Based Comparability Payments**

7. In § 531.602 the definition of *official duty station* is revised, and the definitions of *position of record*, *telework*, and *telework arrangement* are added in alphabetical order to read as follows:

**§ 531.602 Definitions.**

In this subpart:

\* \* \* \* \*

*Official duty station* means the location of the employee's position of record where he or she performs more of his or her duties as determined by the requirements in § 531.605.

*Position of record* means an employee's official position (defined by employing agency, grade, occupational series, and position duties) as documented on the employee's most recent notification of personnel action and the current position description. This excludes any position to which an employee is temporarily detailed without a change in the official position. For an employee whose change in his or her official position is followed within 3 workdays by a reduction in force

resulting in the employee's separation before he or she is required to report for duty in the new position, the position of record in effect immediately before the position change is deemed to remain the position of record through the date of separation.

\* \* \* \* \*

*Telework* means work performed by an employee at an alternative work site instead of the location of the employee's assigned organization. Alternative work sites may include the employee's home, telecenter, satellite office, field installation or other location.

*Telework arrangement* means a formal oral or written agreement between a supervisor and employee to permit an employee to work at an alternative work site (*i.e.*, telework) instead of the location of the employee's assigned organization.

**§§ 531.605, 531.606, 531.607**  
**[Redesignated]**

8. Sections 531.605, 531.606, and 531.607 are redesignated as §§ 531.606, 531.607, and 531.608, respectively, and a new § 531.605 is added to read as follows:

**§ 531.605 Determining an employee's official duty station.**

(a) Except as otherwise provided in this section, the official duty station is the location of the employee's position of record where the employee regularly performs his or her duties or, if his or her work involves regular travel, where his or her work activities are based, as determined by the employing agency. An agency must document an employee's official duty station on an employee's notification of personnel action (Standard Form 50 or equivalent).

(b) For an employee who is relocated and authorized to receive relocation expenses under 5 U.S.C. chapter 57, subchapter II (or similar authority), the official duty station is the established work site in the area to which the employee has been relocated. This includes employees authorized to receive relocation expenses under 5 U.S.C. 5737 in connection with an extended assignment resulting in a temporary change of station, in which case the duty station associated with the extended assignment is the official duty station. (See 41 CFR part 302-1.1.)

(c) For an employee whose assignment to a new duty station is followed within 3 workdays by a reduction in force resulting in the employee's separation before he or she is required to report for duty at the new location, the official duty station in effect immediately before the

assignment remains the official duty position through the date of separation.

(d) For an employee who is under a telework agreement, the official duty station must be the location of the employee's telework site unless the employee is scheduled (while in duty status) to report at least once a week to the regular work site for the employee's position of record, in which case the regular work site is the official duty station. Agencies may make temporary exceptions to this requirement in appropriate situations, such as when an employee is recovering from an injury or medical condition that prevents the employee from commuting to the regular work site. Agencies must determine a telework employee's official duty station on a case-by-case basis.

**PART 550—PAY ADMINISTRATION**  
**(GENERAL)**

**Subpart A—Premium Pay**

9. The authority citation for subpart A continues to read as follows:

**Authority:** 5 U.S.C. 5304 note, 5305 note, 5541(2)(iv), 5545a(h)(2)(B) and (i), 5547(b) and (c), 5548, and 6101(c); sections 407 and 2316, Pub. L. 105-277, 112 Stat. 2681-101 and 2681-828 (5 U.S.C. 5545a); E.O. 12748, 3 CFR, 1992 Comp., p. 316.

10. In § 550.114, paragraph (d) is revised, paragraph (e) is redesignated as paragraph (f) and a new paragraph (e) is added to read as follows:

**§ 550.114 Compensatory time off.**

\* \* \* \* \*

(d) Except as provided in paragraph (e)(2) of this section, an employee must use accrued compensatory time off to which he is entitled under paragraph (a) or (b) of this section by the end of the 26th pay period after the pay period during which it was credited. Compensatory time off to an employee's credit as of [insert effective date of final regulations] must be used by the end of the 26th pay period following [insert effective date of final regulations]. The head of an agency, at his or her sole and exclusive discretion, may provide that an employee who fails to take compensatory time off to which he is entitled within 26 pay periods after the pay period during which it was credited must—

(1) Receive payment for such unused compensatory time off at the dollar value prescribed in paragraph (f) of this section; or

(2) Forfeit the unused compensatory time off, unless the failure to take the compensatory time off is due to an exigency of the service beyond the employee's control, in which case the

agency head must provide payment for the unused compensatory time off at the dollar value prescribed in paragraph (f) of this section.

(e)(1) Except as provided in paragraph (e)(2) of this section, an employee with unused compensatory time off under paragraph (a) or (b) of this section who transfers to another agency or separates from Federal service before the expiration of the time limit established under paragraph (d) of this section may receive overtime pay or forfeit the unused compensatory time off, consistent with the employing agency's policy established under paragraph (d) of this section.

(2) If an employee with unused compensatory time off under paragraph (a) or (b) of this section separates from Federal service or is placed in a leave without pay status under the following circumstances, the employee must be paid for unused compensatory time off at the dollar value prescribed in paragraph (f) of this section:

(i) The employee separates or is placed in a leave without pay status to perform service in the uniformed services (as defined in 38 U.S.C. 4303 and 5 CFR 353.102); or

(ii) The employee separates or is placed in a leave without pay status because of an on-the-job injury with entitlement to injury compensation under 5 U.S.C. chapter 81.

\* \* \* \* \*

**Subpart J—Compensatory Time Off for Religious Observances**

11. Subpart J is revised to read as follows:

- 550.1001 Purpose.
- 550.1002 Definitions.
- 550.1003 Agency requirements.
- 550.1004 Time limits.
- 550.1005 Limits on the amount of earned compensatory time off an employee may accumulate.
- 550.1006 Crediting and recording of compensatory time off.
- 550.1007 Premium pay and compensatory overtime work.
- 550.1008 Transfer or separation of an employee with a positive or negative balance of compensatory time off for religious observances.

**Authority:** 5 U.S.C. 5550a.

**Subpart J—Compensatory Time Off for Religious Observances**

**§ 550.1001 Purpose.**

This subpart contains OPM regulations implementing 5 U.S.C. 5550a, which allows employees to earn and use compensatory time off to modify work schedules to satisfy religious obligations to abstain from work. When an employee has personal

religious beliefs that require him or her to abstain from work during the employee's scheduled tour of duty established for leave purposes, the employee may be granted time off to meet those religious requirements. The employee earns this time off by performing an equal amount of compensatory overtime work at another time.

**§ 550.1002 Definitions.**

In this subpart:

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

*Employee* means an employee who satisfies the definition of that term in 5 U.S.C. 2105.

*Rate of basic pay* means the rate of pay fixed by law or administrative action for the position held by the employee, including the following types of pay, as applicable, but not including any other additional pay of any kind:

(1) A locality payment under 5 U.S.C. 5304 or similar geographic-based payment under another authority (provided that the similar payment is creditable as part of basic pay for retirement purposes);

(2) A special pay adjustment for law enforcement officers under section 404 of the Federal Employees Pay Comparability Act of 1990 (Public Law 101-509); and

(3) A continued rate adjustment under 5 CFR part 531, subpart G.

*Scheduled tour of duty for leave purposes* means an employee's regular hours for which he or she may be charged leave under 5 CFR part 630 when absent. For full-time employees, it is the 40-hour basic workweek as defined in 5 CFR 610.102. For employees with an uncommon tour of duty as defined in 5 CFR 630.201, it is the uncommon tour of duty.

**§ 550.1003 Agency requirements.**

An agency must grant an employee's request to take time off to meet religious requirements to abstain from work and to work compensatory overtime unless granting the request would interfere with the efficient accomplishment of the agency's mission. An agency may require an employee requesting time off under these provisions to submit written requests for an adjusted schedule in advance and to provide acceptable written documentation of the employee's religious requirement to abstain from work.

**§ 550.1004 Time limits.**

(a) The employee may perform compensatory overtime work before or after using the compensatory time off for religious observances, subject to agency

approval. The agency must take into account its mission requirements and operational efficiencies in determining when to schedule compensatory overtime work.

(b) When an agency grants advanced compensatory time off for religious observances to an employee, the agency must require that the employee perform the required amount of compensatory overtime work within 3 pay periods. If the employee fails to perform compensatory overtime work within 3 pay periods, the agency must charge the employee annual leave to eliminate the negative balance, even if this results in a negative annual leave balance.

**§ 550.1005 Limits on the amount of earned compensatory time off an employee may accumulate.**

An agency may allow an employee to accumulate only the number of hours of earned compensatory time off (based on the performance of compensatory overtime work) needed to make up for previous approved absences or anticipated absences for specific religious observances.

**§ 550.1006 Crediting and recording of compensatory time off.**

The agency must credit an employee with compensatory time off for performing compensatory overtime work on an hour-for-hour basis. The agency may authorize credit in increments of one-tenth of an hour (6 minutes) or one-quarter of an hour (15 minutes). The agency must keep appropriate records of the compensatory time off each employee earns and uses.

**§ 550.1007 Premium pay and compensatory overtime work.**

The overtime hours worked to earn compensatory time off under this subpart do not create any entitlement to premium pay (including overtime pay) under 5 CFR part 550, subpart A, or overtime pay under 5 CFR part 551. Earned compensatory time off for religious observances is not considered in applying the premium pay limitations described in 5 CFR 550.105, 550.106, and 550.107.

**§ 550.1008 Transfer or separation of an employee with a positive or negative balance of compensatory time off for religious observances.**

(a) If an employee separates from Federal service or transfers to another agency, the losing agency must compensate the employee for any positive amount of earned compensatory time off to his or her credit. The agency must pay the employee for hours of earned compensatory time off for religious

observances at the hourly rate of basic pay in effect when the extra hours of work were performed.

(b) If an employee separates from Federal service or transfers to another agency and owes the losing agency for used compensatory time off that was advanced and not yet repaid through compensatory overtime work, the losing agency must reduce the employee's annual leave balance by the amount of the negative balance of hours to the extent possible. If the negative balance cannot be eliminated by adjusting the employee's annual leave balance, the employee owes a monetary debt to the agency for any remaining hours of advanced compensatory time off. The hours must be valued using the hourly rate of basic pay in effect at the time the hours of religious compensatory time off were used.

(c) For purposes of applying paragraphs (a) and (b) of this section, an hourly rate of basic pay is computed by dividing the annual rate of basic pay by 2087 hours (or 2756 hours for firefighter hours subject to that divisor under subpart F of this part).

**Subpart L—Lump-Sum Payment for Accumulated and Accrued Annual Leave**

12. The authority citation for subpart L continues to read as follows:

**Authority:** 5 U.S.C. 5553, 6306, and 6311.

13. In § 550.1205, revise paragraph (b)(5)(i) to read as follows:

**§ 550.1205 Calculating a lump-sum payment.**

\* \* \* \* \*

(b) \* \* \*

(5) \* \* \*

(i) Night differential under 5 U.S.C. 5343(f) at the applicable percentage rate received by a prevailing rate employee for all regularly scheduled periods of night shift duty covered by the unused annual leave as if the employee had continued to work beyond the effective date of separation, death, or transfer. In the case of an employee who is assigned to a regular rotating schedule involving work on both day and night shifts, the night differential is payable for that portion of the lump-sum period that would have occurred when the employee was scheduled to work night shifts.

\* \* \* \* \*

**PART 551—PAY ADMINISTRATION UNDER THE FAIR LABOR STANDARDS ACT**

14. The authority citation for part 551 continues to read as follows:

**Authority:** 5 U.S.C. 5542(c); Sec. 4(f) of the Fair Labor Standards Act of 1938, as amended by Pub. L. 93-259, 88 Stat. 55 (29 U.S.C. 204f).

### Subpart E—Overtime Pay Provisions

15. In § 551.531, paragraph (d) is revised, paragraph (e) is redesignated as paragraph (f) and a new paragraph (e) is added to read as follows:

#### § 551.531 Compensatory time off.

\* \* \* \* \*

(d) If compensatory time off earned under paragraph (a) or (b) of this section is not taken within 26 pay periods or if the employee separates before using the compensatory time, the employee must be paid for overtime work at the dollar value prescribed in paragraph (f) of this section. Compensatory time off to an employee's credit as of [insert effective date of final regulations] must be used by the end of the 26th pay period following [insert effective date of final regulations].

(e) If an employee with unused compensatory time off under paragraph (a) or (b) of this section is placed in a leave without pay status under the following circumstances, the employee must be paid for overtime work at the overtime rate at the dollar value prescribed in paragraph (f) of this section:

(1) The employee is placed in a leave without pay status to perform service in the uniformed services (as defined in 38 U.S.C. 4303 and 5 CFR 353.102); or

(2) The employee is placed in a leave without pay status because of an on-the-job injury with entitlement to injury compensation under 5 U.S.C. chapter 81.

\* \* \* \* \*

### PART 575—RECRUITMENT AND RELOCATION BONUSES; RETENTION ALLOWANCES; SUPERVISORY DIFFERENTIALS

16. The authority citation for part 575 continues to read as follows:

**Authority:** 5 U.S.C. 1104(a)(2), 5753, 5754, and 5755; secs. 302 and 404 of the Federal Employees Pay Comparability Act of 1990 (FEPCA) (Pub. L. 101-509), 104 Stat. 1462 and 1466, respectively; E.O. 12748, 3 CFR, 1992 Comp., p. 316.

#### Subpart A—Recruitment Bonuses

17. In § 575.103, the definition of *rate of basic pay* is revised to read as follows:

#### § 575.103 Definitions.

\* \* \* \* \*

*Rate of basic pay* means the rate of pay fixed by law or administrative

action for the position to which the employee is or will be newly appointed before deductions and exclusive of additional pay of any kind, such as locality-based comparability payments under 5 U.S.C. 5304, special pay adjustments for law enforcement officers under section 404 of the Federal Employees Pay Comparability Act of 1990 (Pub. L. 101-509), night shift differentials under 5 U.S.C. 5343(f), or environmental differentials under 5 U.S.C. 5343(c)(4).

\* \* \* \* \*

#### Subpart B—Relocation Bonuses

18. In § 575.203, the definition of *rate of basic pay* is revised to read as follows:

#### § 575.203 Definitions.

\* \* \* \* \*

*Rate of basic pay* means the rate of pay fixed by law or administrative action for the position to which the employee is being relocated or, in the case of an employee who is entitled to grade or pay retention, the employee's retained rate of pay, before deductions and exclusive of additional pay of any kind, such as locality-based comparability payments under 5 U.S.C. 5304, special pay adjustments for law enforcement officers under section 404 of the Federal Employees Pay Comparability Act of 1990 (Pub. L. 101-509), night shift differentials under 5 U.S.C. 5343(f), or environmental differentials under 5 U.S.C. 5343(c)(4).

\* \* \* \* \*

#### Subpart C—Retention Allowances

19. In § 575.303, the definition of *rate of basic pay* is revised to read as follows:

#### § 575.303 Definitions.

\* \* \* \* \*

*Rate of basic pay* means the rate of pay fixed by law or administrative action for the position held by the employee or, in the case of an employee who is entitled to grade or pay retention, the employee's retained rate of pay, before deductions and exclusive of additional pay of any kind, such as locality-based comparability payments under 5 U.S.C. 5304, special pay adjustments for law enforcement officers under section 404 of the Federal Employees Pay Comparability Act of 1990 (Pub. L. 101-509), night shift differentials under 5 U.S.C. 5343(f), or environmental differentials under 5 U.S.C. 5343(c)(4).

20. Part 610 is revised to read as follows:

### PART 610—HOURS OF WORK

#### Subpart A—Weekly and Daily Scheduling of Work

Sec.

610.101 Coverage.

610.102 Definitions.

#### Workweeks

610.111 Establishing workweeks.

#### Work Schedules

610.121 Establishing work schedules.

610.122 Variation for educational purposes.

610.123 Travel outside duty hours.

610.124 Unpaid meal periods.

#### Subpart B—Holidays

610.201 Definitions

610.202 Entitlement to paid holidays.

601.203 How to determine a holiday.

610.204 Employee in nonpay status immediately preceding or following a holiday.

#### Subpart C—Administrative Dismissal of Daily, Hourly, and Piecework Employees

610.301 Purpose.

610.302 Definitions.

610.303 Coverage.

610.304 Use of administrative dismissal.

610.305 Supplemental agency regulations.

#### Subpart D—Flexible and Compressed Work Schedules

##### General Provisions

610.401 Purpose.

610.402 Definitions.

610.403 Covered work schedules.

610.404 Time-accounting method.

##### Flexible Work Schedules

610.411 Overtime hours for employees on flexible work schedules.

610.412 Pay for a holiday for employees on flexible work schedules.

610.413 Holiday premium pay for employees on flexible work schedules.

610.414 Credit hours.

##### Compressed Work Schedules

610.421 Overtime hours for employees on compressed work schedules.

610.422 Pay for a holiday for employees on compressed work schedules.

610.423 Holiday premium pay for employees on compressed work schedules.

#### Subpart A—Weekly and Daily Scheduling of Work

**Authority:** 5 U.S.C. 6101; sec. 1(1) of E.O. 11228, 3 CFR, 1964-1965 Comp., p. 317.

#### § 610.101 Coverage.

Notwithstanding subpart D of this part, implementing flexible work schedules and compressed work schedules established under 5 U.S.C. chapter 61, subchapter II, the regulations on the weekly and daily scheduling of work in this subpart apply to—

(a) Each employee to whom 5 CFR part 550, subpart A, applies; and  
 (b) Each employee whose pay is fixed and adjusted from time to time under 5 U.S.C. 5343 or 5349 or by a wage board or similar administrative authority serving the same purpose.

#### § 610.102 Definitions.

In this subpart:

*Administrative workweek* means any period of 7 consecutive 24-hour periods designated in advance by the head of the agency under 5 U.S.C. 6101.

*Agency* means an executive agency as defined in 5 U.S.C. 105. For the purposes of this subpart, a military department as defined in 5 U.S.C. 102 is treated as a separate agency.

*Authorized agency official* means the head of an agency or an official who is authorized to act for the head of the agency in the matter concerned.

*Basic workweek*, for full-time employees, means the 40-hour workweek established under § 610.111.

*Employee* means an employee of an agency to whom this subpart applies, as described in § 610.101.

*Regularly scheduled administrative workweek*, for a full-time employee, means the period within an administrative workweek, established under § 610.111, within which the employee is regularly scheduled to work. For a part-time employee, this term means the officially prescribed days and hours within an administrative workweek during which the employee is regularly scheduled to work.

*Regularly scheduled work* means work that is scheduled in advance of an administrative workweek under an agency's procedures for establishing workweeks in accordance with § 610.111.

*Tour of duty* means the hours of a day (a daily tour of duty) and the days of an administrative workweek (a weekly tour of duty) that constitute an employee's regularly scheduled administrative workweek.

*Unpaid meal period* means an approved period of time in a nonpay and nonwork status that interrupts a daily tour of duty or a period of overtime work for the purpose of permitting employees to eat or engage in permitted personal activities.

#### Workweeks

##### § 610.111 Establishing workweeks.

(a)(1) For each full-time employee, an authorized agency official must establish the following by a written agency policy statement:

(i) A basic workweek of 40 hours which does not extend over more than 6 of any 7 consecutive days. The written

agency policy statement must specify the days and hours within the administrative workweek that constitute the basic workweek, except as provided in paragraphs (b), (c), and (d) of this section.

(ii) A regularly scheduled administrative workweek that consists of the 40-hour basic workweek established under paragraph (a)(1) of this section, plus the period of regularly scheduled overtime work, if any, required of each employee. The written agency policy statement, for leave and premium pay administration purposes, must specify by days and hours of each day the periods included in the regularly scheduled administrative workweek that do not constitute a part of the basic workweek, except as provided in paragraphs (b), (c), and (d) of this section.

(2) The basic workweek and regularly scheduled administrative workweek established under paragraph (a)(1) of this section must be used for premium pay and leave administration purposes, as appropriate.

(b) When it is impracticable to prescribe a regular schedule of definite hours of work for each workday of a regularly scheduled administrative workweek, an authorized agency official may establish the first 40 hours of work performed within a period of not more than 6 days of the administrative workweek as the basic workweek. A first 40-hour tour of duty is the basic workweek without the requirement for specific days and hours within the administrative workweek. All work performed by an employee within the first 40 hours is considered regularly scheduled work for premium pay and leave administration purposes. Any additional hours of officially ordered or approved work within the administrative workweek are overtime hours.

(c) (1) When an employee receives annual premium pay for regularly scheduled standby duty under 5 U.S.C. 5545(c)(1), his or her regularly scheduled administrative workweek is the total number of regularly scheduled hours of duty a week, including on-duty sleep and meal periods. (See 5 CFR 550.112(m)(2) and 551.432(e).)

(2) When an employee has a tour of duty which includes a period during which he or she remains at or within the confines of his or her station in a standby status rather than performing actual work, his or her regularly scheduled administrative workweek is the total number of regularly scheduled hours of duty each week. This includes time in a standby status, but does not include time that is allowed for sleep

and meal periods by a written agency policy statement, subject to the requirements of 5 CFR 550.112(k) and (m), 551.411(c), 551.431, and 551.432.

(3) When an employee is a firefighter compensated under 5 U.S.C. 5545b, the agency must establish a regular tour of duty instead of a basic workweek and a regularly scheduled administrative workweek, consistent with the requirements of 5 CFR part 550, subpart M.

(d) When an authorized agency official establishes a flexible or compressed work schedule under 5 U.S.C. 6122 or 6127, he or she must establish a basic work requirement for each employee as defined in 5 U.S.C. 6121 and subpart D of this part. A flexible or compressed work schedule is a scheduled tour of duty, and all work performed by an employee within the basic work requirement is considered regularly scheduled work for premium pay and leave administration purposes.

(e) The basic workweeks established under this section are not affected by a holiday. Employees are entitled to paid holidays as provided in subpart B of this part.

#### Work Schedules

##### § 610.121 Establishing work schedules.

(a) Except when an authorized agency official determines that the agency would be seriously handicapped in carrying out its functions or that costs would be substantially increased, he or she must provide that—

(1) Assignments to tours of duty are scheduled in advance of the administrative workweek over periods of not less than 1 week;

(2) The 40-hour basic workweek is scheduled on 5 days, Monday through Friday when possible, and the 2 days outside the basic workweek are consecutive;

(3) The working hours in each day of the basic workweek are the same;

(4) The basic nonovertime workday may not exceed 8 hours;

(5) The occurrence of holidays may not affect the designation of the basic workweek; and

(6) Breaks in working hours of more than 1 hour may not be scheduled in a basic workday.

(b) An authorized agency official must schedule the work of his or her employees to accomplish the mission of the agency. An authorized agency official must schedule an employee's regularly scheduled administrative workweek so that it corresponds with his or her actual work requirements.

(c) When an authorized agency official knows in advance of an

administrative workweek that the specific days and/or hours of a day actually required of an employee in that administrative workweek will differ from those required in the current administrative workweek, he or she must reschedule the employee's regularly scheduled administrative workweek to correspond with those specific days and hours. An authorized agency official must inform the employee of the change and must record the change on the agency's official document for recording work schedules.

(d) If it is determined that an authorized agency official should have scheduled a period of work as part of the employee's regularly scheduled administrative workweek and failed to do so in accordance with paragraphs (b) and (c) of this section, the employee is entitled to the payment of premium pay for that period of work as regularly scheduled work under 5 CFR part 550, subpart A. In this regard, it must be determined that the authorized agency official—

(1) Had knowledge of the specific days and hours of the work requirement in advance of the administrative workweek; and

(2) Had the opportunity to determine which employee had to be scheduled, or rescheduled, to meet the specific days and hours of that work requirement.

(e) To the extent that the requirements of this section are inconsistent with the provisions for flexible and compressed work schedules in 5 U.S.C. chapter 61, subchapter II, and subpart D of this part, the requirements of this section do not apply to employees on such flexible or compressed work schedules.

#### **§ 610.122 Variation for educational purposes.**

(a) Notwithstanding § 610.121, an authorized agency official may authorize a special tour of duty of not less than 40 hours to permit an employee to take one or more courses in a college, university, or other educational institution when he or she determines that—

(1) The courses the employee takes are not training under 5 U.S.C. chapter 41;

(2) The rearrangement of the employee's tour of duty will not appreciably interfere with the accomplishment of the work required to be performed;

(3) Additional costs for personal services will not be incurred; and

(4) Completion of the courses will equip the employee for more effective work in the agency.

(b) An agency may not pay an employee any premium pay solely

because the special tour of duty authorized under this section causes the employee to work on a day, or at a time during the day, for which premium pay otherwise would be payable.

#### **§ 610.123 Travel outside duty hours.**

(a) An employee may earn overtime pay or earn compensatory time off for travel outside his or her regularly scheduled administrative workweek only under the limited conditions prescribed in 5 CFR 550.112(g)(2) for all employees, whether exempt or non-exempt from coverage by the Fair Labor Standards Act, and in 5 CFR 551.422 for employees who are covered by the Fair Labor Standards Act. Insofar as practicable, an authorized agency official should not require an employee to travel during nonduty hours. When it is essential that an employee travel during nonduty hours under circumstances that do not permit payment of overtime pay under 5 CFR 550.112(e), the supervisor or other approving official must record his or her reasons for ordering travel at those hours and must, upon request, furnish a copy of this statement to the employee concerned.

(b) An agency must not adjust the regular working hours that normally apply to an employee solely for the purpose of including time spent traveling that would not otherwise be considered hours of work under 5 CFR 550.112 or 5 CFR 551.422.

#### **§ 610.124 Unpaid meal periods.**

An authorized agency official may schedule employees for an unpaid meal period during the basic workday in accordance with § 610.121(a)(6). An unpaid meal period may not be counted as hours of work. If an agency schedules an unpaid meal period, an employee may not choose to work through that meal period to shorten his or her workday or to earn overtime pay.

#### **Subpart B—Holidays**

**Authority:** 5 U.S.C. 6101; sec. 1(1) of E.O. 11228, 3 CFR, 1964–1965 Comp., p. 317.

#### **§ 610.201 Definitions.**

In this subpart:

*Administrative workweek* means any period of 7 consecutive 24-hour periods designated in advance by the head of the agency under 5 U.S.C. 6101.

*Agency* means an executive agency as defined in 5 U.S.C. 105. For the purposes of this subpart, a military department as defined in 5 U.S.C. 102 is treated as a separate agency.

*Authorized agency official* means the head of an executive agency or an official who is authorized to act for the

head of the executive agency in the matter concerned.

*Basic workday* means the hours within an employee's basic workweek that occur during one of the 24-hour periods comprising the employee's administrative workweek. For employees on flexible or compressed work schedules as described in subpart D of this part, this term also means the daily basic work requirement.

*Basic workweek*, for full-time employees, means the 40-hour workweek established in accordance with § 610.111. For employees on flexible or compressed work schedules, as described in subpart D of this part, this term also means the basic work requirement.

*Employee* means an employee of an agency who satisfies the definition of that term in 5 U.S.C. 2105.

*Rate of basic pay* means the rate of pay fixed by law or administrative action for the position held by the employee, including the following types of pay, as applicable, but not including additional pay of any other kind:

(1) A locality payment under 5 U.S.C. 5304 or similar geographic-based payment under another authority (provided that the similar payment is treated as part of basic pay for computing retirement contributions and benefits);

(2) A special pay adjustment for law enforcement officers under section 404 of the Federal Employees Pay Comparability Act of 1990 (Public Law 101–509); and

(3) A continued rate adjustment under 5 CFR part 531, subpart G.

*The United States* means—

(1) A State of the United States;

(2) The District of Columbia;

(3) Puerto Rico;

(4) The U.S. Virgin Islands;

(5) Outer Continental Shelf Lands, as defined in the Outer Continental Shelf Lands Act (67 Stat. 462);

(6) American Samoa;

(7) Guam;

(8) Midway Atoll;

(9) Wake Island;

(10) Johnston Island; and

(11) Palmyra.

*Workday* means hours of the day that constitute an employee's daily tour of duty. For purposes of this subpart, a *workday* includes a day on which employees may be excused from duty by statute, Executive order, or administrative action.

#### **§ 610.202 Entitlement to paid holidays.**

(a) Employees are entitled to paid holidays under the conditions set forth in this subpart. Agencies must determine the legal holidays on which

employees may be excused from duty with pay consistent with the requirements of 5 U.S.C. 6103, Executive Order 11582 of February 11, 1971, and § 610.203.

(b) Employees are excused from duty with pay on a holiday as follows:

(1) Full-time employees are excused for 8 hours.

(2) Part-time employees are excused for the number of nonovertime hours in the employee's daily tour of duty on the holiday (not to exceed 8 hours).

(3) Notwithstanding paragraphs (b)(1) and (2) of this section, employees on compressed work schedules are excused for the number of hours in the employee's daily basic work requirement on the holiday, consistent with § 610.422.

(4) If an employee on a flexible work schedule has a daily basic work requirement in excess of 8 hours on a holiday, the agency must charge the employee leave for any excess hours, allow the employee to use credit hours or compensatory time off, or arrange for the employee to meet the work requirement on another day.

(c) An agency must compute the basic pay for a holiday on which an employee is excused from duty by multiplying the appropriate number of hours as provided in paragraph (b) of this section by the employee's hourly rate of basic pay.

(d) If any part of an employee's basic workday falls on a holiday, the entire basic workday must be treated as if it fell on the holiday. However, if an employee has two basic workdays that overlap a single holiday, the employee is entitled to a paid holiday only with respect to the basic workday commencing on the legal holiday.

(e) An employee is not entitled to pay when not working on a holiday if the employee is barred from receiving premium pay for working on a holiday under 5 U.S.C. 5546(b) based on receipt of standby duty premium pay under 5 U.S.C. 5545(c)(1) or compensation under 5 U.S.C. 5545b (dealing with firefighters).

**Note to § 610.202:** The President may excuse specified employees from duty on a given day by Executive order and require that the day be considered as falling within the scope of Executive Order 11582 of February 11, 1971, and of 5 U.S.C. 5546 and 6103(b) and other similar statutes insofar as they relate to the pay and leave of affected employees.

#### § 610.203 How to determine a holiday.

(a) An employee's holiday is the day designated by 5 U.S.C. 6103(a) whenever that day is part of the employee's basic workweek or basic

work requirement, except as provided in paragraph (e) of this section.

(b) When a holiday falls on a nonworkday outside an employee's basic workweek, an agency must determine the day to be treated as his or her holiday (*i.e.*, "in-lieu-of" holiday) in accordance with 5 U.S.C. 6103(b) and Executive Order 11582 as follows:

(1) For employees whose basic workweek is Monday through Friday—

(i) If a holiday falls on a Saturday, the Friday immediately before is the legal holiday.

(ii) If a holiday falls on a Sunday, the following Monday is the legal holiday.

(2) For employees whose basic workweek is other than Monday through Friday, but does not include Sunday—

(i) If a holiday falls on one of the employee's regular nonworkdays other than a Sunday, the employee's workday immediately before that regular nonworkday is the legal holiday.

(ii) If a designated holiday falls on a Sunday, the employee's next workday is the legal holiday.

(3) For employees whose basic workweek includes Sunday, the agency must designate one of the employee's nonworkdays to be the employee's deemed Sunday and determine the holiday as follows:

(i) If a holiday falls on one of the employee's regular nonworkdays other than the deemed Sunday, the employee's workday immediately before that regular nonworkday is the legal holiday.

(ii) If a holiday falls on the deemed Sunday, the employee's next workday is the legal holiday.

(c) As authorized by 5 U.S.C. 6103(d), an agency may prescribe rules under which an employee (as defined in 5 U.S.C. 6121) under a compressed work schedule (as established under subpart D of this part) may be required to observe a holiday on another workday other than would otherwise be required by paragraph (b) of this section, provided that—

(1) The actual holiday falls on a regularly scheduled nonworkday;

(2) An authorized agency official has determined that selection of an alternative legal holiday (as compared to the legal holiday that would be designated under paragraph (b) of this section) is necessary to prevent an adverse agency impact, as defined in 5 U.S.C. 6131(b); and

(3) The alternative legal holiday is in the same biweekly pay period as the date of the actual holiday designated under 5 U.S.C. 6103(a) or in the biweekly pay period immediately preceding or following that pay period.

**Note to § 610.203(c):** In the event that the designated alternate legal holiday for an employee on a compressed work schedule occurs on a workday on which his or her duty station is closed by administrative action, that workday continues to be the alternate legal holiday.

(d) Part-time employees, including part-time employees on flexible or compressed work schedules, are not entitled to an "in-lieu-of" holiday, as provided in paragraph (b) of this section, when a holiday falls on the employee's regularly scheduled nonworkday.

(e) The holiday for employees under a first 40-hour tour of duty, as described in § 610.111(b), is determined as provided in section 4 of E.O. 11582.

(f) The provisions of 5 U.S.C. 6103(b)(3) on determining holidays for certain employees at duty posts outside the United States apply to covered employees who are working outside the United States at a permanent or temporary station or under travel orders.

#### § 610.204 Employee in nonpay status immediately preceding or following a holiday.

An employee who is in a nonpay status on his or her entire workday immediately preceding *and* following a holiday is not entitled to receive pay for that holiday. A full-time employee who is in a pay status for at least 4 hours during any part of his or her workday immediately preceding or following a holiday is entitled to receive pay for that holiday. For a part-time employee or an employee on an uncommon tour of duty, the required number of hours in a pay status on the day immediately preceding or following the holiday must be prorated, based upon the number of hours the employee was scheduled to work on that day in relation to an 8-hour day.

#### Subpart C—Administrative Dismissal of Daily, Hourly, and Piecework Employees

**Authority:** 5 U.S.C. 6104; E.O. 10552, 3 CFR, 1954–1958 Comp., p. 201.

#### § 610.301 Purpose.

This subpart contains OPM regulations implementing 5 U.S.C. 6104, which authorizes agencies to grant administrative dismissals for certain daily, hourly, and piece-work employees.

#### § 610.302 Definitions.

In this subpart:

*Administrative order* means an order issued by an authorized official of an agency relieving regular employees from



an authorized duty without charge to leave or loss of pay.

*Regular employees* means employees paid at daily, hourly, or piecework rates who have a regular tour of duty and whose appointments are not limited to 90 days or less or who have been currently employed for a continuous period of 90 days under one or more appointments without a break in service. Regular employees do not include employees who have a scheduled annual rate of pay (e.g., employees under the General Schedule).

#### § 610.303 Coverage.

This subpart applies to regular employees of the Federal Government paid at daily, hourly, or piecework rates. This subpart does not apply to—

- (a) Federal Wage System employees as described in section 610.101(b); or
- (b) Experts and consultants appointed under 5 U.S.C. 3109.

#### § 610.304 Use of administrative dismissal.

(a) An agency may grant administrative dismissal for employees paid at daily, hourly, or piece work rates only to the extent warranted by good administration and only for short periods of time not generally exceeding 3 consecutive workdays in a single period of excused absence. An agency may not use this authority in situations of extensive duration or for periods of interrupted or suspended operations that ordinarily would be covered by the scheduling of leave, furlough, or the assignment of other work. Insofar as practicable, each administrative order issued under this subpart must provide benefits for regular employees paid at daily, hourly, or piecework rates similar to those provided for employees who have a scheduled annual rate of pay.

(b) A Federal agency may issue an administrative order under this subpart when—

- (1) Normal operations of an establishment are interrupted by events beyond the control of management or employees;
- (2) For managerial reasons, the closing of an establishment or portions thereof is required for short periods;
- (3) It is in the public interest to relieve employees from work to participate in civil activities which the Government is interested in encouraging; or
- (4) The circumstances are such that an administrative order under paragraph (b)(1), (b)(2), or (b)(3) of this section is not appropriate and the agency under its regulations excuses, or is authorized to excuse, without charge to leave or loss of pay, employees paid a scheduled annual rate of pay.

#### § 610.305 Supplemental agency regulations.

Agencies may issue supplemental regulations for their regular employees consistent with this subpart.

#### Subpart D—Flexible and Compressed Work Schedules

**Authority:** 5 U.S.C. 5548, 5 U.S.C. 6124, and 5 U.S.C. 6133(a).

#### General Provisions

##### § 610.401 Purpose.

Notwithstanding 5 U.S.C. 6101 and subpart A of this part, this subpart implements certain provisions of 5 U.S.C., chapter 61, subchapter II, which authorizes the use of alternative work schedules. These regulations supplement that subchapter and must be read together with those provisions of law.

##### § 610.402 Definitions.

*Agency* means an executive agency as defined in 5 U.S.C. 105, the Government Printing Office, and the Library of Congress. For the purpose of this subpart, a military department as defined in 5 U.S.C. 102 is treated as a separate agency.

*Alternative work schedule* means a flexible work schedule or a compressed work schedule.

*Basic work requirement* means the number of hours, excluding overtime hours, an employee is required to work or to account for by charging leave (including leave without pay), credit hours, excused absence, holiday hours, compensatory time off, or time off as an award.

*Compressed work schedule* means, for a full time-employee, an 80-hour biweekly basic work requirement that is scheduled by an agency for less than 10 workdays. For a part-time employee, a compressed work schedule means a biweekly basic work requirement of less than 80 hours which is scheduled by an agency for less than 10 workdays and which may require the employee to work more than 8 hours in a day. A compressed work schedule is a schedule that is *fixed by the agency*—i.e., a schedule with arrival and departure times that are fixed by the agency and days fixed by the agency that comprise the basic work requirement.

*Core hours* means the time periods during the workday, workweek, or pay period that are within the tour of duty during which an employee covered by a flexible work schedule is required by the agency to be present for work or to be in an approved leave status or other paid time off status.

*Credit hours* means those hours within a flexible work schedule which an employee elects to work, with supervisory approval, in excess of his or her basic work requirement so as to vary the length of a workweek or workday. An employee covered by a compressed work schedule may not earn credit hours.

*Employee* has the meaning given that term in 5 U.S.C. 6121.

*Flexible hours* means the time during the workday, workweek, or pay period within the tour of duty during which an employee covered by a flexible work schedule may choose to vary his or her times of arrival to and departure from the worksite consistent with the duties and requirements of the position.

*Flexible work schedule* means, for a full-time employee, a work schedule that has an 80-hour biweekly basic work requirement that allows an employee to determine his or her own schedule within the limits set by the agency. For a part-time employee, a flexible work schedule means a biweekly basic work requirement of less than 80 hours that allows an employee to determine his or her own schedule within limits set by the agency.

*Rate of basic pay* means the rate of pay fixed by law or administrative action for the position held by an employee, including the following types of pay, as applicable, but not including additional pay of any other kind:

- (1) A locality payment under 5 U.S.C. 5304 or similar geographic-based payment under another authority (provided that the similar payment is treated as part of basic pay for the purpose of computing retirement contributions and benefits);
- (2) A special pay adjustment for law enforcement officers under section 404 of the Federal Employees Pay Comparability Act of 1990 (Public Law 101-509); and
- (3) A continued rate adjustment under 5 CFR part 531, subpart G.

*Tour of duty* under a flexible work schedule means the limits set by an agency within which an employee must complete his or her basic work requirement. Under a compressed work schedule or other fixed work schedule, *tour of duty* is synonymous with an employee's basic work requirement.

##### § 610.403 Covered work schedules.

This subpart applies only to flexible work schedules (including maxiflex schedules) and compressed work schedules established under 5 U.S.C. chapter 61, subchapter II. Agencies may not combine provisions from the flexible work schedule and compressed work schedule authorities in subchapter

II in an effort to create a hybrid alternative work schedule program—for example, a compressed schedule in which the employee has the flexibility to change his or her hours or a flexible schedule that permits more than 8 hours of paid absence on a holiday.

**§ 610.404 Time-accounting method.**

An agency that authorizes a flexible work schedule or a compressed work schedule under this subpart must establish a time-accounting method that will provide affirmative evidence that each employee subject to the schedule has worked the proper number of hours in a biweekly pay period.

**Flexible Work Schedules**

**§ 610.411 Overtime hours for employees on flexible work schedules.**

For an employee on a flexible work schedule, overtime hours are all hours of work in excess of 8 hours in a day or 40 hours in a week that are officially ordered and approved in advance by management. An employee on a flexible work schedule who is covered by the Fair Labor Standards Act may not earn overtime compensation as a result of “suffered or permitted” work as defined in 5 CFR 551.104.

**§ 610.412 Pay for a holiday for employees on flexible work schedules.**

A full-time employee on a flexible work schedule who is relieved or prevented from working on a day within his or her scheduled tour of duty that is designated as a holiday by Federal statute or Executive order is entitled to basic pay with respect to that holiday for 8 hours. A part-time employee on a flexible work schedule is entitled to basic pay with respect to the holiday for the number of hours the employee is scheduled to work on that day, not to exceed 8 hours.

**§ 610.413 Holiday premium pay for employees on flexible work schedules.**

(a) A full-time employee on a flexible work schedule who performs nonovertime work on a holiday that is ordered and approved is entitled to his or her rate of basic pay plus premium pay equal to his or her rate of basic pay for up to 8 hours of holiday work. For work in excess of 8 hours that is ordered and approved, a full-time employee is entitled to overtime compensation under the applicable provisions of law.

(b) A part-time employee on a flexible work schedule is entitled to his or her rate of basic pay plus premium pay equal to his or her rate of basic pay for up to 8 hours of work that is ordered and approved performed during his or her basic work requirement on a

holiday. For work in excess of 8 hours that is ordered and approved, a part-time employee is entitled to overtime compensation under the applicable provisions of law. However, a part-time employee scheduled to work on a day designated as an “in-lieu-of” holiday for full-time employees under § 610.203(b) is not entitled to holiday premium pay for working on the “in-lieu-of” holiday.

(c) An employee on a flexible work schedule is not entitled to holiday premium pay while engaged in training, except as provided in 5 CFR 410.402.

**§ 610.414 Credit hours.**

(a) An agency may permit a full-time or a part-time employee on a flexible work schedule to earn credit hours by performing work in excess of the employee’s biweekly basic work requirement. An employee uses credit hours by being excused from duty during the employee’s basic work requirement, as approved by the employee’s supervisor or other authorized official. Members of the Senior Executive Service and employees on compressed work schedules may not earn credit hours.

(b) A full-time employee may carry forward up to 24 credit hours from one pay period to the next. A part-time employee may carry forward from one pay period to the next a number of credit hours that represents up to one-fourth of his or her biweekly basic work requirement.

(c) An employee may not use credit hours before they are earned. Agencies may permit employees to use credit hours in the same biweekly pay period within which they are earned.

(d) An agency may establish a timeframe within which accumulated credit hours must be used. If an employee does not use his or her accumulated credit hours within the established timeframe, he or she is entitled to be paid for each credit hour at his or her hourly rate of basic pay in effect at the time of payment. Members of the Senior Executive Service may not receive compensation in lieu of unused credit hours accumulated prior to their appointment in the Senior Executive Service; however, they may use such credit hours subject to approval by their supervisor or other authorized official.

(e) When an employee is no longer covered by a flexible work schedule, he or she must be paid for accumulated credit hours at his or her rate of basic pay in effect at the time of payment, up to a maximum of 24 unused credit hours for full-time employees and one-fourth of the biweekly basic work requirement for part-time employees.

(f) An employee may not receive overtime, Sunday, or holiday premium pay or night pay under 5 U.S.C. 5545(a) when he or she earns or uses credit hours.

**Compressed Work Schedules**

**§ 610.421 Overtime hours for employees on compressed work schedules.**

(a) For a full-time employee on a compressed work schedule who is exempt from the Fair Labor Standards Act (FLSA), overtime hours are those hours in excess of the compressed work schedule that are officially ordered and approved. For a part-time employee on a compressed work schedule who is exempt from the FLSA, overtime hours are those hours in excess of the compressed work schedule for the day or week that are officially ordered and approved, but must be in excess of 8 hours in a day or 40 hours in a week.

(b) For a full-time employee on a compressed work schedule who is covered by the FLSA, overtime hours are those hours in excess of the compressed work schedule that are officially ordered and approved or are “suffered or permitted.” For a part-time employee on a compressed work schedule who is covered by the FLSA, overtime hours are those hours in excess of the compressed work schedule for the day or week that are officially ordered and approved or are “suffered or permitted,” but must be in excess of 8 hours in a day or 40 hours in a week. Full-time and part-time employees may not be credited with FLSA overtime hours on the basis of periods of duty in excess of 8 hours in a day when the hours are *not* hours of work for purposes of computing overtime pay under 5 CFR 410.402, 5 CFR Parts 550 or 532 and 5 U.S.C. 5544 (e.g., suffered or permitted overtime work). Suffered or permitted overtime work is always credited towards an employee’s weekly FLSA overtime standard. The daily overtime standard applies only to hours of work that would be considered overtime hours under title 5, United States Code, for General Schedule or prevailing rate (wage) employees.

**§ 610.422 Pay for a holiday for employees on compressed work schedules.**

A full-time or part-time employee on a compressed work schedule who is relieved or prevented from working on a day within his or her scheduled tour of duty that is designated as a holiday by Federal statute or Executive order is entitled to basic pay with respect to that holiday for the number of hours of his or her compressed work schedule on that day.

**§ 610.423 Holiday premium pay for employees on compressed work schedules.**

(a) An employee on a compressed schedule who performs work on a holiday is entitled to his or her rate of basic pay, plus premium pay at a rate equal to his or her rate of basic pay, for the work that is not in excess of the employee's compressed work schedule for that day. For hours worked on a holiday in excess of the compressed work schedule, a full-time employee is entitled to overtime compensation under applicable provisions of law.

(b) A part-time employee on a compressed work schedule who performs work on a holiday is entitled to his or her rate of basic pay plus premium pay equal to his or her rate of basic pay for work that is not in excess of the employee's compressed work schedule for that day. However, a part-time employee scheduled to work on a day designated as an "in-lieu-of" holiday for full-time employees under § 610.203(b) is not entitled to premium pay for working on the "in-lieu-of" holiday.

(c) An employee on a compressed work schedule is not entitled to holiday premium pay while engaged in training, except as provided in 5 CFR 410.402.

21. Part 630 is revised to read as follows:

**PART 630—ABSENCE AND LEAVE****Subpart A—General Provisions**

Sec.

630.101 Responsibility for administration.

**Subpart B—General Provisions for Annual and Sick Leave**

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- 630.202 Earning leave in a full biweekly pay period.
- 630.203 [Reserved]
- 630.204 Leave accrual for employees on uncommon tours of duty.
- 630.205 Leave accrual for part-time employees.
- 630.206 Appointments limited to fewer than 90 calendar days.
- 630.207 Earning leave in a fractional pay period.
- 630.208 Effect of nonpay status on earning leave.
- 630.209 Minimum charge for leave.
- 630.210 Advanced annual and sick leave.
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- 630.213 Exclusion of Presidential appointees.
- 630.214 Use of annual leave to establish initial eligibility for retirement or continuation of health benefits.
- 630.215 Leave for bone-marrow and organ donation.

**Subpart C—Annual Leave**

- 630.301 Maximum annual leave limitation for employees stationed in the U.S.
- 630.302 Maximum annual leave limitation for employees stationed outside the U.S.
- 630.303 Maximum annual leave limitation for members of the Senior Executive Service.
- 630.304 Scheduling annual leave to ensure its restoration.
- 630.305 Designating an agency official to approve exigencies of the public business.
- 630.306 Time limits for using restored annual leave.
- 630.307 Time limit for using restored annual leave for a former missing employee.
- 630.308 Time limits for using restored annual leave in the event of an extended exigency of the public business.
- 630.309 Restoring annual leave to employees determined necessary to respond to the "National Emergency by Reason of Certain Terrorist Attacks."

**Subpart D—Sick Leave**

- 630.401 Granting sick leave.
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- 630.403 Supporting evidence for the use of sick leave.
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**Subpart E—Recredit of Leave**

- 630.501 Transferring annual and sick leave between agencies.
- 630.502 Transferring annual leave between different leave systems.
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- 630.504 Recrediting sick leave following a break in service.
- 630.505 Recrediting leave earned under a former leave system.
- 630.506 Treatment of leave account when an employee goes on active military duty.
- 630.507 Restoration of leave following an appeal.

**Subpart F—Home Leave**

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**Subpart G—Shore Leave**

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**Authority:** 5 U.S.C. 6311; Sec. 630.205 also issued under 5 U.S.C. 6133(a); Sec. 630.303 also issued under Pub. L. 103-356, 108 Stat. 3410; Secs. 630.305 and 630.307 also issued under 5 U.S.C. 6304(d)(3), Pub. L. 102-484, 106 Stat. 2722, and Pub. L. 103-337, 108 Stat. 2663; subpart D also issued under Pub. L. 103-329, 108 Stat. 2423; Sec. 630.501, 630.502, and subpart F also issued under E.O. 11228, 30 FR 7739, 3 CFR, 1974 Comp., p. 163; subpart G also issued under 5 U.S.C. 6305; subpart H also issued under 5 U.S.C. 6326; subpart I also issued under 5 U.S.C. 6332, Pub. L. 100-566, 102 Stat. 2834, and Pub. L. 103-103, 107 Stat. 1022; subpart J also issued under 5 U.S.C. 6362, Pub. L. 100-566 and Pub. L. 103-103; subpart K also issued under Pub. L. 105-18, 111 Stat. 158; and subpart L also issued under 5 U.S.C. 6387 and Pub. L. 103-3, 107 Stat. 23.

#### Subpart A—General Provisions

##### § 630.101 Responsibility for administration.

The head of each agency having employees subject to this part is responsible for the proper administration of this part so far as it pertains to employees under his or her jurisdiction and for maintaining an account of leave for each employee in accordance with policies and procedures prescribed by OPM.

#### Subpart B—General Provisions for Annual and Sick Leave

##### § 630.201 Definitions.

(a) In 5 U.S.C. 6301(2)(iii), the term *temporary employee engaged in construction work at an hourly rate* means an employee hired on a temporary basis solely for the purpose of work on a specific construction project and paid an hourly rate.  
 (b) In subparts B through G of this part:

*Accrued leave* means leave earned by an employee during the current leave year which remains unused at any given time during that year.

*Accumulated leave* means unused leave remaining to the credit of an employee at the beginning of a leave year.

*Advanced leave* means annual or sick leave an agency may choose to advance to an employee in advance of the date the leave is accrued (earned).

*Authorized agency official* means the head of an executive agency or an official who is authorized to act for the head of the executive agency in the matter concerned.

*Employee* means an employee to whom 5 U.S.C. chapter 63, subchapter I, applies.

*Family member* means the following relatives of the employee:

- (1) Spouse, and parents thereof;
- (2) Children, including adopted children and spouses thereof;
- (3) Parents;
- (4) Brothers and sisters, and spouses thereof; and

(5) Any individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship.

*Health care provider* has the meaning given that term in § 630.1204.

*Intermittent work schedule* means employment without a regularly scheduled tour of duty during each administrative workweek.

*Leave year* means the period beginning with the first day of the first full pay period in a calendar year and ending with the day immediately before the first day of the first full pay period in the following calendar year.

*Medical certificate* means a written statement signed by a healthcare provider certifying to the incapacitation, examination, or treatment or to the period of disability while the patient was receiving professional treatment.

*Regularly scheduled administrative workweek* has the meaning given that term in 5 CFR 610.102.

*Serious health condition* has the meaning given that term in § 630.1204.

*Uncommon tour of duty* means an established tour of duty that exceeds 80 hours of work in a biweekly pay period, provided the tour—

- (1) Includes hours for which the employee is compensated by standby duty pay under 5 U.S.C. 5545(c)(1) and 5 CFR 550.141;
- (2) Is a regular tour of duty (as defined in 5 CFR 550.1302) established for firefighters compensated under 5 U.S.C. 5545b and 5 CFR part 550, subpart M; or
- (3) Is authorized for a category of employees by OPM.

*United States* means the several States and the District of Columbia.

**§ 630.202 Earning leave in a full biweekly pay period.**

A full-time employee earns leave during each full biweekly pay period during which the employee is in a pay status or in a combination of a pay status and a nonpay status, except as provided in § 630.207. A full-time employee earns and uses leave based on the hours in his or her regularly scheduled administrative workweek (excluding overtime hours as defined in 5 CFR 550.111(a)), except as provided in §§ 630.204, 630.915, and 630.1013. Employees who enter Federal service after the beginning of a biweekly pay period or before the end of a biweekly pay period do not earn leave during that pay period unless they complete their full biweekly work requirement for that pay period.

**§ 630.203 [Reserved]****§ 630.204 Leave accrual for employees on uncommon tours of duty.**

(a) An agency may require that a Federal employee on an uncommon tour of duty accrue and use leave on the basis of that uncommon tour of duty. The employee's leave accrual rates must be directly proportional (based on the number of hours in the biweekly tour of duty and the accrual rate of the corresponding leave category) to the standard leave accrual rates for employees who accrue and use leave on the basis of an 80-hour biweekly tour of duty. The agency must charge 1 hour (or appropriate fraction thereof) of leave for each hour (or appropriate fraction thereof) of absence from the uncommon tour of duty.

(b) When an employee is converted to a different tour of duty for leave purposes, his or her leave balances must be converted to the proper number of hours based on the proportion of hours in the new tour of duty compared to a standard 80-hour tour of duty.

(c) An agency must establish an uncommon tour of duty for each firefighter compensated under 5 CFR part 550, subpart M. The uncommon tour of duty must correspond directly to the firefighter's regular tour of duty, as defined in 5 CFR 550.1302, so that each firefighter accrues and uses leave on the basis of that regular tour of duty.

**§ 630.205 Leave accrual for part-time employees.**

(a) A part-time employee for whom an agency has established in advance of a biweekly pay period a regular tour of duty on 1 or more days during each administrative workweek, or a part-time employee on a flexible work schedule for whom an agency has established only a biweekly work requirement,

earns leave under 5 U.S.C. 6303 and 6307 based on the total number of hours in a pay status in each biweekly pay period, excluding overtime hours as defined in 5 CFR 550.111(a), except as provided in §§ 630.204, 630.915, and 630.1013.

(b) A part-time employee earns annual leave as follows:

(1) A part-time employee with fewer than 3 years of service earns 1 hour of annual leave for each 20 hours in a pay status.

(2) A part-time employee with at least 3 but fewer than 15 years of service earns 1 hour of annual leave for each 13 hours in a pay status.

(3) A part-time employee with 15 or more years of service earns 1 hour of annual leave for each 10 hours in a pay status.

(c) A part-time employee earns 1 hour of sick leave for each 20 hours in a pay status.

(d) When a part-time employee has hours in a pay status that are fewer than the number necessary to accrue 1 hour of leave, the agency must carry forward those hours into the next pay period and credit them toward the employee's leave accrual.

(1) When a part-time employee moves to a full-time position, he or she loses any unapplied hours not previously used towards a leave accrual.

(2) When a part-time employee moves to or from a part-time position from or to an intermittent position, he or she may carry the unapplied hours.

(e) A part-time employee may be charged leave only for the hours not worked that were scheduled in advance of his or her regularly scheduled administrative workweek. A part-time employee may not be charged leave for hours not worked that were scheduled in addition to the employee's regularly scheduled administrative workweek after the beginning of the pay period.

**§ 630.206 Appointments limited to fewer than 90 calendar days.**

An employee whose appointment is limited to fewer than 90 calendar days is not entitled to accrue annual leave but is entitled to accrue sick leave under 5 U.S.C. 6307. If the appointment is extended or the employee receives one or more successive appointments without a break in service that extend the period of employment to 90 calendar days or more, the employee is entitled to accrue annual leave, and the agency must, on the 90th day, credit the employee with the annual leave that would have accrued to him or her under 5 U.S.C. 6303(a) during the 90-day period. Employees who transfer without a break in service from a leave-earning

position to a less-than-90-day appointment are not subject to this provision.

**§ 630.207 Earning leave in a fractional pay period.**

An employee is ineligible to earn leave when he or she is receiving benefits from the Office of Workers' Compensation Programs (OWCP) under 20 U.S.C. chapter I or subject to an intermittent work schedule. When an employee's service is interrupted by such an event, he or she earns leave only for that portion of each pay period during which he or she is eligible to earn leave (*i.e.*, not receiving OWCP benefits or moving from an intermittent work schedule to a full-time or part-time work schedule.) This section does not apply to employees who enter Federal service after the beginning of a pay period or who separate from Federal service before the end of a pay period.

**§ 630.208 Effect of nonpay status on earning leave.**

(a) If an employee is in an extended nonpay status (*e.g.*, leave without pay), he or she continues to earn annual and sick leave until the number of hours in the nonpay status equals the number of hours in a pay period. An employee does not earn any annual or sick leave during a pay period (including the last pay period in the year when he or she might normally earn 10 hours of annual leave) in which he or she reaches the cumulative number of hours in a nonpay status that is equal to the number of hours in a pay period (80 hours for most full-time employees). The agency must carry forward and apply to the next pay period any hours in a nonpay status in excess of the number of hours in a pay period. The employee earns leave in the next and succeeding pay periods until he or she again accumulates the number of hours in a nonpay status that is equal to the number of hours in a pay period. At the end of the leave year, the agency must drop any remaining time in a nonpay status that does not require a reduction in leave earnings.

(b) If an employee is in a nonpay status for the entire leave year, he or she does not earn leave.

(c) When a reduction in leave earnings results in a negative leave balance in an employee's annual leave account at the end of a leave year, the agency must—

(1) Carry the negative balance forward as a charge against the annual leave the employee will earn in the next leave year; or

(2) Require the employee to refund the amount paid him or her for the

period covering the excess leave that resulted in the debit.

(d) A period covered by a refund for unearned advanced leave is deemed not a period of nonpay status under this section.

**§ 630.209 Minimum charge for leave.**

(a) An agency may charge leave in increments of one-tenth of an hour (6 minutes) or one-quarter of an hour (15 minutes). Additional charges to leave must be made in multiples thereof.

(b) When an employee is charged leave for an unauthorized absence or tardiness, the agency may not require him or her to perform work for any part of the leave period charged against the employee's account.

**§ 630.210 Advanced annual and sick leave.**

(a) At the beginning of the leave year or at any time thereafter, an agency may advance the amount of annual leave an employee is expected to accrue during the remainder of that leave year.

(b) An agency may advance a maximum of 30 days of sick leave to a full-time employee at the beginning of a leave year or at any time thereafter when required by the exigencies of the situation for a serious disability or ailment of the employee or a family member or for purposes relating to the adoption of a child. Thirty days is the maximum amount of advanced sick leave that an employee may have to his or her credit at any one time. For a part-time employee (or an employee on an uncommon tour of duty), the maximum amount of sick leave an agency may advance must be prorated according to the number of hours in the employee's regularly scheduled administrative workweek.

(c) When an employee is serving under a time-limited appointment or one that will terminate on a specified date, an agency may advance sick leave to him or her up to the total amount of sick leave the employee would otherwise earn during the term of his or her appointment, not to exceed the 30-day maximum in 630.210(b). For the purposes of this paragraph, an employee serving a probationary or trial period is not serving under a limited appointment.

(d) An employee may liquidate a debt for advanced leave in the following ways:

- (1) Through the retroactive substitution of accumulated annual leave;
- (2) Through the retroactive substitution of donated annual leave;
- (3) Through the application of annual leave as it is accrued;

(4) Through the application of sick leave as it is accrued if the debt is for advanced sick leave; or

(5) Through a cash payment equal to the amount paid to the employee for the period covered by the advanced leave.

(e) When an employee separates from Federal service under circumstances other than those listed in paragraphs (g)(1) through (3) of this section with an indebtedness for advanced leave, the agency must—

(1) Require the employee to refund the amount paid him or her for the period covering the leave for which the employee is indebted; or

(2) Deduct that amount from any pay due the employee.

(f) An employee who enters active military service with a right of restoration is deemed not separated for the purpose of paragraph (e) of this section.

(g) An employee is not required to pay back advanced leave when he or she—

- (1) Dies;
- (2) Retires for disability; or
- (3) Resigns or is separated because of a disability that prevents him or her from returning to duty or continuing in the service, and which is the basis of the separation, as determined by the agency on medical evidence acceptable to the agency.

**§ 630.211 Excusing employees from work for less than 1 hour.**

If an employee is unavoidably or necessarily tardy or absent for less than 1 hour, an authorized agency official may excuse him or her without charge to leave or loss of pay if there is adequate reason for the absence.

**§ 630.212 Travel time for employees whose post of duty is outside the U.S.**

Under 5 U.S.C. 6303(d), the travel time granted to a Federal employee whose post of duty is outside the United States includes the time necessary to travel to and from the post of duty and the United States or to and from the employee's place of residence if the place of residence is outside the employee's area of employment and in the Commonwealth of Puerto Rico or the territories or possessions of the United States. The employee must designate his or her place of residence in any request for leave under 5 U.S.C. 6303(d).

**§ 630.213 Exclusion of Presidential appointees.**

(a) *Authority.* (1) Section 6301(2)(B)(xi) of title 5, United States Code, authorizes the President to exclude certain Presidential appointees in the executive branch or the government of the District of Columbia

from the annual and sick leave provisions of 5 U.S.C. chapter 63, subchapter I, and from the related provisions of this part.

(2) The President, by Executive Order 10540, as amended, has delegated to OPM the responsibility for making exclusions under 5 U.S.C.

6301(2)(B)(xi), and OPM has delegated this responsibility to the head of each agency, consistent with the provisions of this section.

(3) Presidential appointees in positions where the rate of basic pay is equal to or exceeds the rate for level V of the Executive Schedule are already excluded from the annual and sick leave provisions by 5 U.S.C. 6301(2)(B)(x). Therefore, no further action by an agency is necessary to exclude these appointees.

(b) *Criteria for exclusions.* The head of an agency may exclude an officer in the agency from the annual and sick leave provisions only if the officer meets all of the following criteria:

- (1) The officer is a Presidential appointee;
- (2) The officer is not a United States attorney or United States marshal; and
- (3) The officer's responsibilities for carrying out the duties of the position continue outside normal duty hours and while away from the normal duty post.

(c) *Revocation of exclusion.* An authorized agency official may revoke an exclusion from the annual and sick leave provisions which was made under this section.

(d) *Records.* The agency must maintain records of any exclusion, or revocation of an exclusion, authorized under this section.

(e) *Continuation of previous authorizations.* Any officer in an agency who was excluded by action of the President or the Civil Service Commission prior to February 15, 1979, from the annual and sick leave provisions under the authority of 5 U.S.C. 6301(2)(B)(xi) must continue to be excluded from annual and sick leave unless the exclusion is revoked by the agency under the provisions of this section.

**§ 630.214 Use of annual leave to establish initial eligibility for retirement or continuation of health benefits.**

(a) An employee may elect to use annual leave and remain on the agency's rolls in order to establish initial eligibility for immediate retirement under 5 U.S.C. 8336, 8412, or 8414, and/or to establish initial eligibility under 5 U.S.C. 8905 to continue health benefits coverage into retirement, as provided in:

- (1) 5 CFR 351.606(b)(1) for an employee who otherwise would have

been separated by reduction-in-force procedures under 5 CFR part 351; or

(2) 5 CFR 351.606(b)(2) for an employee who otherwise would have been separated by adverse action procedures under 5 CFR part 752 because of the employee's decision to decline relocation (including transfer of function).

(b)(1) Annual leave that may be used for the purposes described in paragraph (a) of this section includes all accumulated, accrued, and restored annual leave to the employee's credit prior to the effective date of the reduction in force or relocation (including transfer of function) and annual leave earned by an employee while in a paid leave status after the effective date of the reduction in force or relocation (including transfer of function).

(2) Annual leave that is advanced to an employee under 5 U.S.C. 6302(d), including any advanced annual leave that may be credited to an employee's leave account after the effective date of the reduction in force or relocation (including transfer of function), may not be used for purposes of this section.

(3) For purposes of this section, an authorized agency official may approve the use of any or all annual leave donated to an employee under subpart I of this part (Voluntary Leave Transfer Program), or made available to the employee under subpart J of this part (Voluntary Leave Bank Program), as of the effective date of the reduction in force or relocation.

**§ 630.215 Leave for bone-marrow and organ donation.**

(a) A full-time employee is entitled to up to 7 days (56 hours) of leave in a leave year to serve as a bone-marrow donor. The amount of bone-marrow donation leave available to a part-time employee or an employee on an uncommon tour of duty must be prorated according to the number of regularly scheduled hours in his or her biweekly pay period. Leave for bone-marrow donation may be used for compatibility testing as well as actual donation and recuperation.

(b) A full-time employee is entitled to up to 30 days (240 hours) of leave in a leave year to serve as an organ donor. The amount of organ donation leave available to a part-time employee or an employee on an uncommon tour of duty must be prorated according to the number of regularly scheduled hours in his or her biweekly pay period. Leave for organ donation may be used for compatibility testing as well as actual donation and recuperation.

(c) OPM may make a determination that other donation procedures are sufficiently similar to bone-marrow donation or organ donation to warrant the granting of bone-marrow or organ donor leave.

**Subpart C—Annual Leave**

**§ 630.301 Maximum annual leave limitation for employees stationed in the U.S.**

A full-time or part-time employee whose official duty station is in the United States may accumulate annual leave for use in succeeding years until it totals not more than 30 days (240 hours) at the beginning of the first full biweekly pay period in a leave year, except as provided in § 630.204.

**§ 630.302 Maximum annual leave limitation for employees stationed outside the U.S.**

(a) A full-time or part-time employee whose official duty station is outside the United States may accumulate annual leave for use in succeeding years until it totals not more than 45 days (360 hours) at the beginning of the first full biweekly pay period in a leave year, except as provided in § 630.204.

(b) The effective date on which an otherwise eligible employee becomes subject to the 45-day maximum annual leave limitation is—

(1) The date of the employee's entry on duty when he or she is employed locally;

(2) The date of the employee's arrival at a post of regular assignment for duty; or

(3) The date on which he or she begins to perform that duty in an area outside the United States, if the employee is required to perform that duty en route to his or her post of regular assignment and is outside the area of recruitment or the area from which he or she was transferred.

(c) Subject to 5 U.S.C. 6304(c), the maximum amount of annual leave an employee may carry forward into the next leave year when he or she is transferred or reassigned to a position in which he or she is no longer subject to section 6304(b) of that title is determined as follows:

(1) When, on the date prescribed by paragraph (d) of this section, the amount of an employee's accumulated and accrued annual leave is 30 days or less, he or she may carry forward up to 30 days as prescribed by 5 U.S.C. 6304(a).

(2) When, on the date prescribed by paragraph (d) of this section, the amount of an employee's accumulated and accrued annual leave is more than 30 days but not more than 45 days, he or she may carry forward the full amount thereof that is unused at the end of the

current leave year, not to exceed 45 days.

(3) When, on the date prescribed by paragraph (d) of this section, the amount of an employee's accumulated and accrued annual leave is more than 45 days, he or she may carry forward the amount of unused annual leave to the employee's credit at the end of the current leave year that does not exceed—

(i) Forty-five days, if he or she is not entitled to a greater accumulation under 5 U.S.C. 6304(c); or

(ii) The amount he or she is entitled to accumulate under section 5 U.S.C. 6304(c), if that amount is greater than 45 days.

(d) For the purposes of paragraph (c) of this section, an agency must determine the amount of an employee's accumulated and accrued annual leave at the end of the pay period that includes:

(1) The date on which the employee departs from his or her post of regular assignment for transfer or reassignment;

(2) The date on which an employee ceases to perform duty, when he or she is required to perform that duty en route to an area in which he or she would be subject to 5 U.S.C. 6304(b) if assigned there; or

(3) The date on which final administrative approval is given to effect a change in an employee's duty station when he or she is on detail or on leave in the United States or in the Commonwealth of Puerto Rico or a territory or possession of the United States if that is the area from which he or she was recruited or transferred.

**§ 630.303 Maximum annual leave limitation for members of the Senior Executive Service.**

(a) Unused annual leave accrued by an employee while serving under an appointment in the Senior Executive Service (SES) under 5 U.S.C. chapter 33, subchapter VIII, may accumulate for use in succeeding years until it totals not more than 90 days (720 hours) at the beginning of the first full biweekly pay period in a leave year.

(b) When an employee in a position outside of the SES moves to a position in the SES, all unused accumulated annual leave remains to the employee's credit and is subject to the 90-day limitation in paragraph (a) of this section.

(c) If an employee serves less than a full pay period under an appointment in the SES, his or her unused accumulated annual leave is subject to the maximum annual leave limitations in 5 U.S.C. 6304(a), (b), or (c), as appropriate.

(d) When an employee in the SES moves to a position outside the SES, any

unused accumulated annual leave that is in excess of the amount allowed for the new position by 5 U.S.C. 6304(a), (b), or (c) remains to the employee's credit and is subject to reduction under procedures identical to those described in 5 U.S.C. 6304(c).

(e) Agencies must maintain records on the accumulated annual leave credited to each employee under this section. If the employee transfers to another agency, the losing agency must provide such records to the gaining agency.

**§ 630.304 Scheduling annual leave to ensure its restoration.**

(a) Except as provided in paragraph (b) of this section and § 630.309, before an agency may consider restoration of annual leave forfeited at the beginning of the leave year under 5 U.S.C. 6304, the annual leave that was forfeited must have been scheduled in writing before November 15 of the previous leave year.

(b) The requirement for advance scheduling of annual leave in paragraph (a) of this section does not apply to an employee who is covered by 5 U.S.C. 6304(d)(3) which exempts employees of the Department of Defense at installations undergoing closure or realignment pursuant to the Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101-510; 10 U.S.C. 2687 note). When coverage under 5 U.S.C. 6304(d)(3) terminates during a leave year, the employee must make a reasonable effort to comply with the scheduling requirement in paragraph (a) of this section. An authorized agency official may exempt an employee from the advance scheduling requirement in paragraph (a) of this section if coverage under 6304(d)(3) terminated during the leave year and the employee was unable to comply with the advance scheduling requirement because of circumstances beyond his or her control.

**§ 630.305 Designating an agency official to approve exigencies of the public business.**

An authorized agency official must make the determination that an exigency exists and that the exigency is of such major importance that employees may not use annual leave to avoid forfeiture. This determination must be made before an agency may restore annual leave under 5 U.S.C. 6304. An agency official whose leave would be affected by the decision (except the head of the agency) may not make this determination.

**§ 630.306 Time limits for using restored annual leave.**

(a) Except as otherwise authorized under paragraphs (b) and (c) of this section or other regulation, an employee

must schedule and use annual leave restored under 5 U.S.C. 6304(d) not later than the end of the leave year ending 2 years after—

(1) The date of restoration of the annual leave, if the annual leave was forfeited because of administrative error;

(2) The date fixed by an authorized agency official as the termination date of the exigency of the public business that resulted in forfeiture of the annual leave; or

(3) The date the employee is determined to be recovered and able to return to duty if the leave was forfeited because of his or her sickness.

(b) An employee must schedule and use annual leave restored under 5 U.S.C. 6304(d)(3) within the time limits prescribed in paragraphs (b)(1) and (b)(2) of this section, as follows:

(1) A full-time employee must schedule and use excess annual leave of 416 hours or less by the end of the leave year in progress 2 years after the date he or she is no longer subject to 5 U.S.C. 6304(d)(3). The agency must extend this period by 1 leave year for each additional 208 hours of excess annual leave or any portion thereof.

(2) A part-time employee must schedule and use excess annual leave in an amount equal to or less than 20 percent of the number of hours in his or her scheduled annual tour of duty by the end of the leave year in progress 2 years after the date the employee is no longer subject to 5 U.S.C. 6304(d)(3). The agency must extend this period by 1 leave year for each additional number of hours of excess annual leave, or any portion thereof, equal to 10 percent of the number of hours in the employee's scheduled annual tour of duty.

(c) The time limits established under paragraphs (a) and (b) of this section for using restored annual leave accounts do not apply for the entire period during which an employee is subject to 5 U.S.C. 6304(d)(3). When coverage under 5 U.S.C. 6304(d)(3) ends, the agency must establish a new time limit under paragraph (b) of this section for all annual leave restored to an employee under 5 U.S.C. 6304(d).

**§ 630.307 Time limit for using restored annual leave for a former missing employee.**

Annual leave restored under 5 U.S.C. 5562 must be used within a time limit to be prescribed by OPM, in each case taking into consideration the amount of the restored leave and other relevant factors.

**§ 630.308 Time limits for using restored annual leave in the event of an extended exigency of the public business.**

(a) An employee must schedule and use annual leave restored under 5 U.S.C. 6304(d)(1)(B) because of an extended exigency, as defined in paragraph (b) of this section, within a time period that equals twice the number of full calendar years, or parts thereof, that the exigency existed. This time period begins at the beginning of the leave year following the leave year in which the exigency is declared to be ended.

(b) An *extended exigency* means an exigency of such significance as to—

- (1) Threaten the national security, safety, or welfare;
- (2) Last more than 3 calendar years;
- (3) Affect a segment of an agency or occupational class; and
- (4) Preclude subsequent use of both restored and accrued annual leave within the time limit specified in § 630.306.

**§ 630.309 Restoring annual leave to employees determined necessary to respond to the "National Emergency by Reason of Certain Terrorist Attacks."**

(a) OPM deemed the "National Emergency by Reason of Certain Terrorist Attacks" (Presidential Proclamation of September 14, 2001) to be an exigency of the public business for the purpose of restoring annual leave forfeited under 5 U.S.C. 6304.

(b) If an employee forfeits annual leave under 5 U.S.C. 6304 at the beginning of a leave year because his or her agency determines the employee's services are required in response to the national emergency, the forfeited annual leave is deemed to have been scheduled in advance for the purposes of 5 U.S.C. 6304(d)(1)(B) and § 630.304.

(c) An employee must schedule and use annual leave restored under 5 U.S.C. 6304(d) because of the national emergency within the following time limits:

(1) A full-time employee must schedule and use excess annual leave of 416 hours or less by the end of the leave year in progress 2 years after the date his or her services are no longer required by the national emergency. The agency must extend this period by 1 leave year for each additional 208 hours of excess annual leave or any portion thereof.

(2) A part-time employee must schedule and use excess annual leave in an amount equal to or less than 20 percent of the number of hours in his or her scheduled annual tour of duty by the end of the leave year in progress 2 years after the date the employee's services are no longer required by the



national emergency. The agency must extend this period by 1 leave year for each additional number of hours of excess annual leave, or any portion thereof, equal to 10 percent of the number of hours in the employee's scheduled annual tour of duty.

(d) The time limits established in paragraph (c) of this section for using restored annual leave accounts are suspended for the entire period during which an employee's services are required for the national emergency. When coverage under paragraphs (a) and (b) of this section ends, the agency must establish a new time limit under paragraph (c) of this section for all annual leave restored to an employee under 5 U.S.C. 6304(d).

(e) If an employee's services are determined essential during the national emergency, but he or she subsequently moves to a position not considered essential, the employee must make a reasonable effort to comply with the scheduling requirement in § 630.304(a). An authorized agency official may exempt such an employee from the advance scheduling requirement in § 630.304(a) if coverage under paragraphs (a) and (b) of this section terminated during the leave year and the employee can demonstrate that he or she was unable to comply with the advance scheduling requirement because of circumstances beyond his or her control.

#### Subpart D—Sick Leave

##### § 630.401 Granting sick leave.

(a) Subject to paragraphs (b) through (e) of this section, an agency must grant sick leave to an employee when he or she—

- (1) Receives medical, dental, or optical examination or treatment;
- (2) Is incapacitated for the performance of his or her duties by physical or mental illness, injury, pregnancy, or childbirth;

(3)(i) Provides care for a family member who is incapacitated by a medical or mental condition or attends to a family member receiving medical, dental, or optical examination or treatment; or

(ii) Provides care for a family member with a serious health condition;

(4) Makes arrangements necessitated by the death of a family member or attends the funeral of a family member;

(5) Would, as determined by the health authorities having jurisdiction or by a health care provider, jeopardize the health of others by his or her presence on the job because of exposure to a communicable disease; or

(6) Must be absent from duty for purposes relating to his or her adoption of a child, including appointments with adoption agencies, social workers, and attorneys; court proceedings; required travel; and any other activities necessary to allow the adoption to proceed.

(b) The maximum amount of sick leave that may be granted to an employee during any leave year for the purposes described in paragraphs (a)(3)(i) and (4) of this section may not exceed a total of 104 hours (or, for a part-time employee or an employee with an uncommon tour of duty, the number of hours of sick leave he or she normally accrues during a leave year).

(c) The maximum amount of sick leave that may be granted to an employee during any leave year for the purposes described in paragraph (a)(3)(ii) of this section may not exceed a total of 480 hours (or, for a part-time employee or an employee with an uncommon tour of duty, an amount of sick leave equal to 12 times the average number of hours in his or her scheduled tour of duty each week), subject to the limitation found in paragraph (d) of this section.

(d) If, at the time an employee uses sick leave to care for a family member with a serious health condition under paragraph (c) of this section, he or she has used any portion of the sick leave authorized under paragraph (b) of this section during that leave year, the agency must subtract that amount from the maximum number of hours authorized under paragraph (c) of this section to determine the total amount of sick leave the employee may use during the remainder of the leave year to care for a family member with a serious health condition. If an employee has previously used the maximum amount of sick leave permitted under paragraph (c) of this section in a leave year, he or she is not entitled to use additional sick leave under paragraph (b) of this section.

(e) If the number of hours in the employee's tour of duty is changed during the leave year, his or her entitlement to use sick leave for the purposes described in paragraphs (a)(3) and (4) of this section must be recalculated based on the new tour of duty.

##### § 630.402 Requesting sick leave.

An employee must file an application—written, oral, or electronic, as required by the agency—for sick leave within such time limits as the agency may require. The employee must request advance approval for sick leave for the purpose of receiving medical, dental, or optical examination or

treatment and, to the extent possible, for the purposes described in § 630.401(a)(3), (4), and (6).

##### § 630.403 Supporting evidence for the use of sick leave.

(a) An agency may grant sick leave only when the need for sick leave is supported by administratively acceptable evidence. An agency may consider an employee's self-certification as to the reason for his or her absence as administratively acceptable evidence, regardless of the duration of the absence. An agency may also require a medical certificate or other administratively acceptable evidence as to the reason for an absence for any of the purposes described in § 630.401(a) for an absence in excess of 3 workdays, or for a lesser period when the agency determines it is necessary.

(b) An employee must provide administratively acceptable evidence or medical certification for a request for sick leave within 15 days of his or her agency's request. An employee who does not provide the required evidence or medical certification within the 15 days is not entitled to sick leave.

(c) An agency may require an employee requesting sick leave to care for a family member under § 630.401(a)(3)(ii) to provide an additional written statement from the health care provider concerning the family member's need for psychological comfort and/or physical care. The statement must certify that—

(1) The family member requires psychological comfort and/or physical care;

(2) The family member would benefit from the employee's care or presence; and

(3) The employee is needed to care for the family member for a specified period of time.

##### § 630.404 Use of sick leave during annual leave.

Subject to § 630.401(b) through (e), an agency may grant sick leave to an employee during a period of annual leave for any of the purposes described in § 630.401(a).

##### § 630.405 Sick leave used in the computation of an annuity.

Sick leave used in the computation of an annuity is charged against an employee's sick leave account and may not thereafter be used, transferred, or recredited. All sick leave to the credit of an employee as of the date of his or her retirement (or death) and reported to OPM for credit towards the calculation of an annuity is considered to have been used.

**§ 630.406 Records on the use of sick leave.**

An agency must maintain records of the amount of sick leave used for family care purposes and to make arrangements for or attend the funeral of a family member under § 630.401(a)(3) and (4). The records must be sufficient to ensure that employees do not exceed the limitations in § 630.401(b) and (c).

**Subpart E—Recredit of Leave****§ 630.501 Transferring annual and sick leave between agencies.**

When an employee transfers between positions under 5 U.S.C., chapter 63, subchapter I, the agency from which the employee transfers must certify the employee's annual and sick leave accounts to the employing agency for credit or charge. When an employee transfers between positions under 5 U.S.C., chapter 63, subchapter I, the gaining agency must convert his or her leave into the minimum increments that can be accommodated by the gaining agency.

**§ 630.502 Transferring annual leave between different leave systems.**

(a) When annual leave is transferred between different leave systems under 5 U.S.C. 6308 or is recredited under a different leave system as the result of a refund under 5 U.S.C. 6306, 7 calendar days of annual leave are deemed equal to 5 workdays of annual leave.

(b) When an employee of the U.S. Postal Service transfers without a break in service to a position under 5 U.S.C. chapter 63, subchapter I, the employing agency must transfer and credit his or her accumulated annual leave to the employee's annual leave account. If the total amount of transferred annual leave exceeds the maximum amount of annual leave limitations under 5 U.S.C. 6304(a), (c), or (f), the maximum annual leave that may be transferred is limited to the employee's former maximum annual leave limitation at the U.S. Postal Service. The employee's maximum annual leave limitation is subject to reduction in the same manner as provided in 5 U.S.C. 6304(c) until the employee's annual leave account is equal to or less than the limitations under 5 U.S.C. 6304(a), (b), or (f).

(c) The annual leave of an employee employed by the U.S. House of Representatives or Senate or both may not be transferred to an executive branch agency.

**§ 630.503 Transferring sick leave between different leave systems.**

(a) When sick leave is transferred between different leave systems under 5 U.S.C. 6308, 7 calendar days of sick

leave are deemed equal to 5 workdays of sick leave.

(b) An employee who transfers to a position under a different leave system to which he or she may transfer only a part of his or her sick leave is entitled to a recredit of the untransferred sick leave (without regard to the date of the original transfer) if the employee returns to the leave system under which it was earned on or after December 2, 1994.

(c) An employee who transfers to a position to which he or she cannot transfer his or her sick leave is entitled to a recredit of the untransferred sick leave (without regard to the date of the original transfer) if the employee returns to the leave system under which it was earned on or after December 2, 1994.

(d) Except as provided in § 630.405, when an employee of the U.S. Postal Service transfers without a break in service to a position under 5 U.S.C. chapter 63, subchapter I, the employing agency must transfer and credit the employee's accumulated sick leave to his or her sick leave account. If the employee has a break in service, he or she is entitled to a recredit of sick leave if he or she is employed in a position under 5 U.S.C. chapter 63, subchapter I.

(e) The sick leave of an employee employed by the U.S. House of Representatives or Senate or both may not be transferred to an executive branch agency.

**§ 630.504 Recrediting sick leave following a break in service.**

(a) Except as provided in § 630.405 and in paragraph (b) of this section, an employee who has had a break in service is entitled to a recredit of sick leave (without regard to the date of his or her separation), if he or she returns to Federal employment on or after December 2, 1994, unless the sick leave was previously forfeited upon reemployment in the Federal Government before December 2, 1994.

(b) Except as provided in § 630.405, an employee of the government of the District of Columbia who was first employed by the government of the District of Columbia before October 1, 1987, who has had a break in service is entitled to a recredit of sick leave (without regard to the date of his or her separation) if he or she returns to Federal employment on or after December 2, 1994, unless the sick leave was previously forfeited upon reemployment in the Federal Government before December 2, 1994.

(c) The recredit of sick leave under this section must be supported by written documentation available to the employing agency in the employee's official personnel records, the official

records of the former employing agency, copies of contemporaneous earnings and leave statements provided by the employee, or copies of other contemporaneous written documentation acceptable to the agency.

(d) The sick leave to be recredited under this section must have been accrued under 5 U.S.C. 6307 or transferred to an employee's sick leave account under 5 U.S.C. 6308 (or the corresponding provisions of prior statutes).

**§ 630.505 Recrediting leave earned under a former leave system.**

An employee who earned leave under another leave system that was merged under 5 U.S.C. chapter 63, subchapter I, is entitled to a recredit of that leave under subchapter I if he or she would have been entitled to recredit for it on reentering the leave system under which it was earned. However, this section does not revive leave already forfeited.

**§ 630.506 Treatment of leave account when an employee goes on active military duty.**

(a) When an employee leaves his or her civilian position to enter the military service, the employing agency must certify his or her annual and sick leave accounts for credit or charge. However, an employee entering the military service may choose to receive a lump-sum payment for unused annual leave under 5 CFR 550.1203(c).

(b) If the employee returns to a civilian position following military service, the agency to which the employee returns must reestablish the certified annual and sick leave accounts as a credit or charge (without regard to the date he or she left the civilian position) when the employee is—

(1) Restored in accordance with a right of restoration after separation from active military duty or hospitalization continuing thereafter as provided by law or in accordance with the mandatory provisions of a statute, Executive order, or regulation; or

(2) Reemployed in a position under 5 U.S.C. chapter 63, subchapter I, on or after December 2, 1994.

(c) For the purpose of documenting a returning employee's entitlement to a recredit of sick leave under this section, the employing agency must apply the documentation criteria established in § 630.504(c).

**§ 630.507 Restoration of leave following an appeal.**

When an employee is restored to duty as a result of an appeal, the agency must reestablish his or her leave account as a credit or charge as it was at the time of separation.

**Subpart F—Home Leave**

**§ 630.601 Definitions.**

In this subpart:  
*Home leave* means leave authorized by 5 U.S.C. 6305(a) and earned by service abroad for use in the United States, the Commonwealth of Puerto Rico, or the territories or possessions of the United States.  
*Month* means a period which runs from a given day in 1 month through the date preceding the numerically corresponding day in the next month.  
*Service abroad* means service on and after September 6, 1960, by an employee at a post of duty outside the United States and outside the employee's place of residence if his place of residence is in the Commonwealth of Puerto Rico or a territory or possession of the United States.

**§ 630.602 Coverage.**

An employee who is stationed overseas and meets the requirements of 5 U.S.C. 6304(b) for the accumulation of a maximum of 45 days of annual leave earns and may be granted home leave in accordance with 5 U.S.C. 6305(a) and this subpart.

**§ 630.603 Computation of service abroad.**

(a) For the purpose of this subpart, service abroad—  
 (1) Begins on the date of the employee's arrival at a post of duty

outside the United States or on the date of his or her entrance on duty, when recruited abroad;

(2) Ends on the date of the employee's departure from the post for separation or for assignment in the United States or on the date of his or her separation from duty, when separated abroad; and

(3) Includes any absence in a nonpay status up to a maximum of 2 workweeks within each 12 months of service abroad, authorized leave with pay, time spent in the Armed Forces of the United States which interrupts service abroad (but only for eligibility, not leave-earning, purposes), and any period on detail.

(b) In computing service abroad, full credit is given for the day of arrival and the day of departure.

**§ 630.604 Earning rates.**

(a) For each 12 months of service abroad, an employee earns home leave at the following rates:

(1) An employee who accepts an appointment to or occupies a position for which the agency has prescribed the requirement that the incumbent accept assignments anywhere in the world as the needs of the agency dictate earns 15 days.

(2) An employee who is serving with a U.S. mission to a public international organization earns 15 days.

(3) An employee who is serving at a post for which payment of a foreign or nonforeign (but not a tropical) differential of 20 percent or more is authorized by law or regulation earns 15 days.

(4) An employee who is not included in paragraph (a)(1), (2), or (3) of this section, but is serving at a post for which payment of a foreign or territorial (but not a tropical) differential of at least 10 percent, but less than 20 percent, is authorized by law or regulation, earns 10 days.

(5) An employee who is not included in paragraph (a)(1), (2), (3), or (4) of this section earns 5 days.

(6) An employee who is included in paragraph (a)(1) through (5) of this section and whose civilian service abroad is interrupted by a tour of duty in the Armed Forces of the United States does not earn home leave for the duration of such tour.

(b) An agency must credit home leave to an employee's leave account, as earned, in multiples of 1 day.

**§ 630.605 Computing home leave.**

(a) For each month of service abroad, an employee earns home leave at the rates fixed by § 630.604(a) in the amounts set forth in the following table:

HOME LEAVE-EARNING TABLE  
 [Days earned]

Months of service abroad	Earning rate (days for each 12 months)		
	15	10	5
1	1	0	0
2	2	1	0
3	3	2	1
4	5	3	1
5	6	4	2
6	7	5	2
7	8	5	2
8	10	6	3
9	11	7	3
10	12	8	4
11	13	9	4
12	15	10	5

(b) When an employee moves between different home leave-earning rates during a month of service abroad, or when a change in the differential during a month of service abroad results in a different home leave-earning rate, the agency must credit the employee with an amount of home leave for the month at the rate to which he or she was entitled before the change in his or her home leave-earning rate.

**§ 630.606 Granting home leave.**

(a) *Entitlement.* Except as otherwise authorized by statute, an employee is entitled to use home leave only when he or she has completed a basic service period of 24 months of continuous service abroad. If the employee has a break in service of 1 or more workdays or an assignment (other than a detail) to a position in which he or she is no longer subject to 5 U.S.C. 6305(a), he or she must complete another basic service

period of 24 continuous months before becoming entitled to use home leave.

(b) *Agency authority.* Agencies have discretionary authority to grant home leave to an employee. An agency may grant home leave in combination with other leaves of absence in accordance with established agency policy.

(c) *Limitations.* An agency may grant home leave only—

(1) For use in the United States, the Commonwealth of Puerto Rico, or a

territory or possession of the United States; and

(2) During an employee's period of service abroad, or within a reasonable period after his or her return from service abroad when it is contemplated that the employee will return to service abroad immediately or on completion of an assignment in the United States. Home leave not granted during the period of service abroad or within a reasonable period after the employee's return from service abroad may be granted only after the employee has completed a further substantial period of service abroad. This further substantial period of service abroad may not be shorter than the tour of duty prescribed for the employee's post of assignment. However, an agency may determine in an individual case that an earlier grant of home leave is warranted.

(d) *Charging of home leave.* The minimum charge for home leave is 1 day, and additional charges are in multiples thereof.

(e) *Refund for home leave.* If an employee fails to return to service abroad after a period of home leave or after the completion of an assignment in the United States, he or she is indebted for the home leave he or she has used. However, an agency may not require a repayment of this debt for home leave when—

(1) The employee has completed at least 6 months of service in an assignment in the United States following the period of home leave;

(2) The agency determines that the employee's failure to return was due to compelling personal reasons of a humanitarian or compassionate nature, such as may involve physical or mental health or circumstances over which he or she has no control; or

(3) The agency that granted the home leave determines that it is in the public interest not to return the employee to his or her overseas assignment.

#### **§ 630.607 Transfer or recredit of home leave.**

An employee is entitled to have his or her home leave account transferred or recredited when he or she moves between agencies or is reemployed without a break in service of more than 90 days. An employee may not receive a lump-sum payment for unused home leave upon separation from Federal service.

### **Subpart G—Shore Leave**

#### **§ 630.701 Coverage.**

An employee, as defined in 5 U.S.C. 6301, is eligible to accrue shore leave if he or she is regularly assigned to duties

aboard an oceangoing vessel. An employee is considered to be regularly assigned when his or her continuing duties are such that all or a significant part of them require him or her to serve aboard an oceangoing vessel. Temporary assignments of a shore-based employee, such as for limited work projects or for training, do not constitute a regular assignment.

#### **§ 630.702 Definitions.**

*Extended voyage* means a voyage of not less than 7 consecutive calendar days duration.

*Oceangoing vessel* means a vessel in use on the high seas or the Great Lakes, but does not include a vessel that operates primarily on rivers, other lakes, bays, sounds or within the 3-nautical-mile limit of the coastal area of the 48 contiguous States, except when used in mapping, charting, or surveying operations or when in or sailing to or from foreign, territorial, Hawaiian, or Alaskan waters or waters outside its normal area of operation or outside the 3-nautical-mile limit.

*Shore leave* means leave authorized by 5 U.S.C. 6305(c) and this subpart.

*Voyage* means the sailing of an oceangoing vessel from one port and its return to that port or the final port of discharge.

#### **§ 630.703 Earning shore leave.**

(a) An employee earns shore leave at the rate of 1 day of shore leave for each 15 calendar days of absence on one or more extended voyages.

(b)(1) For an employee who is an officer or crewmember, a voyage begins on the date he or she assumes his or her duties aboard an oceangoing vessel to begin preparation for a voyage or on the date he or she comes aboard when a voyage is in progress. The voyage terminates on the date the employee ceases to be an officer or crewmember of the oceangoing vessel or on the date on which he or she is released from assigned duties relating to that voyage aboard the oceangoing vessel at the earlier of the employee's arrival at the port of origin or the port of final discharge.

(2) For an employee other than an officer or crewmember, a voyage begins on the date of sailing and terminates on the date the oceangoing vessel returns to a port at which the employee will disembark in completion of his or her assignment aboard the vessel or on the date the employee is released from assigned duties aboard the vessel, whichever is earlier.

(c) In computing days of absence, an agency must include—

(1) The beginning date of a voyage and the termination date of a voyage;

(2) The days an employee spends traveling to join an oceangoing vessel to which assigned when the vessel is at a place other than the port of origin;

(3) The days an employee spends traveling between oceangoing vessels when he or she is assigned from one vessel to another;

(4) The period representing the number of days within which an employee is reasonably expected to return to the port of origin when his or her oceangoing vessel's voyage is terminated, or the employee's employment as an officer or crewmember is terminated, at a port other than the port of origin;

(5) For an employee who is an officer or crewmember, the days on which the employee is on sick leave when he or she becomes sick during a voyage (whether or not continued as a member of the crew), but not beyond the earlier of the termination date of the voyage of the oceangoing vessel or the date of the employee's repatriation to the port of origin;

(6) For an employee who is other than an officer or crewmember, the days on which he or she is carried on sick leave, but not beyond the earlier of the date on which he or she returns to the port of origin or the termination date of the voyage; and

(7) The days of approved leave from a vessel (paid or unpaid) during a voyage.

#### **§ 630.704 Granting shore leave.**

(a) *Authority.* (1) An employee has an absolute right to use shore leave, subject to the right of the head of the agency to fix the time at which shore leave may be used.

(2) An agency may grant shore leave during a voyage only when requested by an employee.

(3) An employee must submit a written request to use shore leave. Whenever a request to use shore leave is denied, the agency must provide the employee with a written denial.

(b) *Accumulation.* Shore leave is in addition to annual leave, and an employee may accumulate shore leave for future use without limitation.

(c) *Charge for shore leave.* The minimum charge for shore leave is 1 day, and additional charges are in multiples thereof.

(d) *Lump sum payment.* An employee may not receive a lump-sum payment for unused shore leave when he or she separates from Federal service, except as provided in 5 U.S.C. 6305(c)(2).

(e) *Terminal leave.* (1) Except as provided by paragraph (e)(2) of this

section, an agency may not grant shore leave to an employee as terminal leave. For the purpose of this paragraph, terminal leave is an approved absence immediately before an employee's separation when the agency knows the employee will not return to duty before the date of his or her separation.

(2) An agency must grant shore leave as terminal leave when an employee's inability to use shore leave was because of circumstances beyond his or her control and not his or her own act or omission.

(f) *Forfeiture of shore leave.* Shore leave is forfeited if it is not granted before separation from Federal service or official assignment (other than by temporary detail) to a position in which an employee does not earn shore leave. When an official assignment will result in forfeiture of shore leave, the agency must, to the extent administratively practicable, give the employee an opportunity to use the shore leave to his or her credit before the reassignment or, when the agency is unable to grant the shore leave before the reassignment, not later than 6 months after the date of the employee's reassignment.

#### Subpart H—Funeral Leave

##### § 630.801 Purpose.

This subpart and 5 U.S.C. 6326 authorize an agency to grant funeral leave to an employee in connection with the funeral of, or memorial service for, his or her immediate relative who died as a result of wounds, disease, or injury incurred while serving as a member of the Armed Forces in a combat zone.

##### § 630.802 Coverage.

This subpart applies to an employee, as defined in 5 U.S.C. 2105, who is employed by an executive agency, as defined in 5 U.S.C. 105.

##### § 630.803 Definitions.

In this subpart:

*Armed Forces* means the Army, Navy, Air Force, Marine Corps, and Coast Guard.

*Combat zone* means those areas determined by the President in accordance with section 112 of the Internal Revenue Code.

*Funeral leave* means leave authorized by 5 U.S.C. 6326 and this subpart.

*Immediate relative* means the following relatives of the deceased member of the armed forces:

- (1) Spouse, and parents thereof;
- (2) Children, including adopted children, and spouses thereof;
- (3) Parents;
- (4) Brothers and sisters, and spouses thereof; and

(5) Any individual related by blood or affinity whose close association with the deceased was the equivalent of a family relationship.

##### § 630.804 Granting funeral leave.

(a) An agency must grant an employee up to 3 workdays of funeral leave without loss of pay, charge to leave to which the employee is otherwise entitled, or loss of credit for time or service and without adversely affecting his or her performance or efficiency rating. Funeral leave is granted to allow an employee to make arrangements for or to attend the funeral or memorial service for an immediate relative who died as the result of a wound, disease, or injury incurred while serving as a member of the Armed Forces in a combat zone. The 3 days need not be consecutive, but if not, the employee must furnish the approving authority with satisfactory reasons justifying a grant of funeral leave for nonconsecutive days.

(b) An agency may grant funeral leave only from an established tour of duty, including regularly scheduled overtime.

#### Subpart I—Voluntary Leave Transfer Program

##### § 630.901 Purpose.

This subpart sets forth procedures and requirements for a voluntary leave transfer program under which the unused accrued annual leave of one agency employee or officer may be transferred for use by another agency employee or officer who needs such leave because of a medical emergency. This subpart implements the provisions of 5 U.S.C., chapter 63, subchapter III, and must be read together with those provisions of law.

##### § 630.902 Coverage.

Employees and officers to whom the definition of *employee* under 5 U.S.C. 6301 applies are covered by the voluntary leave transfer program.

##### § 630.903 Definitions.

In this subpart:

*Agency means—*

(a) An *executive agency*, as defined in 5 U.S.C. 105;

(b) A *military department*, as defined in 5 U.S.C. 102; or

(c) Any other entity of the Federal Government that employs officers or employees to whom the definition of *employee* under 5 U.S.C. 6301 applies. Except as provided in § 630.922, it does not include the Central Intelligence Agency; the Defense Intelligence Agency; the National Security Agency; the Federal Bureau of Investigation; or any other executive agency or unit

thereof, as determined by the President, whose principal function is the conduct of foreign intelligence or counterintelligence activities.

*Available paid leave* means accrued or accumulated annual or sick leave under 5 U.S.C. 6302–6304 and 6307 and recredited and restored annual or sick leave under subpart C or E of this part. If the medical emergency involves a family member of the employee, his or her *available paid leave* includes that amount of sick leave which he or she is entitled to use to care for a family member under § 630.401. *Available paid leave* does not include annual or sick leave advanced to an employee under 5 U.S.C. 6302(d) or 6307(d) or any annual or sick leave accrued under § 630.915 that has not been transferred to the appropriate leave account under § 630.917.

*Employee* has the meaning given that term in 5 U.S.C. 6301(2), but does not include an individual employed by the government of the District of Columbia.

*Family member* means the following relatives of the employee:

- (1) Spouse, and parents thereof;
- (2) Children, including adopted children, and spouses thereof;
- (3) Parents;
- (4) Brothers and sisters, and spouses thereof; and

(5) Any individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship.

*Healthcare provider* has the meaning given that term in § 630.1204.

*Leave donor* means an employee whose voluntary written request for transfer of annual leave to the annual leave account of a leave recipient is approved by his or her own employing agency.

*Leave recipient* means a current employee for whom the employing agency has approved an application to receive annual leave from the annual leave accounts of one or more leave donors.

*Medical emergency* means a serious health condition, as that term is defined in § 630.1204, which affects an employee or a family member of such employee and is likely to require the employee's absence from duty for a prolonged period of time and to result in a substantial loss of income to the employee because of the unavailability of paid leave.

*Paid leave status* means the administrative status of an employee while the employee is using annual or sick leave accrued or accumulated under 5 U.S.C. 6302–6304 and 6307.

*Shared leave status* means the administrative status of an employee

while the employee is using transferred leave under this subpart or leave transferred from a leave bank under subpart J of this part.

*Transferred leave* means donated annual leave credited to an approved leave recipient's annual leave account.

**§ 630.904 Administration.**

Each Federal agency must establish and administer procedures to permit the voluntary transfer of annual leave consistent with this subpart.

**§ 630.905 Uncommon tour of duty.**

An agency having employees who earn and use annual leave on the basis of an uncommon tour of duty, as that term is defined in § 630.201, must establish procedures for administering the transfer of annual leave to or from such employees under this subpart. Those procedures must be based on the "directly proportional" rules the agency uses to determine rates of leave accrual under 5 CFR 630.204.

**§ 630.906 Application to become a leave recipient.**

(a) An employee must make written application to his or her employing agency to become a leave recipient. If the employee is not capable of making application, a personal representative may make written application on his or her behalf. An agency may establish a time limit during which an employee must make a written application to become a leave recipient following the termination of a medical emergency.

(b) The following information must accompany an application for donated leave:

- (1) The employee's name, position title, and grade or pay level;
- (2) The reasons transferred leave is needed, including a brief description of the nature, severity, and anticipated duration of the medical emergency, and if it is a recurring one, the approximate frequency of the medical emergency affecting the employee;

(3) Certification from one or more healthcare providers, with respect to the medical emergency, if the employing agency so requires;

(4) The date the medical emergency terminated, if the employee is applying to become a leave recipient after the medical emergency has terminated; and

(5) Any additional information required by the employing agency.

(c) If an employee is required to obtain certification from two or more healthcare providers under paragraph (b)(3) of this section, the employing agency must ensure, by direct payment to the healthcare provider involved or by reimbursement, that the employee is

not required to pay for the expenses associated with obtaining certification from more than one healthcare provider.

**§ 630.907 Approval of an application to become a leave recipient.**

(a) The potential leave recipient's employing agency must review an application to become a leave recipient under procedures established by the agency for the purpose of determining that the employee is or has been affected by a medical emergency.

(b) Before approving an employee's application to become a leave recipient, the employing agency must determine that his or her absence from duty without available paid leave because of the medical emergency is (or is expected to be) at least 24 hours (or, in the case of a part-time employee or an employee with an uncommon tour of duty, at least 30 percent of the average number of hours in the employee's biweekly scheduled tour of duty).

(c) In making a determination as to whether a medical emergency is likely to result in a substantial loss of income because of the unavailability of paid leave, an agency may not consider an employee's grade or pay level or financial status.

**§ 630.908 Notification of approval of an application.**

If an employee's application to become a leave recipient is approved, the employing agency must notify the employee (or the personal representative who made application on the employee's behalf) within 10 calendar days (excluding Saturdays, Sundays, and legal public holidays) after the date the application was received, that—

(a) The application has been approved; and

(b) Other employees of the employing agency may request the transfer of their annual leave to the employee's leave account.

**§ 630.909 Disapproval of an application to become a leave recipient.**

If an employee's application to become a leave recipient is not approved, the employing agency must notify the employee (or his or her personal representative who made application on the employee's behalf) within 10 calendar days (excluding Saturdays, Sundays, and legal public holidays) after the date the application was received, that—

(a) The application has not been approved, and

(b) The reasons for its disapproval.

**§ 630.910 Donating annual leave through a leave transfer program.**

(a) A leave donor may submit a voluntary written request to his or her employing agency that a specified number of hours of the donor's accrued annual leave, including annual leave restored under 5 U.S.C. 6304(d) and 5596(b)(1)(B)(i), but excluding annual leave advanced to the employee under 5 U.S.C. 6302(d) and § 630.210(a), be transferred from his or her annual leave account to the annual leave account of a specified leave recipient. Except as provided in § 630.911, annual leave may be transferred only to an approved leave recipient employed by the donor's employing agency.

(b) An employee who transfers to a position excepted from 5 U.S.C. chapter 63, subchapter I, by 5 U.S.C. 6301(2)(x)–(xii) may submit a voluntary written request to his or her employing agency that a specified number of hours of his or her accrued or accumulated annual leave that is being held in abeyance be transferred from his or her annual leave account to the annual leave account of a specified leave recipient. Except as provided in § 630.911, annual leave may be transferred only to a leave recipient employed by the leave donor's employing agency.

(c) Except as provided in § 630.913, and subject to the limitations on the amount of annual leave that may be donated by a leave donor under § 630.912, all or any portion of the annual leave the donor requested under paragraph (a) of this section may be transferred to the annual leave account of the specified leave recipient under procedures established by his or her employing agency.

**§ 630.911 Donation of leave to an employee in a different agency.**

(a) If a leave donor wishes to donate annual leave to an approved leave recipient in another agency, the donor's agency must verify the availability of annual leave in his or her annual leave account, determine that the amount of annual leave to be donated does not exceed the limitations in § 630.912, and ascertain that the leave recipient's employing agency has made the determination required by paragraph (b) of this section. Upon satisfying these requirements, the donor's agency must—

(1) Reduce the amount of annual leave credited to the donor's annual leave account, as appropriate; and

(2) Notify the approved leave recipient's employing agency in writing of the amount of annual leave to be credited to his or her annual leave account.

(b) The employing agency of an approved leave recipient must accept the transfer of annual leave from leave donors employed by one or more other agencies when—

(1) The leave recipient has a family member employed by another agency who requests the transfer of annual leave to him or her;

(2) In the judgment of the employing agency, the amount of annual leave transferred from leave donors employed by the employing agency may not be sufficient to meet the employee's needs; or

(3) In the judgment of the employing agency, acceptance of leave transferred from another agency would further the purpose of the voluntary leave transfer program.

**§ 630.912 Limitations on the amount of annual leave that may be donated through a leave transfer program.**

(a) In any one leave year, a leave donor may donate no more than a total of one-half of the amount of annual leave he or she would be entitled to accrue during the leave year in which the donation is made.

(b) If a leave donor is projected to have annual leave that otherwise would be subject to forfeiture at the end of the leave year under 5 U.S.C. 6304(a), the maximum amount of annual leave that may be donated during the leave year is the lesser of—

(1) One-half of the amount of annual leave the donor would be entitled to accrue during the leave year in which the donation is made; or

(2) The number of hours remaining in the leave year (as of the date of the transfer) for which the donor is scheduled to work and receive pay, excluding any period of paid or unpaid leave.

(c) In any one leave year, an employee who transfers to a position excepted from 5 U.S.C. chapter 63, subchapter I, by 5 U.S.C. 6301(2)(x)–(xii) may donate not more than a total of one-half of the amount of annual leave he or she was entitled to accrue in the leave year in effect prior to transfer to the excepted position.

(d) An agency may waive the limitations on donating annual leave in paragraphs (a), (b), and (c) of this section by establishing written criteria for such waivers. All waivers must be documented in writing.

(e) The limitations in this section apply to the total amount of annual leave donated or contributed under subparts I and J of this part (the voluntary leave transfer and leave bank programs).

**§ 630.913 Prohibition against donation of leave to an immediate supervisor.**

An employee may not donate annual leave to his or her immediate supervisor.

**§ 630.914 Restrictions on the use of transferred annual leave by a leave recipient.**

(a) A leave recipient may use annual leave transferred to his or her annual leave account only for the purpose of the medical emergency for which the recipient was approved. An approved leave recipient who has received an official notice of leave restriction from his or her agency is subject to the terms and conditions of the leave restriction notice when requesting and using donated annual leave under this subpart.

(b) Except as provided in § 630.915(b), in each biweekly pay period during which a leave recipient is affected by a medical emergency, he or she must use any accrued annual leave, and sick leave, if applicable, before using transferred annual leave.

(c) The approval and use of transferred annual leave is subject to all of the conditions and requirements imposed by 5 U.S.C. 6302–6304, this part, and the employing agency on the approval and use of annual leave accrued under 5 U.S.C. 6303, except that transferred annual leave may accumulate without regard to the limitation imposed by 5 U.S.C. 6304.

(d) A leave recipient may choose to substitute transferred annual leave retroactively for any period of leave without pay or use it to liquidate any indebtedness for any period of advanced annual or sick leave that began on or after the date fixed by the employing agency as the beginning of the medical emergency.

(e) A leave recipient may not—

(1) Transfer the leave he or she receives to another leave recipient;

(2) Receive a lump-sum payment for transferred leave under 5 U.S.C. 5551 or 5552; or

(3) Receive recredit under 5 U.S.C. 6306 for the transferred leave upon reemployment by a Federal agency.

(f) An agency may establish a maximum period of time, not less than 6 months, during which a qualified employee may continue to be an approved leave recipient under subparts I and J of this part (the voluntary leave transfer and leave bank programs) for any particular medical emergency. When an employee is approved as a leave transfer recipient, an agency which has established such a time limit must provide the leave recipient with written notification of the maximum

period of time for which an employee may continue to be an approved leave recipient.

**§ 630.915 Accrual of leave in set-aside accounts while using donated leave.**

(a) An agency must credit any annual or sick leave a leave recipient accrues while using transferred leave under this section and § 630.1013 to a set-aside annual or sick leave account, as appropriate, that is separate from any leave account under 5 U.S.C. 6302–6304 and 6307.

(b) Any annual and sick leave an employee accrues in his or her set-aside accounts while using transferred leave may not become available for his or her use and may not otherwise be taken into account under 5 U.S.C. 6302–6304 until it is transferred to the appropriate annual and sick leave accounts under 5 U.S.C. 6303, as provided in § 630.917.

**§ 630.916 Limitations on the accrual of annual and sick leave in set-aside accounts while using donated leave.**

Except as otherwise provided in § 630.918, while an employee is in a shared leave status as a leave recipient, annual and sick leave must accrue to his or her credit at the same rate as if he or she were in a paid leave status under 5 U.S.C. 6303, 6304, and 6307, except that—

(a) The total amount of annual leave a leave recipient may accrue while in a shared leave status under §§ 630.915 and 630.1013 in connection with any particular medical emergency may not exceed 40 hours (or, in the case of a part-time employee or an employee with an uncommon tour of duty, the average number of hours in the employee's weekly scheduled tour of duty); and

(b) The total amount of sick leave a leave recipient may accrue while in a shared leave status under §§ 630.915 and 630.1013 in connection with any particular medical emergency may not exceed 40 hours (or, in the case of a part-time employee or an employee with an uncommon tour of duty, the average number of hours in the employee's weekly scheduled tour of duty).

**§ 630.917 Using annual and sick leave in set-aside accounts.**

Any annual or sick leave an employee accrues in his or her set-aside accounts as a leave recipient under subparts I and J of this part (the voluntary leave transfer and leave bank programs), must be transferred to the employee's annual or sick leave account, as appropriate, under 5 U.S.C. 6303 and 6307 and must become available for use—

(a) As of the beginning of the first pay period beginning on or after the date the

medical emergency terminates, as prescribed in § 630.920(a)(2) or (3); or

(b) Once the employee has exhausted all leave made available under 5 CFR subparts I or J (the voluntary leave transfer and leave bank programs), if the medical emergency has not yet terminated. If annual or sick leave accrued in the set-aside accounts under § 630.915 is transferred to the employee's appropriate leave account under 5 U.S.C. chapter 63, subchapter I, before the set-aside accounts have reached their maximum limits under § 630.916, annual leave and sick leave will continue to accrue in the set-aside accounts, in the event the leave recipient receives and uses additional donated leave, until the total amount accrued during the particular medical emergency has reached the maximum limit of 40 hours of annual leave and 40 hours of sick leave.

**§ 630.918 Accrual of leave in set-aside accounts when annual and sick leave have been advanced at the beginning of a leave year.**

If, at the beginning of a leave year, an employing agency advances the amount of annual leave an employee normally would accrue during the entire leave year under 5 U.S.C. 6302(d)—

(a) The employing agency must establish procedures to ensure that 40 hours (or, in the case of a part-time employee or an employee with an uncommon tour of duty, the average number of hours in his or her weekly scheduled tour of duty) of annual leave is placed in a separate set-aside annual leave account and made available for the leave recipient's use as described in § 630.917; and

(b) The leave recipient may continue to accrue annual leave while in a shared leave status to the extent necessary for the purpose of reducing any indebtedness caused by the use of annual leave advanced at the beginning of the leave year.

**§ 630.919 Terminating set-aside accounts when a leave recipient is terminated from Federal service.**

If a leave recipient is terminated from Federal service as described in § 630.920(a)(1) or § 630.1014(a), he or she may not receive credit or lump-sum payment for any leave accrued in the set-aside accounts under §§ 630.915 or 630.1013, and the employing agency must terminate the set-aside accounts.

**§ 630.920 Termination of a medical emergency.**

(a) A leave recipient's medical emergency terminates—

(1) When his or her Federal service terminates;

(2) At the end of the biweekly pay period in which the employing agency receives written notice from the employee or his or her personal representative that the employee is no longer affected by a medical emergency;

(3) At the end of the biweekly pay period in which the employing agency determines that the employee is no longer affected by a medical emergency, after giving the employee (or, if appropriate, his or her personal representative) written notice and giving the employee (or, if appropriate, his or her personal representative) an opportunity to answer orally or in writing; or

(4) At the end of the biweekly pay period in which the employing agency receives notice that OPM has approved the employee's application for disability retirement under the Civil Service Retirement System or the Federal Employees' Retirement System.

(b) The employing agency must continuously monitor the status of the medical emergency affecting a leave recipient to ensure that he or she continues to be affected by a medical emergency.

(c) When the medical emergency affecting an employee terminates, no further requests for transfer of annual leave to him or her may be granted, and any unused transferred annual leave remaining to the employee's credit must be restored to the leave donors under § 630.921.

(d) An agency may deem a medical emergency to continue for the purpose of providing an employee with an adequate period of time within which to receive donations of annual leave.

**§ 630.921 Restoration of unused transferred annual leave to leave donors.**

(a) When a medical emergency terminates, any transferred annual leave remaining to the credit of a leave recipient must be credited to the annual leave accounts of leave donors who, on the date leave restoration is made, are employed by a Federal agency and subject to 5 U.S.C. chapter 63. The employing agency must establish procedures for restoring such unused transferred leave (as provided in paragraphs (b) and (c) of this section and to the extent administratively feasible) by transfer to the annual leave accounts of the leave donors who, on the date leave restoration is made, are employed by a Federal agency and subject to 5 U.S.C. chapter 63.

(b) The amount of unused transferred annual leave to be restored to each leave donor must be determined as follows:

(1) Divide the number of hours of unused transferred annual leave by the

total number of hours of annual leave transferred to the leave recipient;

(2) Multiply the ratio obtained in paragraph (b)(1) of this section by the number of hours of annual leave transferred by each leave donor eligible for restoration under paragraph (a) of this section; and

(3) Round the result obtained in paragraph (b)(2) of this section to the nearest increment of time, either one-tenth of an hour (6 minutes) or one-quarter of an hour (15 minutes), as established by the leave donor's employing agency to account for annual leave.

(c) If the total number of eligible leave donors exceeds the total number of hours of annual leave to be restored, no unused transferred annual leave may be restored. In no case may the amount of annual leave restored to a leave donor exceed the amount donated by the leave donor to the leave recipient.

(d) If the leave donor retires from Federal service, dies, or is otherwise separated from Federal service before the date unused transferred annual leave can be restored, the employing agency of the leave recipient may not restore the unused transferred annual leave.

(e) At the election of a leave donor, unused transferred annual leave restored under paragraph (a) of this section may be restored by—

(1) Crediting the restored annual leave to his or her annual leave account in the current leave year;

(2) Crediting the restored annual leave to his or her annual leave account effective as of the first day of the first leave year beginning after the date of election;

(3) Donating such leave in its entirety to another leave recipient; or

(4) Donating such leave in part to another leave recipient and electing to have the remaining unused transferred leave credited to his or her account under paragraphs (e)(1) or (e)(2) of this section.

(f) Transferred annual leave restored to a leave donor under paragraph (e)(1) or (e)(2) of this section is subject to the limitation imposed by 5 U.S.C. 6304(a) at the end of the leave year in which the restored leave is credited to the leave donor's annual leave account.

(g) If a leave recipient elects to buy back annual leave as a result of a claim for an employment-related injury approved by the Office of Workers' Compensation Programs under 20 CFR part 10, and the annual leave was leave transferred under § 630.910, the amount of annual leave bought back must be restored to the leave donor(s).



**§ 630.922 Participation by an excepted agency.**

(a) The head of an agency excepted from these regulations under 5 U.S.C. 6339(a)(1) may, at his or her sole discretion, establish a program under which an individual employed in or under such excepted agency may participate in a leave transfer program established under the provisions of this subpart, including provisions permitting the transfer of annual leave accrued or accumulated by such employee to, or permitting such employee to receive transferred leave from, an employee of any other agency (including another excepted agency having a program under this subpart).

(b) An excepted agency choosing to participate in a leave transfer program established under this subpart may develop a policy that includes provisions that protect the anonymity of its employees. Leave transferred to and from employees of such excepted agencies must be accepted by other agencies (including another excepted agency having a program under this subpart), regardless of whether the donating employee is identified.

**§ 630.923 Records.**

An agency must record the status of a current leave recipient under the voluntary leave transfer program when he or she transfers to another Federal agency without a break in service. The employing agency from which the leave recipient is transferring must document and forward the following information to the new employing agency:

- (a) The dates the medical emergency began and terminated (if applicable);
- (b) The date the employee was approved to become a leave recipient;
- (c) The effective date of the transfer; and

(d) The hours of donated annual leave received, used, and remaining at the time the leave recipient transfers to the new employing agency.

**Subpart J—Voluntary Leave Bank Program****§ 630.1001 Purpose.**

This subpart establishes procedures and requirements for a voluntary leave bank program under which the unused accrued annual leave of an employee or officer may be contributed to a leave bank for use by a leave bank member who needs such leave because of a medical emergency. This subpart implements the provisions of 5 U.S.C., chapter 63, subchapter IV, and must be read together with those provisions of law.

**§ 630.1002 Coverage.**

This subpart applies to employees and officers—

(a) To whom the definition of *employee* under U.S.C. 6301 applies; and

(b) Who are employed in agencies and their organizational subunits operating a voluntary leave bank program under this subpart.

**§ 630.1003 Definitions.**

In this subpart:

*Agency* has the meaning given that term in § 630.903.

*Available paid leave* has the meaning given that term in § 630.903.

*Employee* has the meaning given that term in § 630.903.

*Family member* has the meaning given that term in § 630.903.

*Healthcare provider* has the meaning given that term in § 630.1204.

*Leave bank* means a pooled fund of annual leave established by an agency under § 630.1004.

*Leave bank contributor* means an employee who contributes annual leave to a leave bank under § 630.1008.

*Leave bank member* means a leave bank contributor who has contributed, in an open enrollment period (or individual enrollment period, as applicable) of the current leave year, at least the minimum amount of annual leave required by § 630.1007.

*Leave recipient* means a leave bank member whose application to receive contributions of annual leave from a leave bank has been approved under § 630.1011.

*Medical emergency* has the meaning given that term in § 630.903.

*Paid leave status* has the meaning given that term in § 630.903.

*Shared leave status* has the meaning given that term in § 630.903.

**§ 630.1004 Establishing and operating leave banks.**

(a) An agency participating in the voluntary leave bank program must—

(1) Develop written policies and procedures for establishing and administering leave banks and leave bank boards consistent with this subpart;

(2) Establish one or more leave bank boards to perform the duties authorized by this subpart; and

(3) Establish and begin operating one or more leave banks.

(b) Annual leave may not be borrowed, contributed, or otherwise transferred between leave banks, except as provided in § 630.1106.

**§ 630.1005 Operation of a leave bank board.**

(a) Each leave bank board must consist of three members. At least one

member must represent a labor organization or employee group.

(b) Each leave bank board must—

(1) Establish its internal decision-making procedures;

(2) Review and approve or disapprove each application to become a leave contributor under §§ 630.1006 and 630.1008 and a leave recipient under §§ 630.1010 and 630.1011;

(3) Monitor the status of each leave recipient's medical emergency;

(4) Monitor the amount of leave in the leave bank and the number of applications to become a leave recipient;

(5) Maintain an adequate amount of annual leave in the leave bank to the greatest extent practicable in accordance with § 630.1007; and

(6) Perform other functions prescribed in this subpart.

(c) No more than one leave bank board may be established for each leave bank.

(d) An agency having employees who earn and use annual leave on the basis of an uncommon tour of duty must establish procedures for administering the contribution and withdrawal of annual leave by such employees under this subpart.

**§ 630.1006 Application to become a leave bank member.**

(a) An employee may become a leave bank member for a particular leave year if he or she submits an application that meets the requirements of this section and § 630.1007 during an open enrollment period established by the leave bank board under paragraphs (b) and (c) of this section (or, where applicable, during an individual enrollment period established under paragraph (d) of this section).

(b) A leave bank board must establish at least one open enrollment period for each leave year of leave bank operation.

(c) An open enrollment period must last at least 30 calendar days. An agency must take appropriate action to inform employees of each open enrollment period.

(d) If an employee is entering the agency or participating organizational subunit or returning from an extended absence outside an open enrollment period, he or she may become a leave bank member for the current leave year by submitting an application meeting the requirements of this section during an individual enrollment period lasting at least 30 calendar days, beginning on the date the employee entered or returned to the agency or organizational subunit.

**§ 630.1007 Minimum contribution of a leave bank member.**

(a) Except as provided in paragraph (b) of this section, the minimum contribution of annual leave required to become a leave bank member for a leave year is—

(1) Four hours of annual leave for an employee who has less than 3 years of service at the time he or she submits an application to contribute annual leave;

(2) Six hours of annual leave for an employee who has at least 3, but less than 15, years of service at the time he or she submits an application to contribute annual leave; and

(3) Eight hours of annual leave for an employee who has 15 or more years of service at the time he or she submits an application to contribute annual leave.

(b) A leave bank board may—

(1) Decrease the minimum contribution required by paragraph (a) of this section for the following leave year when the board determines that there is a surplus of leave in the bank;

(2) Increase the minimum contribution required by paragraph (a) of this section for the following leave year when the board determines that such action is necessary to maintain an adequate balance of annual leave in the leave bank; or

(3) Eliminate the requirement for a minimum contribution under paragraph (a) of this section when a leave bank member transfers within his or her employing agency to an organization covered by a different leave bank.

(c) If a leave recipient does not have sufficient available accrued annual leave to his or her credit to make the full minimum contribution required by this section, he or she must be deemed to have made the minimum contribution.

(d) A leave bank board must deposit all contributions of annual leave under this subpart in the leave bank.

(e) A leave bank member may apply to contribute additional annual leave at any time.

**§ 630.1008 Application to become a leave bank contributor.**

(a) An employee may make voluntary written application to the leave bank board to become a leave bank contributor at any time. The leave contributor must specify on the application the number of hours of his or her accrued annual leave, including annual leave restored under 5 U.S.C. 6304(d) and 5596(b)(1)(B)(i), but excluding annual leave advanced under 5 U.S.C. 6302(d) and 5 CFR 630.210(a), to be contributed and any other information the leave bank board may reasonably require.

(b) An employee may request that annual leave be contributed to a

specified bank member other than his or her immediate supervisor.

(c) Except as provided in § 630.1019(c), a leave bank board may not return a contribution of annual leave to a leave contributor after deposit in the leave bank.

**§ 630.1009 Maximum limitation on contribution of annual leave to a leave bank.**

(a) In any one leave year, a leave contributor may contribute no more than a total of one-half of the amount of annual leave he or she would be entitled to accrue during the leave year in which the contribution is made.

(b) If a leave contributor is projected to have annual leave that otherwise would be subject to forfeiture at the end of the leave year under 5 U.S.C. 6304(a), the maximum amount of annual leave he or she may contribute during the leave year is the lesser of—

(1) One-half of the amount of annual leave the employee would be entitled to accrue during the leave year in which the contribution is made; or

(2) The number of hours remaining in the leave year (as of the date of the contribution) for which the employee is scheduled to work and receive pay (excluding any periods of paid or unpaid leave).

(c) An agency may waive the limitations on donating annual leave under paragraphs (a) and (b) of this section by establishing written criteria permitting the leave bank board to approve such waivers. All waivers must be documented in writing.

(d) The limitations in this section apply to the total amount of annual leave donated or contributed under subparts I and J of this part (the voluntary leave transfer and leave bank programs).

**§ 630.1010 Application to become a leave recipient under a leave bank.**

(a) A leave bank member may make written application to the leave bank board to become a leave recipient. If the leave bank member is not capable of making application on his or her own behalf, a personal representative may make written application on his or her behalf.

(b) For a medical emergency that has terminated, a leave bank board may establish a maximum period during which it will accept a leave bank member's written application to become a leave recipient following the termination of the medical emergency.

(c) A leave bank member's application to become a leave recipient must be accompanied by the following information:

(1) The leave bank member's name, position title, and grade or pay level;

(2) The reasons leave is needed, including a brief description of the nature, severity, anticipated duration, and if it is a recurring one, the approximate frequency of the medical emergency affecting the leave bank member;

(3) The date the medical emergency terminated if the leave bank member is applying to become a leave recipient after the medical emergency has terminated.

(4) Certification from one or more healthcare providers, with respect to the medical emergency, if the leave bank board so requires; and

(5) Any additional information that may be required by the leave bank board.

(d) If the leave bank board requires a leave bank member to submit certification from two or more sources under paragraph (c)(4) of this section, the agency must ensure, either by direct payment to the healthcare provider involved or by reimbursement, that the leave bank member is not required to pay for the expenses associated with obtaining certification from more than one source.

**§ 630.1011 Approval of a leave recipient under a leave bank program.**

(a) The leave bank board must review an employee's application to become a leave recipient under procedures established by the agency for the purpose of determining whether the employee is a leave bank member who is or has been affected by a medical emergency that is likely to result in a substantial loss of income.

(b) Before approving an application to become a leave recipient, the leave bank board must determine that the employee's absence from duty without available paid leave because of the medical emergency is (or is expected to be) at least 24 hours (or, in the case of a part-time employee or an employee with an uncommon tour of duty, at least 30 percent of the average number of hours in the employee's biweekly scheduled tour of duty).

(c) An agency may not consider an employee's grade or pay level or financial status in making a determination as to whether the medical emergency is likely to result in a substantial loss of income because of the unavailability of paid leave.

(d) The leave bank board must provide timely written notification to the applicant of the action taken on the application. If the leave bank board disapproves the application, notification

must include the reasons for disapproval.

**§ 630.1012 Restrictions on the use of annual leave withdrawn from a leave bank.**

(a) A leave recipient may use annual leave withdrawn from a leave bank only for the purpose of the medical emergency for which the leave recipient was approved. An approved leave recipient who has received an official notice of leave restriction from his or her agency is subject to the terms and conditions of the leave restriction notice when requesting and using donated annual leave under this subpart.

(b) Except as provided in § 630.1013, in each biweekly pay period during which a leave recipient is affected by a medical emergency, he or she must use any accrued annual leave (and sick leave, if applicable) before using annual leave withdrawn from a leave bank.

(c) The approval and use of annual leave withdrawn from a leave bank is subject to all of the conditions and requirements imposed by 5 U.S.C. 6302–6304, this part, and the agency on the approval and use of annual leave accrued under 5 U.S.C. 6303, except that annual leave withdrawn from a leave bank may accumulate without regard to any limitation imposed by 5 U.S.C. 6304(a).

(d) Annual leave withdrawn from a leave bank may be substituted retroactively for any period of leave without pay or used to liquidate an indebtedness for any period of advanced leave that began on or after the date fixed by the leave bank board as the beginning of the medical emergency.

(e) Annual leave withdrawn from a leave bank may not be—

(1) Transferred to another leave recipient;

(2) Included in a lump-sum payment under 5 U.S.C. 5551 or 5552; or

(3) Made available for recredit under 5 U.S.C. 6306 upon reemployment by a Federal agency.

(f) An agency may establish a maximum period of time, not less than 6 months, during which an employee may continue to be an approved leave recipient under subparts I and J of this part (the voluntary leave transfer and leave bank programs) for any particular medical emergency. An agency which has established such a time limitation must provide the leave recipient with written notification of the maximum continuous period of time for which an employee may continue to be an approved leave recipient.

**§ 630.1013 Accrual and use of leave in set-aside accounts under a leave bank program.**

When an employee is receiving donated leave from a leave bank, annual leave and sick leave will accrue to his or her credit as provided in §§ 630.915, 630.916, and 630.918 and will become available for his or her use as provided in §§ 630.917 and 630.919.

**§ 630.1014 Termination of a medical emergency under the leave bank program.**

A leave recipient's medical emergency terminates—

(a) When his or her Federal service terminates;

(b) When he or she leaves the agency or participating organizational subunit, if the bank board so determines;

(c) At the end of the biweekly pay period in which the leave bank board receives written notice from the leave recipient or his or her personal representative that the leave recipient is no longer affected by a medical emergency;

(d) At the end of the biweekly pay period in which the leave bank board determines, after written notice from the bank board and an opportunity for the leave recipient (or, if appropriate, his or her personal representative) to answer orally or in writing, that the leave recipient is no longer affected by a medical emergency; or

(e) At the end of the biweekly pay period in which the employing agency receives notice that OPM has approved the leave recipient's application for disability retirement under the Civil Service Retirement System or the Federal Employees' Retirement System.

**§ 630.1015 Restoration of unused leave to a leave bank.**

(a) A leave bank board must ensure that annual leave withdrawn from the leave bank and not used before the termination of the medical emergency is returned to the leave bank.

(b) A leave bank board may deem a medical emergency to continue for the purpose of providing the leave recipient with an adequate period of time within which to receive contributions of annual leave.

(c) If a leave recipient elects to buy back annual leave as a result of a claim for an employment-related injury approved by the Office of Workers' Compensation Programs under 20 CFR part 10, and the annual leave was withdrawn from a leave bank under § 630.1012, the amount of annual leave bought back must be restored to the leave bank.

**§ 630.1016 Participation in both the voluntary leave transfer and leave bank programs.**

(a) If an agency or organizational subunit establishes a voluntary leave bank program under this subpart—

(1) A covered employee may also participate in a voluntary leave transfer program under subpart I of this part;

(2) Any annual leave previously transferred to an employee under the voluntary leave transfer program must remain to his or her credit if the employee later becomes a leave recipient in a leave bank and must become subject to the agency's policies and procedures for administering this subpart, except as provided in paragraphs (b) and (c) of this section; and

(3) The agency or organizational subunit must establish policies or procedures governing the use of donated or transferred leave if an employee receives leave under both a voluntary leave transfer program and a voluntary leave bank program for the same medical emergency.

(b) Upon termination of a medical emergency, any annual leave previously transferred under the voluntary leave transfer program and remaining to the employee's credit must be restored under § 630.921(a) through (d).

(c) Transferred annual leave restored to the account of a leave donor under paragraph (b) of this section is subject to the limitation imposed by 5 U.S.C. 6304(a) and (b) at the end of the leave year in which the annual leave is restored.

**§ 630.1017 Transferring to a new leave bank.**

If an employee moves from an agency or organizational subunit operating a leave bank to an agency or organizational subunit operating a different leave bank, the following procedures apply:

(a) On the date of the leave recipient's transfer, he or she becomes subject to the policies and procedures of the voluntary leave bank program of the new agency or organizational subunit; and

(b) Nothing in §§ 630.1014(b) or 630.1015(a) may interfere with the employee's right to submit an application to become a leave contributor or leave recipient under the policies and procedures of the voluntary leave bank program of the new agency or organizational subunit.

**§ 630.1018 Transferring to an agency that does not have a leave bank.**

If an employee moves from an agency or organizational subunit covered by a

voluntary leave bank program under this subpart to an agency or organizational subunit covered only by a voluntary leave transfer program under subpart I of this part, the following procedures apply:

(a) On the date of the employee's transfer, he or she becomes subject to the policies and procedures of the voluntary leave transfer program of the new agency or organizational subunit; and

(b) Nothing in §§ 630.1014(b) or 630.1015(a) may interfere with the employee's right to submit an application to become a leave donor or leave recipient under the voluntary leave transfer program of the new agency or organizational subunit.

**§ 630.1019 Termination of a voluntary leave bank program.**

(a) An agency may terminate a voluntary leave bank program only after providing at least 30 calendar days advance written notice to current leave bank members.

(b) If an agency terminates a voluntary leave bank program before the termination of the medical emergency affecting a leave bank recipient, annual leave transferred to the leave recipient must remain available for use under the rules set forth in subpart I of this part.

(c) If an agency terminates a voluntary leave bank program, the agency must make provisions for the timely and equitable distribution of any leave remaining in the leave bank. The agency may allocate the leave to current leave recipients, recredit the leave to the accounts of current voluntary leave bank members, or a combination of both. The agency may distribute the leave immediately or may delay the distribution, in whole or part, until the beginning of the following leave year.

**§ 630.1020 Records.**

Each agency must maintain records concerning the administration of the voluntary leave bank program.

**Subpart K—Emergency Leave Transfer Program**

**§ 630.1101 Purpose.**

This subpart provides regulations to implement 5 U.S.C. 6391, which authorizes the President to direct OPM to establish an emergency leave transfer program under which an employee may donate unused annual leave for transfer to employees of his or her agency or to employees in other executive agencies who are adversely affected by a major disaster or emergency, as declared by the President.

**§ 630.1102 Coverage.**

This subpart applies to any individual who is defined as an *employee* in 5 U.S.C. 6331(1) and who is employed in an executive agency.

**§ 630.1103 Administration.**

The head of each agency having employees subject to this subpart is responsible for the proper administration of this subpart. Each Federal agency must establish and administer procedures to permit the voluntary transfer of annual leave consistent with this subpart.

**§ 630.1104 Definitions.**

In this subpart:

*Agency* means an *executive agency*, as defined in 5 U.S.C. 105.

*Disaster or emergency* means a major disaster or emergency, as declared by the President, that results in severe adverse effects for a substantial number of employees (*e.g.*, loss of life or property, serious injury, or mental illness as a result of a direct threat to life or health).

*Emergency leave donor* means a current employee whose voluntary written request for transfer of annual leave to an emergency leave transfer program is approved by his or her employing agency.

*Emergency leave recipient* means a current employee for whom the employing agency has approved an application to receive annual leave under an emergency leave transfer program.

*Emergency leave transfer program* means a program established by OPM that permits Federal employees to transfer their unused annual leave to other Federal employees adversely affected by a disaster or emergency, as declared by the President.

*Employee* has the meaning given that term in 5 U.S.C. 6331(1).

*Family member* has the meaning given that term in § 630.903.

*Leave year* has the meaning given that term in § 630.201.

*Paid leave status* has the meaning given that term in § 630.903.

*Transferred leave* means donated leave credited to an approved emergency leave recipient's annual leave account.

**§ 630.1105 Establishment of an emergency leave transfer program.**

(a) When directed by the President, OPM will establish an emergency leave transfer program that permits an employee to donate his or her accrued annual leave to employees of the same or other executive agencies who are adversely affected by a major disaster or

emergency that results in severe adverse effects for a substantial number of employees. In certain situations, OPM may delegate to an agency the authority to establish an emergency leave transfer program.

(b) OPM will notify agencies of the establishment of an emergency leave transfer program for a specific disaster or emergency, as declared by the President. Once notified, an agency affected by the disaster or emergency is authorized to do the following:

(1) Determine whether, and how much, donated annual leave is needed by affected employees;

(2) Approve emergency leave donors and/or emergency leave recipients within the agency, as appropriate;

(3) Facilitate the distribution of donated annual leave from approved emergency leave donors to approved emergency leave recipients within the agency; and

(4) Determine the period of time for which donated annual leave may be accepted for distribution to approved emergency leave recipients.

**§ 630.1106 Donations from a leave bank to an emergency leave transfer program.**

A leave bank established under 5 U.S.C. 6362 and subpart J of this part may, with the concurrence of the leave bank board established under § 630.1004, donate annual leave to an emergency leave transfer program administered by the employing agency.

**§ 630.1107 Application to become an emergency leave recipient.**

(a) An employee who has been adversely affected by a disaster or emergency may make written application to his or her employing agency to become an emergency leave recipient. If an employee is not capable of making written application, a personal representative may make written application on behalf of the employee.

(b) An employee who has a family member who has been adversely affected by a disaster or emergency also may make written application to his or her employing agency to become an emergency leave recipient. An emergency leave recipient may use donated annual leave to assist an affected family member, provided such family member has no reasonable access to other forms of assistance.

(c) For the purpose of this subpart, an employee is considered to be adversely affected by a major disaster or emergency if the disaster or emergency has caused the employee or a family member of the employee severe hardship to such a degree that his or her absence from work is required.

(d) The employee's application must be accompanied by the following information:

(1) The name, position title, and grade or pay level of the potential leave recipient;

(2) A statement describing his or her need for leave from the emergency leave transfer program; and

(3) Any additional information that may be required by the potential leave recipient's employing agency.

(e) An agency may determine a time period by which employees must apply to become an emergency leave recipient after the occurrence of a major disaster or emergency.

**§ 630.1108 Approval of an application to become an emergency leave recipient.**

An agency must review an application to become an emergency leave recipient under procedures the agency has established for the purpose of determining that a potential leave recipient is or has been affected by a major disaster or emergency.

**§ 630.1109 Notification of approval of an application.**

If an employee's application to become an emergency leave recipient is approved, the agency must notify the employee (or his or her personal representative) within 10 calendar days (excluding Saturdays, Sundays, and legal public holidays) after the date the application was received (or the date established by the agency, if that date is later).

**§ 630.1110 Disapproval of an application to become an emergency leave recipient.**

If an employee's application to become an emergency leave recipient is not approved, the employing agency must notify the employee (or his or her personal representative who made application on the employee's behalf) within 10 calendar days (excluding Saturdays, Sundays, and legal public holidays) after the date the application was received (or the date established by the agency, if that date is later). The agency must give the reasons for its disapproval.

**§ 630.1111 Use of available paid leave.**

An approved emergency leave recipient is not required to exhaust his or her accrued annual and sick leave before receiving donated leave under the emergency leave transfer program.

**§ 630.1112 Donating annual leave.**

An employee may voluntarily submit a written request to his or her agency that a specified number of hours of his or her accrued annual leave, consistent with the limitations in § 630.1113, be

transferred from his or her annual leave account to an emergency leave transfer program established under § 630.1105.

An emergency leave donor may not donate annual leave for transfer to a specific emergency leave recipient under this subpart. Any donated leave not used by an emergency leave recipient may not be returned to the emergency leave donor(s), except as provided in § 630.1120(a).

**§ 630.1113 Limitation on the amount of leave donated by an emergency leave donor.**

(a) An emergency leave donor may not contribute less than 1 hour nor more than 104 hours of annual leave in a leave year to an emergency leave transfer program. Each agency may establish written criteria for waiving the 104-hour limitation on donating annual leave in a leave year.

(b) Annual leave donated to an emergency leave transfer program may not be applied against the limitations on the donation of annual leave under the voluntary leave transfer or leave bank programs established under 5 U.S.C. 6332 and 6362, respectively.

**§ 630.1114 Limitation on the amount of leave received by an emergency leave recipient.**

An emergency leave recipient may receive a maximum of 240 hours of donated annual leave at any one time from an emergency leave transfer program for each disaster or emergency.

**§ 630.1115 Transferring donated leave between agencies.**

(a) If an agency does not receive sufficient amounts of donated annual leave to meet the needs of approved emergency leave recipients within the agency, the agency may contact OPM to obtain assistance in receiving donated leave from other agencies. The agency must notify OPM of the total amount of donated annual leave needed for transfer to the agency's approved emergency leave recipients. OPM will solicit and coordinate the transfer of donated annual leave from other Federal agencies to affected agencies who may have a shortfall of donated annual leave. OPM will determine the period of time for which donations of accrued annual leave may be accepted for transfer to affected agencies.

(b) Each Federal agency OPM contacts for the purpose of providing donated annual leave to an agency in need must—

(1) Approve emergency leave donors under the conditions specified in §§ 630.1112 and 630.1113 and determine how much donated annual

leave is available for transfer to an affected agency;

(2) Report the total amount of annual leave donated to the emergency leave transfer program to OPM; and

(3) When OPM has accepted the donated annual leave, debit the amount of annual leave donated to the emergency leave transfer program from each emergency leave donor's annual leave account.

(c) OPM will notify each affected agency of the aggregate amount of donated annual leave that will be credited to it for transfer to its approved emergency leave recipient(s). The affected agency will determine the amount of donated annual leave to be transferred to each emergency leave recipient (an amount that may vary according to individual needs).

(d) The affected agency must credit the annual leave account of each approved emergency leave recipient as soon as possible after the date OPM notifies the agency of the amount of donated annual leave that will be credited to the agency under paragraph (c) of this section.

**§ 630.1116 Using donated annual leave.**

(a) Any donated leave an emergency leave recipient receives from an emergency leave transfer program may be used only for purposes related to the disaster or emergency for which the emergency leave recipient was approved. Each agency is responsible for ensuring that leave donated under the emergency leave transfer program is used appropriately.

(b) Annual leave transferred under this subpart may be—

(1) Substituted retroactively for any period of leave without pay used because of the adverse effects of the disaster or emergency; or

(2) Used to liquidate an indebtedness incurred by the emergency leave recipient for advanced annual or sick leave used because of the adverse effects of the disaster or emergency. The agency may advance annual or sick leave, as appropriate (even if the employee has available annual and sick leave), so that the emergency leave recipient is not forced to use his or her accrued leave before donated annual leave becomes available.

**§ 630.1117 Accrual of leave while using donated leave.**

While an emergency leave recipient is using donated annual leave from an emergency leave transfer program, annual and sick leave continue to accrue to the credit of the employee at the same rate as if he or she were in a paid leave status under 5 U.S.C. chapter

63, subchapter I, and will be subject to the limitations imposed by 5 U.S.C. 6304(a), (b), (c), and (f) at the end of the leave year in which the transferred annual leave is received.

**§ 630.1118 Purposes for which donated leave may not be credited.**

An agency may not—

(a) Include annual leave transferred under this subpart in a lump-sum payment under 5 U.S.C. 5551 or 5552;

(b) Recredit the annual leave transferred under this subpart to an employee who is reemployed by a Federal agency under 5 U.S.C. 6306; or

(c) Use annual leave transferred under this subpart to establish initial eligibility for immediate retirement or acquire eligibility to continue health benefits into retirement under 5 U.S.C. 6302(g) and § 630.214.

**§ 630.1119 Termination of a disaster or emergency.**

The disaster or emergency affecting the employee as an emergency leave recipient terminates—

(a) When the employing agency determines that the disaster or emergency has terminated;

(b) When the employee's Federal service terminates;

(c) At the end of the biweekly pay period in which the employee, or his or her personal representative, notifies the emergency leave recipient's agency that he or she is no longer affected by such disaster or emergency;

(d) At the end of the biweekly pay period in which the employee's agency determines, after giving the employee or his or her personal representative written notice and an opportunity to answer orally or in writing, that the employee is no longer affected by such disaster or emergency; or

(e) At the end of the biweekly pay period in which the employee's agency receives notice that OPM has approved an application for disability retirement for the emergency leave recipient under the Civil Service Retirement System or the Federal Employees' Retirement System, as appropriate.

**§ 630.1120 Procedures for returning unused leave to emergency leave donors.**

(a) When a disaster or emergency is terminated, any unused annual leave donated to an emergency leave transfer program must be returned to the emergency leave donors. The amount of remaining annual leave to be returned to each emergency leave donor must be proportional to the amount of annual leave donated by the employee to the emergency leave transfer program for such disaster or emergency. Annual leave donated to an emergency leave

transfer program for a specific disaster or emergency may not be transferred to another emergency leave transfer program established for a different disaster or emergency.

(b) Each agency must establish procedures to return unused donated annual leave to emergency leave donors. Each agency must determine the amount of annual leave to be restored to each of the emergency leave donors who, on the date leave restoration is made, is employed by a Federal agency. If the total number of eligible leave donors exceeds the total number of hours of annual leave to be restored, no unused transferred annual leave will be restored. At the election of the emergency leave donor, the agency may restore unused annual leave to the emergency leave donor by—

(1) Crediting the restored annual leave to the emergency leave donor's annual leave account in the current leave year; or

(2) Crediting the restored annual leave to the emergency leave donor's annual leave account effective as of the 1st day of the following leave year.

**§ 630.1121 Protection against coercion.**

(a) An employee may not directly or indirectly intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce, any emergency leave donor or emergency leave recipient for the purpose of interfering with any right such employee may have with respect to donating, receiving, or using annual leave under this subpart.

(b) For the purpose of paragraph (a) of this section, the term *intimidate, threaten, or coerce* includes promising to confer or conferring any benefit (such as appointment or promotion or compensation) or effecting or threatening to effect any reprisal (such as deprivation of appointment, promotion, or compensation).

**Subpart L—Family and Medical Leave**

**§ 630.1201 Purpose.**

This subpart provides regulations to implement 5 U.S.C. 6381 through 6387 and must be read together with those sections of law. Sections 6381 through 6387 of title 5, United States Code, entitle most Federal employees to a total of up to 12 administrative workweeks of unpaid leave during any 12-month period for certain family and medical needs, as specified in § 630.1205.

**§ 630.1202 Coverage.**

(a) Except as otherwise provided in this paragraph, this subpart applies to any *employee* who—

(1) Is defined as an *employee* in 5 U.S.C. 6301(2), excluding employees

covered by paragraph (b) of this section; and

(2) Has completed at least 12 months of service as—

(i) An *employee*, as defined in 5 U.S.C. 6301(2), excluding any service as an employee under paragraph (b) of this section;

(ii) An employee of the Veterans Health Administration appointed under title 38, United States Code, in occupations listed in 38 U.S.C. 7401(1);

(iii) A *teacher* or an individual holding a *teaching position*, as defined in 20 U.S.C. 901; or

(iv) An *employee* identified in 5 U.S.C. 2105(c) who is paid from nonappropriated funds.

(b) This subpart does not apply to—

(1) An individual employed by the government of the District of Columbia;

(2) An employee serving under a temporary appointment with a time limitation of 1 year or less;

(3) An employee on an intermittent work schedule as defined in § 630.201; or

(4) Any employee covered by Title I or Title V of the Family and Medical Leave Act of 1993 (Pub. L. 103-3, February 5, 1993). The Department of Labor has issued regulations implementing Title I at 29 CFR part 825.

(c) For the purpose of applying 5 U.S.C. 6381 through 6387—

(1) An employee of the Veterans Health Administration appointed under title 38, United States Code, in occupations listed in 38 U.S.C. 7401(1) must be governed by the terms and conditions of regulations prescribed by the Secretary of Veterans Affairs;

(2) A *teacher* or an individual holding a *teaching position*, as defined in 20 U.S.C. 901, must be governed by the terms and conditions of regulations prescribed by the Secretary of Defense; and

(3) An employee identified in 5 U.S.C. 2105(c) who is paid from nonappropriated funds must be governed by the terms and conditions of regulations prescribed by the Secretary of Defense or the Secretary of Transportation, as appropriate.

(d) The regulations prescribed by the Secretary of Veterans Affairs, the Secretary of Defense, or the Secretary of Transportation under paragraph (c) of this section must, to the extent appropriate, be consistent with the regulations prescribed in this subpart and the regulations prescribed by the Secretary of Labor to carry out Title I of the Family and Medical Leave Act of 1993 at 29 CFR part 825.

**§ 630.1203 Administration.**

The head of an agency having employees subject to this subpart is

responsible for the proper administration of family and medical leave.

**§ 630.1204 Definitions.**

In this subpart:

*Accrued leave* has the meaning given that term in § 630.201.

*Accumulated leave* has the meaning given that term in § 630.201.

*Administrative workweek* has the meaning given that term in 5 CFR 610.102.

*Adoption* refers to a legal process in which an individual becomes the legal parent of another's child. The source of an adopted child—*e.g.*, whether from a licensed placement agency or otherwise—is not a factor in determining eligibility for leave under this subpart.

*Employee* means an individual to whom this subpart applies.

*Essential functions* means the fundamental job duties of the employee's position, as defined in 29 CFR 1630.2(n). An employee who must be absent from work to receive medical treatment for a serious health condition is considered to be unable to perform the essential functions of the position during the absence for treatment.

*Family and medical leave* means an employee's entitlement to up to 12 administrative workweeks of unpaid leave for certain family and medical needs, as prescribed in 5 U.S.C. 6381 through 6387.

*Foster care* means 24-hour care for children in substitution for, and away from, their parent(s) or guardian. Such placement is made by or with the agreement of the State as a result of a voluntary agreement by the parent(s) or guardian that the child be removed from the home, or pursuant to a judicial determination of the necessity for foster care, and involves agreement between the State and foster family to take the child. Although foster care may be with relatives of the child, State action is involved in the removal of the child from parental custody.

*Health care provider* means—

(1) A licensed Doctor of Medicine or Doctor of Osteopathy or a physician who is serving on active duty in the uniformed services and is designated by the uniformed service to conduct examinations under this subpart;

(2) Any health care provider recognized by the Federal Employees Health Benefits Program or who is licensed or certified under Federal or State law to provide the service in question;

(3) A health care provider as defined in paragraph (2) of this definition who practices in a country other than the

United States, who is authorized to practice in accordance with the laws of that country, and who is performing within the scope of his or her practice as defined under such law;

(4) A Christian Science practitioner listed with the First Church of Christ, Scientist, in Boston, Massachusetts; or

(5) A Native American, including an Eskimo, Aleut, and Native Hawaiian, who is recognized as a traditional healing practitioner by native traditional religious leaders and who practices traditional healing methods as believed, expressed, and exercised in Indian religions of the American Indian, Eskimo, Aleut, and Native Hawaiians, consistent with Public Law 95-341, August 11, 1978 (92 Stat. 469), as amended by Public Law 103-344, October 6, 1994 (108 Stat. 3125).

*In loco parentis* refers to the situation of an individual who has day-to-day responsibility for the care and financial support of a child or, in the case of an employee, who had such responsibility for the employee when the employee was a child. A biological or legal relationship is not necessary.

*Incapacity* means the inability to work, attend school, or perform other regular daily activities because of a serious health condition or treatment for or recovery from a serious health condition.

*Intermittent leave or leave taken intermittently* means leave taken in separate blocks of time, rather than for one continuous period of time, and may include leave periods of 1 hour to several weeks. Leave may be taken for a period of less than 1 hour if an agency policy provides for a minimum charge for leave of less than 1 hour under § 630.209.

*Leave without pay* means an absence from duty in a nonpay status. Leave without pay may be taken only for those hours of duty comprising an employee's basic workweek.

*Parent* means a biological parent or an individual who stands or stood *in loco parentis* to an employee when the employee was a son or daughter. This term does not include parents "in law."

*Reduced leave schedule* means a work schedule under which the usual number of hours of regularly scheduled work per workday or workweek of an employee is reduced. The number of hours by which the daily or weekly tour of duty is reduced are counted as leave for this purpose.

*Regularly scheduled* has the meaning given that term in 5 CFR 610.102.

*Regularly scheduled administrative workweek* has the meaning given that term in 5 CFR 610.102.

*Serious health condition.* (1) Serious health condition means an illness, injury, impairment, or physical or mental condition that involves—

(i) Inpatient care (*i.e.*, an overnight stay) in a hospital, hospice, or residential medical care facility, including any period of incapacity or any subsequent treatment in connection with such inpatient care; or

(ii) Continuing treatment by a health care provider that includes (but is not limited to) examinations to determine if there is a serious health condition and evaluations of such conditions if the examinations or evaluations determine that a serious health condition exists. Continuing treatment by a health care provider may include one or more of the following—

(A) A period of incapacity of more than 3 consecutive calendar days, including any subsequent treatment or period of incapacity relating to the same condition, that also involves—

(1) Treatment two or more times by a health care provider, by a health care provider under the direct supervision of the affected individual's health care provider, or by a provider of health care services under orders of, or on referral by, a health care provider; or

(2) Treatment by a health care provider on at least one occasion which results in a regimen of continuing treatment under the supervision of the health care provider (*e.g.*, a course of prescription medication or therapy requiring special equipment to resolve or alleviate the health condition).

(B) Any period of incapacity due to pregnancy or childbirth, or for prenatal care, even if the affected individual does not receive active treatment from a health care provider during the period of incapacity or the period of incapacity does not last more than 3 consecutive calendar days.

(C) Any period of incapacity or treatment for such incapacity due to a chronic serious health condition that—

(1) Requires periodic visits for treatment by a health care provider or by a health care provider under the direct supervision of the affected individual's health care provider,

(2) Continues over an extended period of time (including recurring episodes of a single underlying condition); and

(3) May cause episodic rather than a continuing period of incapacity (*e.g.*, asthma, diabetes, or epilepsy). The condition is covered even if the affected individual does not receive active treatment from a health care provider during the period of incapacity or the period of incapacity does not last more than 3 consecutive calendar days.

(D) A period of incapacity which is permanent or long-term because of a condition for which treatment may not be effective. The affected individual must be under the continuing supervision of, but need not be receiving active treatment by, a health care provider (e.g., Alzheimer's disease, severe stroke, or the terminal stages of a disease).

(E) Any period of absence to receive multiple treatments (including any period of recovery) by a health care provider or by a provider of health care services under orders of, or on referral by, a health care provider, either for restorative surgery after an accident or other injury or for a condition that would likely result in a period of incapacity of more than 3 consecutive calendar days in the absence of medical intervention or treatment (e.g., chemotherapy/radiation for cancer, physical therapy for severe arthritis, or dialysis for kidney disease).

(2) A *serious health condition* does not include routine physical, optical, or dental examinations; a regimen of continuing treatment that includes the taking of over-the-counter medications, bed-rest, exercise, and other similar activities that can be initiated without a visit to a health care provider; a condition for which cosmetic treatments are administered, unless inpatient hospital care is required or unless complications develop; or an absence because of an employee's use of an illegal substance, unless the employee is receiving treatment for substance abuse by a health care provider or by a provider of health care services on referral by a health care provider. Ordinarily, unless complications arise, the common cold, the flu, earaches, upset stomach, minor ulcers, headaches (other than migraines), routine dental or orthodontia problems, and periodontal disease are not serious health conditions. Allergies, restorative dental or plastic surgery after an injury, removal of a cancerous growth, or mental illness resulting from stress may be serious health conditions only if such conditions require inpatient care or continuing treatment by a health care provider.

*Son or daughter* means a biological, adopted, or foster child; a step child; a legal ward; or a child of a person standing *in loco parentis* who is—

- (1) Under 18 years of age; or
- (2) 18 years of age or older and incapable of self-care because of a mental or physical disability. A son or daughter incapable of self-care requires active assistance or supervision to provide daily self-care in three or more of the "activities of daily living" (ADLs)

or "instrumental activities of daily living" (IADLs). Activities of daily living include adaptive activities such as caring appropriately for one's grooming and hygiene, bathing, dressing, and eating. Instrumental activities of daily living include cooking, cleaning, shopping, taking public transportation, paying bills, maintaining a residence, using the telephone and directories, and using a post office. A "physical or mental disability" refers to a physical or mental impairment that substantially limits one or more of the major life activities of an individual as defined in 29 CFR 1630.2 (h), (i) and (j).

*Spouse* means an individual who is a husband or wife pursuant to a marriage that is a legal union between one man and one woman, including common law marriage between one man and one woman in States where it is recognized.

*Tour of duty* has the meaning given that term in 5 CFR 610.102.

#### **§ 630.1205 Entitlement to family and medical leave.**

An employee is entitled to a total of up to 12 administrative workweeks of unpaid leave during any 12-month period for one or more of the following reasons:

- (a) The birth of his or her son or daughter and the care of such son or daughter;
- (b) The placement of a son or daughter with the employee for adoption or foster care;
- (c) The care of a spouse, son or daughter, or parent, if such spouse, son or daughter, or parent has a serious health condition; or
- (d) The employee's own serious health condition that makes him or her unable to perform any one or more of the essential functions of his or her position.

#### **§ 630.1206 Procedures for invoking entitlement to family and medical leave.**

An employee must invoke his or her entitlement to family and medical leave under § 630.1205, subject to the notification and medical certification requirements in §§ 630.1213 through 630.1216. An employee may not retroactively invoke his or her entitlement to family and medical leave. However, if the employee and his or her personal representative are physically or mentally incapable of invoking his or her entitlement to FMLA leave *during the entire period* in which the employee is absent from work for an FMLA-qualifying purpose under § 630.1205, the employee may retroactively invoke his or her entitlement to FMLA leave within 2 workdays after returning to

work. In such cases, the employee's incapacity must be documented by a written medical certification from a health care provider. In addition, the employee must provide documentation acceptable to his or her agency explaining the inability of his or her personal representative to contact the agency and invoke his or her entitlement to FMLA leave during the entire period the employee was absent from work for an FMLA-qualifying purpose. An employee may take only the amount of family and medical leave necessary to manage the circumstances that prompted the need for leave under § 630.1205.

#### **§ 630.1207 Calculating the 12-month period.**

(a) An agency must calculate the 12-month period referred to in § 630.1205 beginning on the date the employee first takes leave for a family or medical need specified in § 630.1205 and continuing for 12 months. An employee is not entitled to 12 additional workweeks of leave until the previous 12-month period ends and an event or situation occurs that entitles him or her to another period of family or medical leave. (This may include a continuation of a previous situation or circumstance.)

(b) The entitlement to leave under § 630.1205(a) and (b) expires at the end of the 12-month period beginning on the date of birth or placement. Leave for a birth or placement must be concluded within this 12-month period. Leave taken under § 630.1205(a) and (b), may begin prior to or on the actual date of birth or placement for adoption or foster care, and the 12-month period referred to in paragraph (a) of this section begins on that date.

#### **§ 630.1208 Calculating 12 administrative workweeks of family and medical leave.**

(a) An agency must make available a total of up to 12 administrative workweeks equally for full-time or part-time employees in direct proportion to the number of hours in their regularly scheduled administrative workweeks. An agency must calculate the 12 administrative workweeks of leave on an hourly basis, and the 12 administrative workweeks must equal 12 times the average number of hours in the employee's regularly scheduled administrative workweek. If the number of hours in the employee's workweek varies from week to week, the agency must use a weekly average of the hours scheduled over the 12 weeks prior to the date leave commences for this calculation. An agency may not count toward the 12-week entitlement to family and medical leave any holidays



authorized under 5 U.S.C. 6103 or by Executive order or nonworkdays established by Federal statute, Executive order, or administrative order that occur during the period in which the employee is on family and medical leave.

(b) If the number of hours in an employee's regularly scheduled administrative workweek is changed during the 12-month period of family and medical leave, the agency must recalculate the employee's entitlement to any remaining family and medical leave based on the number of hours in the employee's current regularly scheduled administrative workweek.

**§ 630.1209 Agency obligation.**

An agency must inform all employees of their entitlements and responsibilities under this subpart, including the employees' requirements and obligations.

**§ 630.1210 Involuntary placement on family and medical leave.**

An agency may not place an employee on family and medical leave and may not subtract leave from his or her entitlement to leave under § 630.1205 unless the agency has obtained confirmation from the employee of his or her intent to invoke his or her entitlement to leave under § 630.1206. The employee's notice of his or her intent to take leave under § 630.1213 may suffice as his or her confirmation.

**§ 630.1211 Intermittent use of family and medical leave.**

(a) An employee may not take leave under § 630.1205(a) or (b) (leave for childbirth or adoption) intermittently or on a reduced leave schedule unless the employee and his or her agency agree to do so.

(b) An employee may take leave under § 630.1205(c) or (d) intermittently or on a reduced leave schedule when medically necessary, subject to the notification and medical certification requirements in §§ 630.1213 and 630.1215(f).

(c) If an employee takes leave under § 630.1205(c) or (d) intermittently or on a reduced leave schedule that is foreseeable based on planned medical treatment or recovery from a serious health condition, his or her agency may place the employee temporarily in an available alternative position for which he or she is qualified and which can better accommodate recurring periods of leave. Upon returning from leave, the employee is entitled to be returned to his or her permanent position or an equivalent position, as provided in § 630.1222.

(d) For the purpose of applying paragraph (c) of this section, an alternative position need not consist of equivalent duties, but must be in the same commuting area and must provide—

(1) An equivalent grade or pay level, including any applicable locality-based comparability payment under 5 U.S.C. 5304; special rate of pay for law enforcement officers or special pay adjustment for law enforcement officers under section 403 or 404 of the Federal Employees Pay Comparability Act of 1990 (Pub. L. 101-509), respectively; continued rate of pay under 5 CFR part 531; or special salary rate under 5 U.S.C. 5305 or similar provision of law;

(2) The same type of appointment, work schedule, status, and tenure; and

(3) The same employment benefits made available to the employee in his or her previous position (*e.g.*, life insurance, health benefits, retirement coverage, and leave accrual).

(e) An agency must determine the available alternative position that has equivalent pay and benefits consistent with Federal laws, including the Rehabilitation Act of 1973 (29 U.S.C. 701) and the Pregnancy Discrimination Act of 1978 (42 U.S.C. 2000e).

(f) Only the amount of leave taken intermittently or on a reduced leave schedule may be subtracted from the total amount of leave available to an employee under § 630.1208 (a) and (b).

**§ 630.1212 Substitution of paid leave for unpaid family and medical leave.**

(a) Except as provided in paragraph (b) of this section, leave taken under § 630.1205 must be leave without pay.

(b) An employee may elect to substitute the following paid leave for any or all of the period of leave without pay that may be taken under § 630.1205:

(1) Accrued or accumulated annual or sick leave under 5 U.S.C. 6302-6304 and 6307, consistent with current law and regulations governing the granting and use of annual or sick leave;

(2) Advanced annual or sick leave approved under the same terms and conditions that apply to any other agency employee who requests advanced annual or sick leave; and

(3) Leave made available to an employee under the voluntary leave transfer program or the voluntary leave bank program consistent with subparts I and J of this part.

(c) An agency may not deny an employee's right to substitute paid leave under paragraph (b) of this section for any or all of the period of leave without pay to be taken under § 630.1205, consistent with current laws and

regulations governing the granting and use of annual and sick leave.

(d) An agency may not require an employee to substitute paid leave under paragraph (b) of this section for any or all of the period of leave without pay to be taken under § 630.1205.

(e) An employee must notify his or her agency of his or her intent to substitute paid leave under paragraph (b) of this section for the period of leave without pay to be taken under § 630.1205 prior to the date such paid leave begins. An employee may not retroactively substitute paid leave for leave without pay previously taken under § 630.1205, except as provided in §§ 630.914(d) and 630.1012(d).

**§ 630.1213 Notification of intent to invoke entitlement to family and medical leave.**

(a) If leave taken under § 630.1205 is foreseeable based on an expected birth, placement for adoption or foster care, or planned medical treatment, an employee must provide notice to the agency of his or her intent to take leave not less than 30 calendar days before the date the leave is to begin. If the date of birth or placement or planned medical treatment requires leave to begin within 30 calendar days, the employee must provide such notice as is practicable.

(b) If leave taken under § 630.1205(c) or (d) is foreseeable based on planned medical treatment, an employee must consult with his or her agency and make a reasonable effort to schedule medical treatment so as not to disrupt unduly the operations of his or her agency, subject to the approval of the health care provider. An employee's agency may, for justifiable cause, request that he or she reschedule medical treatment, subject to the approval of the health care provider.

(c) If the need for leave is not foreseeable—*e.g.*, because of a medical emergency or the unexpected availability of a child for adoption or foster care—and the employee cannot provide 30 calendar days' notice of his or her need for leave, the employee must provide notice within a reasonable period of time appropriate to the circumstances involved. If necessary, notice may be given by his or her personal representative (*e.g.*, a family member or other responsible party). If the need for leave is not foreseeable and the employee is unable, because of circumstances beyond his or her control, to provide notice of his or her need for leave, the agency may not delay or deny the requested leave.

(d) If the need for leave is foreseeable and an employee fails to give 30 calendar days' notice with no reasonable excuse for the delay of

notification, his or her agency may delay the taking of leave under § 630.1205 until at least 30 calendar days after the date the employee provides notice of his or her need for family and medical leave.

(e) An agency may waive the notification requirements under paragraph (a) of this section and instead impose the agency's usual and customary policies or procedures for providing notification of leave. The agency's policies or procedures for providing notification of leave must not be more stringent than the requirements of this section. However, an agency may not deny an employee's entitlement to leave under § 630.1205 if the employee fails to follow such agency policies or procedures.

(f) An agency may require that a request for leave under § 630.1205(a) and (b) (for childbirth or adoption) be supported by evidence that is administratively acceptable to the agency.

**§ 630.1214 Medical certification of a serious health condition.**

(a) An agency may require that a request for leave for a serious health condition under § 630.1205(c) or (d) be supported by written medical certification issued by the employee's health care provider or the health care provider of his or her spouse, son or daughter, or parent, as appropriate. An agency may waive the requirement for an initial medical certificate for a serious health condition in a subsequent 12-month period if the leave under § 630.1205(c) or (d) is for the same chronic or continuing condition.

(b) If an employee is unable to provide the requested medical certification before leave begins, or if the agency questions the validity of the original certification the employee provides and the medical treatment requires the leave to begin, the agency must grant provisional leave pending final written medical certification.

(c) If, after the leave has commenced, the employee fails to provide the requested medical certification, the agency may—

(1) Charge the employee as absent without leave (AWOL); or

(2) Allow the employee to request that the provisional leave be charged as leave without pay or charged to his or her annual and/or sick leave account, as appropriate.

**§ 630.1215 Contents of a medical certification.**

A written medical certification must include—

(a) The date the serious health condition commenced;

(b) The probable duration of the serious health condition or a specific indication that the serious health condition is a chronic or continuing condition with an unknown duration, including a finding that the patient is presently incapacitated, and the likely duration and frequency of episodes of incapacity;

(c) The appropriate medical facts within the knowledge of the health care provider regarding the serious health condition, including a general statement as to the incapacitation, examination, or treatment that may be required by a health care provider;

(d) If an employee is taking leave under § 630.1205(c)—

(1) A statement from the health care provider that the employee's spouse, son or daughter, or parent requires psychological comfort and/or physical care; needs assistance for basic medical, hygienic, nutritional, safety, or transportation needs or in making arrangements to meet such needs; and would benefit from his or her care or presence; and

(2) A statement from the employee on the care he or she will provide and an estimate of the amount of time needed to care for his or her spouse, son or daughter, or parent;

(e) If an employee is taking leave under § 630.1205(d), a statement that the employee requires medical treatment for a serious health condition or is unable to perform one or more of the essential functions of his or her position, based on written information provided by the employee's agency on the essential functions of his or her position or, if not provided, discussion with the employee about the essential functions of his or her position; and

(f) In the case of certification for intermittent leave or leave on a reduced leave schedule under § 630.1205(c) or (d) for planned medical treatment—

(1) A certification of the dates (actual or estimated) on which such treatment is expected to be given, the duration of such treatment, and the period of recovery, if any; or

(2) A certification that the serious health condition is a chronic or continuing condition with an unknown duration, specifying whether the patient is presently incapacitated and stating the likely duration and frequency of episodes of incapacity.

**§ 630.1216 Limitations on the medical certification.**

The information an employee must provide in the written medical certification must relate only to the serious health condition for which the current need for family and medical

leave exists. An agency may not require any personal or confidential information in the written medical certification other than that required by § 630.1215. If an employee submits a completed medical certification signed by a health care provider, his or her agency may not request new information from the health care provider. However, a health care provider representing the agency, including a health care provider employed by the agency or under its administrative oversight, may contact the health care provider who completed the medical certification, with the employee's permission, for the purpose of clarifying the medical certification.

**§ 630.1217 Second and third opinions on a serious health condition.**

(a) If an agency questions the validity of the original medical certification that an employee provided under § 630.1214, the agency may require, at its expense, that the employee obtain the opinion of a second health care provider designated or approved by the agency concerning the information certified under §§ 630.1214 and 630.1215. The agency may not designate or approve any health care provider who is employed by the agency or is under its administrative oversight on a regular basis unless the agency is located in an area where access to health care is extremely limited—*e.g.*, a rural area or an overseas location where no more than one or two health care providers practice in the relevant specialty, or the only health care providers available are employed by the agency.

(b) If the opinion of the second health care provider differs from the original certification provided under § 630.1214, an agency may require, at its expense, that the employee obtain the opinion of a third health care provider designated or approved jointly by the employee and his or her agency concerning the information certified under § 630.1215. The opinion of the third health care provider is binding on the employee and the agency.

(c) To remain entitled to family and medical leave under § 630.1205(c) or (d), the employee or his or her spouse, son or daughter, or parent must comply with any requirement from the agency that the employee or his or her spouse, son or daughter, or parent submit to examination (though not treatment) to obtain a second or third medical certification from a health care provider other than the individual's health care provider.

**§ 630.1218 Time limits for providing medical certification.**

An employee must provide the written medical certification required by §§ 630.1214, 630.1215, and 630.1217, signed by the health care provider, no later than 15 calendar days after the date his or her agency requests such medical certification. If it is not practicable under the particular circumstances to provide the requested medical certification no later than 15 calendar days after the date requested by the agency despite the employee's diligent, good faith efforts, he or she must provide the medical certification within a reasonable period of time under the circumstances involved, but no later than 30 calendar days after the date the agency requests such medical certification.

**§ 630.1219 Periodic recertification of a serious health condition.**

An agency may require that an employee obtain subsequent medical recertification on a periodic basis, but not more than once every 30 calendar days, for leave taken for purposes relating to pregnancy, chronic conditions, or long-term conditions, as these terms are used in the definition of *serious health condition* in § 630.1204. For leave taken for all other serious health conditions, including leave taken on an intermittent or reduced leave schedule, if the health care provider has specified on the medical certification a minimum duration of the period of incapacity, his or her agency may not request recertification until that period has passed. However, the agency may require subsequent medical recertification more frequently than once every 30 calendar days, or more frequently than the minimum duration of the period of incapacity specified on the medical certification, if the employee requests that the original leave period be extended, the circumstances described in the original medical certification have changed significantly, or the agency receives information that casts doubt upon the continuing validity of the medical certification. The agency must pay for any periodic recertification it requires.

**§ 630.1220 Protection of confidentiality.**

To ensure the security and confidentiality of any written medical certification under §§ 630.1214, 630.1215, 630.1217 or 630.1224, the medical certification must be subject to the provisions for safeguarding information about individuals under 5 CFR part 293 or subpart A of this part.

**§ 630.1221 Employee protections upon return to work.**

If an employee takes family and medical leave under § 630.1205, he or she is entitled, upon return to his or her agency, to be returned to —

(a) The same position the employee held when the leave commenced; or

(b) An equivalent position with equivalent benefits, pay, status, and other terms and conditions of employment.

**§ 630.1222 Equivalent position upon return to work.**

(a) An equivalent position under § 630.1221(b) must be in the same commuting area and must carry or provide, at a minimum—

(1) The same or substantially similar duties and responsibilities, which must entail substantially equivalent skill, effort, responsibility, and authority;

(2) An equivalent grade or pay level, including any applicable locality-based comparability payment under 5 U.S.C. 5304; special rate of pay for law enforcement officers or special pay adjustment for law enforcement officers under section 403 or 404 of the Federal Employees Pay Comparability Act of 1990 (Pub. L. 101–509), respectively; continued rate of pay under 5 CFR part 531, subpart G; or special salary rate under 5 U.S.C. 5305 or similar provision of law;

(3) The same type of appointment, work schedule, status, and tenure;

(4) The same employment benefits made available to the employee in his or her previous position (*e.g.*, life insurance, health benefits, retirement coverage, and leave accrual);

(5) The same or equivalent opportunity for a within-grade increase, performance award, incentive award, or other similar discretionary and non-discretionary payments, consistent with applicable laws and regulations. However, the entitlement to be returned to an equivalent position does not extend to intangible or unmeasurable aspects of the job;

(6) The same or equivalent opportunity for premium pay consistent with applicable law and regulations under 5 CFR part 550, subpart A, or 5 CFR part 551, subpart E; and

(7) The same or equivalent opportunity for training or education benefits consistent with applicable laws and regulations, including any training the employee may be required to complete to qualify for his or her previous position.

(b) For the purpose of applying paragraph (c) of this section, the same entitlements and limitations in law and regulations that apply to the position,

pay, benefits, status, and other terms and conditions of employment of an employee in a leave without pay status must apply when an employee is on leave without pay under this subpart, except where different entitlements and limitations are specifically provided in this subpart.

(c) An employee is not entitled to be returned to the same or equivalent position under paragraph (a) of this section if he or she would not otherwise have been employed in that position at the time he or she returns from leave.

(d) An agency may not return an employee to an equivalent position where written notification has been provided that the equivalent position will be affected by a reduction in force if the employee's previous position is not affected by a reduction in force.

**§ 630.1223 Medical certification of fitness to return to work.**

(a) An agency may establish, as a condition for returning to work for employees who take leave for a serious health condition under § 630.1205(d), a uniformly applied practice or policy that requires an employee, and all similarly-situated employees (*i.e.*, in the same occupation, with the same serious health condition), to obtain written medical certification from his or her health care provider that the employee is able to perform the essential functions of his or her position. An agency may delay an employee's return until the medical certification is provided. The same conditions for verifying the adequacy of a medical certification in § 630.1216 apply to the medical certification to return to work. An agency may not require a second or third opinion on the medical certification to return to work. An agency may not require a medical certification to return to work during the period the employee takes leave intermittently or under a reduced leave schedule under § 630.1211.

(b) If an agency requires an employee to obtain written medical certification under paragraph (a) of this section before he or she returns to work, the agency must notify the employee of this requirement before leave commences, or as soon as practicable in emergency medical situations, and pay the expenses for obtaining the written medical certification. An employee's refusal or failure to provide written medical certification under paragraph (a) of this section may be grounds for appropriate disciplinary or adverse action, as provided in 5 CFR part 752.

**§ 630.1224 Intent to return to work.**

An agency may require that an employee report periodically on his or her status and his or her intent to return to work. An agency's policy requiring such reports must take into account all of the relevant facts and circumstances of the employee's situation.

**§ 630.1225 Adverse actions.**

An employee's decision to invoke FMLA leave under § 630.1205 does not prohibit an agency from proceeding with appropriate actions under 5 CFR part 432 or 5 CFR part 752.

**§ 630.1226 Denial of family and medical leave.**

If an employee does not comply with the notification requirements in § 630.1213 and does not provide medical certification signed by the health care provider that includes all of the information required in § 630.1215 within the time limits prescribed in § 630.1218, he or she is not entitled to family and medical leave.

**§ 630.1227 Continuation of health benefits.**

If an employee is enrolled in a health benefits plan under the Federal Employees Health Benefits Program (established under 5 U.S.C. chapter 89) and is in a leave without pay status as a result of using his or her entitlement to family and medical leave under § 630.1205, he or she may continue his

or her health benefits enrollment while in the leave without pay status and arrange to pay the appropriate employee contributions into the Employees Health Benefits Fund (established under 5 U.S.C. 8909). The employee must make such contributions consistent with 5 CFR 890.502.

**§ 630.1228 Greater leave entitlements.**

(a) An agency must comply with any collective bargaining agreement and any agency employment benefit program or plan that provides greater family or medical leave entitlements to an employee than those provided under this subpart. Nothing in this subpart prevents an agency from amending such policies, provided the policies comply with the requirements of this subpart.

(b) Any collective bargaining agreement or any employee benefit program or plan may not diminish the entitlements established for employees under this subpart.

(c) An agency may adopt leave policies more generous than those provided in this subpart, except that such policies may not provide entitlement to paid time off in an amount greater than that otherwise authorized by law or provide sick leave in any situation in which sick leave would not normally be allowed by law or regulation.

(d) The entitlements under 5 U.S.C. 6381 through 6387 and this subpart do

not modify or affect any Federal law prohibiting discrimination. If the entitlements under 5 U.S.C. 6381 through 6387 and this subpart conflict with any Federal law prohibiting discrimination, an agency must comply with whichever statute provides greater entitlements to employees.

**§ 630.1229 Records on the use of family and medical leave.**

(a) An agency must maintain records of the amount of family and medical leave used by an employee under § 630.1205. The records must be sufficient to ensure that employees do not exceed the entitlement to 12 administrative workweeks within a 12 month period as described in § 630.1207.

(b) When an employee transfers to a different agency, the losing agency must provide the gaining agency with information on family and medical leave taken under § 630.1205 by the employee during the 12 months prior to the date of transfer. The losing agency must provide the following information:

(1) The beginning and ending dates of the employee's 12-month period, as determined under § 630.1207; and

(2) The number of hours of leave taken under § 630.1205 of the subpart during the employee's 12-month period.

[FR Doc. 04-28544 Filed 12-30-04; 8:45 am]

BILLING CODE 6325-39-P