

update VetGuide to further clarify the application of the 24-month requirement.

One commenter recommended OPM replace the word "badge" with "medal" or "badge or medal" in § 211.102(a)(2). OPM is not adopting this recommendation because the reference to "badge" is contained in law at 5 U.S.C. 2108(1)(A). Further, military personnel receive many awards and decorations which are determined by the Department of Defense. OPM and its predecessor agency, the Civil Service Commission, have always used the terms "badge" and "medal" interchangeably, as appropriate. We believe VetGuide provides sufficient explanation of the many badges and medals which qualify for purposes of veterans' preference.

The same individual asked OPM to clarify in the final regulation whether an Army "service medal" qualifies an individual for veterans' preference under part 211. OPM is not adopting this suggestion. The list of military campaigns, expeditions, awards, and decorations qualifying for veterans' preference is too lengthy to be contained in this part. However, OPM lists this information in Appendix A of VetGuide available on-line at <http://www.opm.gov/veterans/html/vgmedal2.asp>. In general, service medals are not qualifying for purposes of veterans' preference.

One commenter asked OPM to explain the significance of changing "separated" to "released or discharged" in § 211.102(a), (b), and (g). OPM modified part 211 in order to be consistent with recent statutory changes to 5 U.S.C. 2108. With these changes the law, OPM's implementing regulations, and Department of Defense (DD) Form 214, *Certificate of Release or Discharge from Active Duty*, the form used by veterans to claim 5-point veterans' preference, all use the same language which should make it easier for eligible veterans to receive their entitlement.

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

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

#### **Regulatory Flexibility Act**

I certify that this regulation would not have a significant economic impact on a substantial number of small entities (including small businesses, small organizational units, and small governmental jurisdictions) because it affects only Federal agencies employees.

#### **List of Subjects in 5 CFR Part 211**

Government employees, Veterans.

Office of Personnel Management.

**Linda M. Springer**,  
*Director.*

■ Accordingly, the interim rule amending part 211 of title 5, Code of Federal Regulations, which was published at 71 FR 33375 on June 9, 2006, is adopted as a final rule without changes.

[FR Doc. E7-4697 Filed 3-14-07; 8:45 am]

**BILLING CODE 6325-39-P**

### **OFFICE OF PERSONNEL MANAGEMENT**

#### **5 CFR PARTS 317, 353, 550, and 551**

**RIN 3206-AL21**

#### **Employment in the Senior Executive Service, Restoration To Duty From Uniformed Service or Compensable Injury, Pay Administration (General), and Pay Administration Under the Fair Labor Standards Act; Miscellaneous Changes to Pay and Leave Rules**

**AGENCY:** Office of Personnel Management.

**ACTION:** Final rule.

**SUMMARY:** The Office of Personnel Management is issuing final regulations to amend a number of rules on pay and leave administration, including employment in the Senior Executive Service, use of paid leave during uniformed service, time limits for using compensatory time off earned in lieu of overtime pay, and other miscellaneous changes. The final regulations are being issued to standardize pay and leave policies in support of the consolidation of agency human resources and payroll systems.

**DATES:** The regulations are effective on May 14, 2007.

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

**SUPPLEMENTARY INFORMATION:** On January 5, 2005, the Office of Personnel Management (OPM) issued a comprehensive package of proposed regulations on 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 (70 FR 1068). The proposed regulations are available at <http://www.opm.gov/>

*fedregis*. The 60-day comment period ended on March 7, 2005. We received a total of 93 comments on the proposed regulations.

In these final regulations, we are addressing the revisions to rules concerning the retention of pay and benefits for a Senior Executive Service (SES) member who accepts a Presidential appointment, use of paid leave during uniformed service, time limits for using compensatory time off earned in lieu of overtime pay, and other miscellaneous rules. We have already published regulations for some of the subject areas included in the January 2005 proposed regulations in separate issuances in the **Federal Register**. Comments received on the proposed changes to the rules on Adjustments of Work Schedules for Religious Observances, Hours of Duty, and Absence and Leave will be addressed in subsequent issuances in the **Federal Register**.

Except as otherwise stated in this supplementary information, the purpose of the revisions in these final regulations is to standardize pay and leave policies in support of the consolidation of agency human resources and payroll systems and in general to aid agencies in the administration of these programs. All revisions are being made to regulations in title 5, Code of Federal Regulations.

#### **Regulations Already Issued**

Some of the changes included in the January 2005 proposed regulations have already been addressed in subsequent regulations issued by OPM on May 13, 2005, May 31, 2005, and August 17, 2006, as discussed below.

The January 2005 regulations proposed to amend the definition of rate of basic pay in §§ 575.103, 575.203, and 575.303 to clarify that night pay and environmental differential pay under the Federal Wage System are not included in the rate of basic pay for the purposes of recruitment, relocation, and retention incentives. The amended definition of rate of basic pay for the purpose of recruitment, relocation, and retention incentives was included in OPM's interim regulations issued on May 13, 2005, for recruitment, relocation, and retention incentives (70 FR 25732). The interim regulations are available at <http://www.opm.gov/fedregis>.

The January 2005 regulations proposed to add a new § 531.605 to define the requirements for determining an employee's official worksite for the purpose of identifying an employee's location-based pay entitlements, including locality rates and special

rates. The proposed regulations also addressed official worksite determinations for employees temporarily working at other locations and teleworking from an alternative worksite. The comments OPM received on proposed § 531.605 were addressed and changes made as an interim rule on May 31, 2005 (70 FR 31278). The interim regulations are available at <http://www.opm.gov/fedregis>. Section 531.605 was again revised in interim regulations issued on August 17, 2006, to clarify the rules for determining an employee's official worksite when he or she teleworks from an alternative worksite during an emergency situation, such as a pandemic health crisis (71 FR 47692). The interim regulations are available on OPM's Web site at <http://www.opm.gov/fedregis>.

Finally, the January 2005 regulations proposed to amend 5 CFR part 630, subpart D, concerning the use of sick leave for family care or bereavement purposes. The regulations proposed, among other changes, removing the requirement that a full-time employee must maintain 80 hours of sick leave in his or her sick leave account to use up to 104 hours (13 workdays) of his or her sick leave for general family care or bereavement purposes and up to 480 hours (12 workweeks) of sick leave to care for a family member with a serious health condition. The comments OPM received on the proposed amendments to 5 CFR part 630, subpart D, were addressed and changes made as a final rule on August 17, 2006 (71 FR 47693). The final regulations on sick leave are available at <http://www.opm.gov/fedregis>.

### Final Regulations in This Issuance

In this issuance, the final regulations address the changes made to the rules on employment in the Senior Executive Service, use of paid leave during uniformed service, time limits for using compensatory time off earned in lieu of overtime pay, and other miscellaneous changes. For these subject areas, we received 29 comments on the January 2005 proposed regulations—20 from agencies, 6 from individuals, 2 from Federal labor unions, and 1 from a Federal employee association.

### Senior Executive Service

Under 5 U.S.C. 5307(d), a higher aggregate limitation on pay (equal to the total annual compensation payable to the Vice President under 3 U.S.C. 104) applies to SES members in positions covered by a certified senior executive performance appraisal system. An agency questioned whether a former SES member may continue to retain the

higher aggregate limitation on pay under the authority provided in 5 U.S.C. 3392(c) and § 317.801(b) to retain SES pay and benefits when he or she accepts a Presidential appointment. In these final regulations, we have amended § 317.801(b) to clarify that a former SES member who chooses to retain SES provisions related to basic pay, performance awards, awarding of ranks, severance pay, leave, and retirement may also choose to retain the higher aggregate limitation on pay that applied to the employee.

### Paid Leave While Performing Uniformed Service

OPM proposed to amend § 353.208 to permit an employee, upon request, to use any accrued annual leave or military leave while performing service with the uniformed service, but not to use sick leave. An agency objected to the proposed change. The agency stated that the use of sick leave during a period of military service is a legitimate right of an employee under the provisions and intent of the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA), (Public Law 103–353, October 13, 1994). We agree and are not adopting the proposed amendment. Section 353.208 will continue to permit an employee performing service in the uniformed service to use sick leave, when appropriate.

An agency recommended that OPM permit an employee to use compensatory time off earned in lieu of overtime pay and earned credit hours while performing uniformed service, since they both provide paid time off. We are not adopting this suggestion because employees are entitled to payment for unused compensatory time off and credit hours only in certain situations. We note that § 550.114(f)(2)(i) and § 551.531(f)(1) require agencies to provide payment for unused earned compensatory time off when an employee is separated or placed in a leave without pay status to perform uniformed service.

We believe it would be appropriate to allow an employee to use earned compensatory time off for travel under 5 CFR part 550, subpart N, while performing uniformed service because an employee may not receive payment for unused earned compensatory time off for travel. (See 5 U.S.C. 5550b(b) and § 550.1408.) We have revised § 353.208 to permit an employee to use earned compensatory time off for travel under 5 CFR part 550, subpart N, to perform uniformed service.

Section 1106 of the National Defense Authorization Act for Fiscal Year 2000

(Public Law 106–65, October 5, 1999) 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. Consistent with this statutory amendment, we proposed to delete the last sentence of § 353.208, which states an employee may not use military leave for inactive duty training. We did not receive any comments, and therefore, have deleted the last sentence in § 353.208 in these final regulations.

### Time Limits for Using Earned Compensatory Time Off

The consolidation of human resources and payroll processing systems has revealed varying discretionary policies among agencies concerning time limits for using compensatory time off earned in lieu of overtime pay. These varying policies have resulted in increased costs for payroll providers to accommodate the myriad of agency policies within their systems and those increased costs are passed on to the agencies. As part of OPM's effort to support the consolidation of human resources and payroll processing systems, we proposed a standardized time limit of 26 pay periods for using compensatory time off earned in lieu of overtime pay that would be applied Governmentwide. The 26-pay period time limit would be applied to both employees not covered by the FLSA (FLS-exempt) under § 550.114 and employees covered by the FLSA (FLSA-nonexempt) under § 551.531. To assist in transitioning to the new time limitation, we proposed to provide an employee with unused compensatory time off to his or her credit on the effective date of the final regulations 26 pay periods after the effective date to use such compensatory time off.

In § 550.114(d), we proposed to provide agencies with discretionary authority to provide payment to FLSA-exempt employees for, or require forfeiture of, compensatory time off that is not used within the 26-pay period time limit. The proposed regulations at § 550.114(d)(2) allowed that if an FLSA-exempt employee is unable to take earned compensatory time off within 26 pay periods due to an exigency of the service beyond the employee's control, the agency must provide payment for the unused compensatory time off at the overtime rate in effect for the period during which the compensatory time off was earned. In addition, the proposed regulations at § 550.114(e)(2) (§ 550.114(f)(2) in the final regulations) required that if an FLSA-exempt

employee 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, the agency must provide payment for the unused compensatory time off at the overtime rate in effect for the period during which the compensatory time off was earned.

In addition, to ensure consistent treatment of affected employees, OPM proposed amending § 551.531(d) to require an FLSA-nonexempt employee to use earned compensatory time off within 26 pay periods. An FLSA-nonexempt employee who fails to use earned compensatory time off earned within 26 pay periods or who separates or transfers from the agency before the earned compensatory time off is used, must be paid for the unused compensatory time off at the overtime rate in effect for the period during which the compensatory time off was earned. The proposed regulations at § 551.531(e) (§ 551.531(f) in the final regulations) also required that, if an FLSA-nonexempt employee is placed on leave without pay to perform service in the uniformed services or because of an on-the-job injury with entitlement to injury compensation under 5 U.S.C. chapter 81, the agency must provide payment for the unused compensatory time off at the overtime rate in effect for the period during which the compensatory time off was earned.

One agency recommended a shorter time limitation—*e.g.*, 13 pay periods—for using compensatory time off earned in lieu of overtime pay. An individual opposed the limitation of 26 pay periods. The two labor organizations opposed providing agencies with discretionary authority to determine whether an FLSA-exempt employee must forfeit or receive payment for unused compensatory time off. One labor organization recommended expanding the circumstances in which an employee must receive payment for unused compensatory time off to include reduction in force (RIF) situations. The other labor organization believed FLSA-exempt employees should receive payment for compensatory time off not used within 26 pay periods or be given additional time to use the compensatory time off.

We disagree with these recommendations. Unlike FLSA-nonexempt employees, who have a statutory entitlement to receive payment for unused compensatory time off, FLSA-exempt employees do not have any such statutory entitlement. Legislation is needed to provide FLSA-

exempt employees with an entitlement to receive payment for unused compensatory time off. In addition, requiring agencies to provide payment for unused compensatory time off to FLSA-exempt employees would significantly increase costs for Federal agencies. Finally, we believe 26 pay periods is sufficient time for most employees to use their earned compensatory time off. We note that § 550.114(d)(2) requires agencies to provide payment for compensatory time off if an employee's failure to use his or her earned compensatory time off is due to an exigency of the service beyond the employee's control.

An agency was concerned that a "rolling" 26-pay period time limit would be an administrative burden for agencies to track. Another agency suggested using a fixed yearly date for employees to use earned compensatory time off because it would provide for easier tracking and monitoring. We are not adopting these suggestions. We believe most agencies already impose on employees a "rolling" time limit for using earned compensatory time off. Therefore, the proposed regulations would not impose an additional administrative burden on the agencies. A fixed yearly date for using earned compensatory time off would result in providing varying lengths of time for individual employees to use earned compensatory time off, depending on when the employee earned the compensatory time off. We believe imposing a time limit of 26 pay periods within which to use earned compensatory time off results in fair and equitable treatment of affected employees and supports our goal of standardizing pay policies. Employees will all have the same number of pay periods within which they must use their earned compensatory time off. We are adopting the revised regulations in § 550.114(d) and (f) and § 551.531(f) as final.

Two agencies disagreed with proposed § 550.114(d), which would give an employee with unused compensatory time off to his or her credit as of the effective date of the final regulations 26 pay periods after the effective date of the final regulations to use the compensatory time off. One agency suggested providing agencies with discretionary authority to extend the time limitation for using earned compensatory time off for employees who have been unable to use earned compensatory time off prior to the effective date of the final regulations because of work requirements or scheduling conflicts. Another agency is concerned that the proposed rule would

have major budgetary implications if the agency's policy were to provide payment for unused compensatory time off and employees are unable to use their earned compensatory time off within 26 pay periods after the effective date of the final regulations. The agency suggested that employees who have compensatory time off to their credit as of the effective date of the final regulations be given a minimum of 3 years to use the compensatory time off. We agree and have added a new paragraph (e) to § 550.114 and § 551.531 of the final regulations to allow an employee who has compensatory time off to his or her credit as of the effective date of the final regulations at least 3 years to use the earned compensatory time off.

One agency suggested revising the proposed regulations to require an employee to use earned compensatory time off within 26 pay periods after the pay period during which it was earned. The agency suggested beginning the 26-pay period time limit after the pay period during which it was earned will ensure standardized recordkeeping and tracking. We agree and have revised § 550.114(d) and § 551.531(d) to require that compensatory time off that is not used within 26 pay periods after the pay period during which it was earned must be paid by the agency or forfeited by the employee.

An agency noted that proposed § 550.114(e)(1) addresses the treatment of compensatory time off when an employee either transfers or separates from an agency, while § 551.531(d) addresses the treatment of compensatory time off only when an employee separates from an agency. To remedy this, we have revised § 551.531(d) to address the treatment of compensatory time off when an employee transfers to a different agency.

Finally, we are redesignating § 551.531(e) as § 551.531(g), and correcting new paragraph (g) by deleting language that states the value of compensatory time off for FLSA-nonexempt employees is considered in applying pay limitations. Compensatory time off for FLSA-nonexempt employees should not be considered in applying the biweekly or annual premium pay limitations established under 5 U.S.C. 5547 or the aggregate limitation on pay established under 5 U.S.C. 5307. In addition, we are correcting a citation in §§ 550.112(j)(1) and 551.422(d) from "(41 CFR 301-1.3(c)(4))" to "(41 CFR 300-3.1)," which references the definition of *official station* in the General Services Administration's Federal Travel Regulations.

An individual requested clarification of the terms *irregular or occasional overtime work* in relationship to earning compensatory time off. As defined in § 550.103, *irregular or occasional overtime work* means overtime work that is not part of an employee's regularly scheduled administrative workweek (*i.e.*, the period within an administrative workweek in which an employee is regularly scheduled to work).

#### Other Miscellaneous Changes

##### *Lump-Sum Payments for Annual Leave*

The regulations governing lump-sum payments for accumulated and accrued annual leave for employees who separate from Federal service in 5 CFR 550, subpart L, have been revised to ensure consistency with the guidance provided in the OPM Operating Manual on the Federal Wage System. The revised regulations ensure 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. An agency asked that we clarify what is meant by "work beyond the effective date of separation." Another agency requested clarification in determining whether a lump-sum payment should be extended to the end of an employee's last scheduled shift. Under 5 U.S.C. 5551, a lump-sum payment must equal the pay an employee would have received had he or she remained in Federal service until expiration of the period of annual leave. Agencies must project a lump-sum period to include any accumulated and accrued annual leave to the employee's credit, as of the date of separation. The lump-sum leave period is the employee's annual leave projected forward for all workdays the employee would have worked if he or she had remained in Federal service, including holidays (even though they are typically nonworkdays) as required by 5 U.S.C. 5551(a), until the expiration of the employee's accumulated and accrued annual leave. The final regulations in § 550.1205(b)(5) state that a 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. The lump-sum period extends only through the last hour of annual leave.

##### *Restriction on Paying Sunday Premium Pay*

Section 636 of the Treasury and General Government Appropriations Act, 1998 (Public Law 105-61, October

10, 1997), permanently restricted the payment of Sunday premium pay for all employees Governmentwide who are paid from appropriated funds and who do not actually perform work on Sunday. Section 624 of the Treasury and General Government Appropriations Act, 1999 (Public Law 105-277, October 21, 1998), expanded the permanent restriction on the payment of Sunday premium pay to cover employees who are paid from any Act (including payments from revolving funds). These provisions effectively prohibit the payment of Sunday premium pay to employees during any period when no work is performed. This includes holidays, periods of paid leave, excused absence (administrative leave), compensatory time off, credit hours, or time off as an incentive or performance award. The restriction covers employees who are paid from any Act, including payments from revolving funds. Consistent with this permanent legal restriction, we have revised § 550.171(a) by deleting language stating that Sunday premium pay is paid during periods of paid leave or excused absence. We also will revise our guidance on payment of Sunday premium pay during periods of paid leave in the OPM Operating Manual for the Federal Wage System.

#### 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 317, 353, 550, and 551

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

Office of Personnel Management.

**Linda M. Springer,**  
*Director.*

■ Accordingly, OPM amends parts 317, 353, 550, and 551 of title 5 of the Code of Federal Regulations to read as follows:

#### **PART 317—EMPLOYMENT IN THE SENIOR EXECUTIVE SERVICE**

■ 1. The authority citation for part 317 continues to read as follows:

**Authority:** 5 U.S.C. 3392, 3393, 3395, 3397, 3592, 3593, 3595, 3596, 8414, and 8421.

#### **Subpart H—Retention of SES Provisions**

■ 2. In § 317.801, paragraph (b)(1) is revised to read as follows:

\* \* \* \* \*

(b) *Election.* (1) At the time of appointment, an appointee covered by paragraph (a) of this section may elect to retain some, all, or none of the following SES provisions related to basic pay (including the aggregate limitation on pay established by 5 U.S.C. 5307), performance awards, awarding of ranks, severance pay, leave, and retirement. That election will remain in effect for no less than 1 year, unless the appointee leaves the position sooner.

\* \* \* \* \*

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

■ 3. 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**

■ 4. 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 under 5 U.S.C. 6304, military leave under 5 U.S.C. 6323, or earned compensatory time off for travel under 5 U.S.C. 5550b during such service.

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

##### **Subpart A—Premium Pay**

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

**Authority:** 5 U.S.C. 5304 note, 5305 note, 5504(d), 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.

##### **§ 550.112 [Amended]**

■ 6. In § 550.112(j)(1), remove the citation "(41 CFR 301-1.3(c)(4))" and add in its place "(41 CFR 300-3.1)."

■ 7. In § 550.114, paragraph (d) is revised, paragraph (e) is redesignated as paragraph (g), and new paragraphs (e) and (f) are added to read as follows:

§ 550.114 Compensatory time off.

\* \* \* \* \*

(d) Except as provided in paragraph (f)(2) of this section, an employee must use accrued compensatory time off to which he or she 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 earned. 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 or she is entitled within 26 pay periods after the pay period during which it was earned must—

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

(e) Except as provided in paragraph (f)(2) of this section, compensatory time off to an employee's credit as of May 14, 2007 must be used by the end of the pay period ending 3 years after May 14, 2007. 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 or she is entitled by the end of the pay period ending 3 years after May 14, 2007 must—

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

(f)(1) Except as provided in paragraph (f)(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 paragraphs (d) or (e) of this section may receive overtime pay or forfeit the unused compensatory time off, consistent with the employing agency's policy established under paragraphs (d) and (e) 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 (g) 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 § 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.

\* \* \* \* \*

■ 8. In § 550.171, paragraph (a) is revised to read as follows:

§ 550.171 Authorization of pay for Sunday work.

(a) A full-time employee is entitled to pay at his or her rate of basic pay plus premium pay at a rate equal to 25 percent of his or her rate of basic pay for each hour of Sunday work (as defined in § 550.103).

\* \* \* \* \*

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

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

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

■ 10. In § 550.1205, revise paragraph (b)(5)(i) and paragraph (g) 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.

\* \* \* \* \*

(g) For a reemployed annuitant who becomes eligible for a lump-sum payment under § 550.1203, the agency must compute the lump-sum payment

using the annuitant's pay before any reductions required under § 837.303 of this chapter.

\* \* \* \* \*

PART 551—PAY ADMINISTRATION UNDER THE FAIR LABOR STANDARDS ACT

■ 11. 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 D—Hours of Work

§ 551.422 [Amended]

■ 12. In § 551.422(d), remove the citation "(41 CFR 301-1.3(c)(4))" and add in its place "(41 CFR 300-3.1)."

Subpart E—Overtime Pay Provisions

■ 13. In § 551.531, paragraph (d) is revised, paragraph (e) is revised and redesignated as paragraph (g), and new paragraphs (e) and (f) are 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 after the pay period during which it was earned or if the employee transfers or separates from an agency before using the compensatory time, the employee must be paid for overtime work at the dollar value prescribed in paragraph (g) of this section.

(e) Compensatory time off to an employee's credit as of May 14, 2007 must be used by the end of the pay period ending 3 years after May 14, 2007. If the earned compensatory time off is not taken by the end of the pay period ending 3 years after May 14, 2007, the employee must be paid for overtime work at the dollar value prescribed in paragraph (g) of this section.

(f) If an employee with unused compensatory time off under paragraphs (a), (b), or (e) 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 overtime work at the overtime rate at the dollar value prescribed in paragraph (g) of this section:

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

(2) The employee is separated or 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.

(g) The dollar value of compensatory time off when it is liquidated is the amount of overtime pay the employee otherwise would have received for hours of the pay period during which compensatory time off was earned by performing overtime work.

\* \* \* \* \*

[FR Doc. E7-4696 Filed 3-14-07; 8:45 am]

BILLING CODE 6325-39-P

## OFFICE OF PERSONNEL MANAGEMENT

### 5 CFR Part 875

RIN 3206-AK99

#### Federal Long Term Care Insurance Program: Miscellaneous Changes, Corrections, and Clarifications

**AGENCY:** Office of Personnel  
Management.

**ACTION:** Final regulation.

**SUMMARY:** The Office of Personnel Management (OPM) is issuing a final rule to make miscellaneous changes, corrections, and clarifications to the Federal Long Term Care Insurance Program (FLTCIP) regulations.

**DATES:** *Effective Date:* April 16, 2007.

**FOR FURTHER INFORMATION CONTACT:** Edward M. DeHarde, Center for Employee and Family Support Policy, Strategic Human Resources Policy Division, Office of Personnel Management, 1900 E Street, NW., Washington, DC 20415; or call him at 202-606-0004.

**SUPPLEMENTARY INFORMATION:** The current FLTCIP regulations were published in the **Federal Register** at 70 FR 30605, May 27, 2005. In those regulations OPM replaced references to "Federal civilian and Postal employees and members of the uniformed services" with "active workforce member" in several places. We are making a similar change in two additional places: § 875.405 and § 875.410. We are also correcting a section reference in § 875.209 of the previously published regulations.

In addition, § 875.408 of the FLTCIP regulations discusses incontestability, a provision that allows coverage based on an erroneous application to continue under certain circumstances. The FLTCIP contractor often doesn't learn that coverage is based on an erroneous application until someone files a claim,

and the contractor becomes aware that the information on the individual's application differed from what is shown in the individual's medical records. If the erroneous coverage has been in effect less than two years, or if the application contained knowingly false or misleading information, the contractor may rescind (void) the coverage and refund the individual's premiums. Section 875.104 of the FLTCIP regulations contains procedures for resolving disputes concerning eligibility for benefits and payment of claims. These final regulations clarify that the claims dispute procedures apply only to persons who have valid coverage under the Program. They do not apply to individuals whose erroneous coverage is rescinded.

A proposed rule was published to amend 5 CFR part 875 in the **Federal Register** at 71 FR 19459, April 14, 2006. OPM requested comments by June 13, 2006. We received one comment by that date, from an FLTCIP enrollee. The issues raised by this commenter are discussed below.

The commenter did not address the miscellaneous changes, corrections, and clarifications that were contained in the proposed regulation. Instead, the commenter suggested that OPM should specifically list in the regulations which injuries qualify for coverage under FLTCIP to ensure that enrollees with similar injuries receive similar coverage. The comment received is beyond the scope of the proposed change to FLTCIP regulations. In addition, coverage under FLTCIP is not based on an enrollee's injury or medical diagnosis; it is based on an enrollee's established inability to perform defined activities of daily living or an enrollee's severe cognitive impairment. Therefore, for the reasons supplied in the proposed rule, the proposed rule amending 5 CFR part 875 which was published in the **Federal Register** at 71 FR 19459, April 14, 2006, is adopted as a final rule without change.

#### Executive Order 12866, Regulatory Review

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

#### Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they affect only enrollees in the Federal Long Term Care Insurance Program.

#### List of Subjects in 5 CFR Part 875

Administrative practices and procedures, Employee benefit plans, Government contracts, Government employees, Health insurance, Military personnel, Retirement.

Office of Personnel Management.

**Linda M. Springer,**

*Director.*

■ Accordingly, OPM is amending 5 CFR part 875, as follows:

#### PART 875—FEDERAL LONG TERM CARE INSURANCE PROGRAM

■ 1. The authority citation for 5 CFR part 875 continues to read as follows:

**Authority:** Authority: 5 U.S.C. 9008.

■ 2. In § 875.104 add paragraph (f) to read as follows:

**§ 875.104 What are the steps required to resolve a dispute involving benefit eligibility or payment of a claim?**

\* \* \* \* \*

(f) The procedures described in paragraphs (a), (b), (c), (d), and (e) of this section apply only if you have valid coverage under the FLTCIP. If the Carrier determines that your coverage was based on an erroneous application and voids the coverage as described in § 875.408 of this part, these provisions do not apply. The Carrier will provide you with information on your review rights in its rescission letter (letter voiding your coverage).

■ 3. In § 875.209 revise the last sentence of paragraph (b) to read as follows:

**§ 875.209 How do I demonstrate that I am eligible to apply for coverage?**

\* \* \* \* \*

(b) \* \* \* The incontestability provisions in § 875.408 do not apply to this section.

■ 4. In § 875.405 revise the first sentence of paragraph (a)(1) to read as follows:

**§ 875.405 If I marry, may my new spouse apply for coverage?**

(a)(1) If you are an active workforce member and you have married, your spouse is eligible to submit an application for coverage under this section within 60 days from the date of your marriage and will be subject to the underwriting requirements in force for the spouses of active workforce members during the most recent open season. \* \* \*

\* \* \* \* \*

■ 5. In § 875.408 revise paragraph (a) to read as follows: