

Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 630

RIN 3206-AL26

Emergency Leave Transfer Program

AGENCY: Office of Personnel Management.

ACTION: Proposed rule with request for comments.

SUMMARY: The Office of Personnel Management is issuing proposed regulations to allow donated annual leave in an agency's voluntary leave bank program to be transferred to an emergency leave transfer program administered by another agency, revise the rules for returning unused donated annual leave to emergency leave donors, and allow judicial branch employees to donate and receive annual leave under an emergency leave transfer program.

DATES: Comments must be received on or before December 14, 2007.

ADDRESSES: Send or deliver written comments to Jerome D. Mikowicz, Deputy Associate Director for Pay and Leave Administration, Rm. 7H31, 1900 E Street, NW., Washington, DC 20415-8200; by fax at (202) 606-0824; or by e-mail to pay-performance-policy@opm.gov.

FOR FURTHER INFORMATION CONTACT: Brenda Roberts, 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 allow donated annual leave in an agency's voluntary leave bank program to be transferred to an emergency leave transfer program administered by another agency, revise the rules for returning unused donated annual leave to emergency leave donors, and allow judicial branch employees to donate and receive annual leave under an emergency leave transfer program, as

provided by Public Law 109-229. These proposed regulations help standardize and simplify leave programs and policies to support consolidating agency human resources and payroll systems. They are also part of OPM's continuing efforts to provide alternative methods for agencies to assist their employees in the event of a pandemic health crisis or other major disasters or emergencies as declared by the President. Finally, the emergency leave transfer regulations have been reorganized and renumbered to aid in accessibility and enhance reader understanding.

Transfer of Leave From Agency Leave Bank to Emergency Leave Transfer Program

Section 6391(d) of title 5, United States Code, permits a leave bank established under 5 U.S.C. 6362 to donate annual leave to an emergency leave transfer program. OPM's regulations currently permit an agency's leave bank to donate annual leave, with the concurrence of the agency's leave bank board, to an emergency leave transfer program administered by the leave bank's employing agency. In the aftermath of Hurricane Katrina, several agencies requested that we broaden this authority to allow an agency's leave bank to donate annual leave to an emergency leave transfer program administered by another agency. We believe a broader authority would have provided an immediate benefit to employees adversely affected by Hurricane Katrina and could benefit employees adversely affected by future major disasters or emergencies. Therefore, we propose adding a new section 5 CFR 630.1104 to permit an agency's leave bank to donate, with the concurrence of the agency's leave bank board, donated annual leave to an emergency leave transfer program administered by another agency during a Governmentwide transfer of emergency leave coordinated by OPM.

Procedures for Recrediting Unused Donated Annual Leave to Emergency Leave Donors

On January 5, 2005, to support the standardization of pay and leave policies under the e-Payroll initiative, OPM issued a comprehensive package of 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 (70 FR 1068). The proposed regulations are available at http://frwebgate.access.gpo.gov/cgi-bin/getpage.cgi?dbname=2005_register&position=all&page=1068. The 60-day comment period ended on March 7, 2005. We received two comments from an agency and a labor union on the proposed rules for recrediting unused donated annual leave to donors under the emergency leave transfer program.

Currently, when a disaster or emergency affecting an emergency leave recipient is terminated, any annual leave donated to an emergency leave transfer program must be returned to the emergency leave donors. The proposed regulations would eliminate the requirement to return unused leave to the donors if the number of hours of unused leave were less than the number of eligible donors. In effect, this would eliminate the requirement to return a fraction of an hour of leave. The labor union felt that employees who donate leave for the specific purpose of helping another employee should have that leave returned to them if unused. The agency recommended returning leave on a prorated basis to employees who donated more hours of leave instead of not returning any of the unused donated annual leave when there are more donors than hours remaining.

We believe the proposed amendment to 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 numbers is consistent with OPM's current regulations at 5 CFR 630.911 for restoring transferred annual leave under the voluntary leave transfer program. The amount of unused donated annual leave returned to an employee would always be proportional to the amount of annual leave donated to the emergency leave transfer program by the employer for the emergency. Further, standardizing the administrative procedures of the emergency leave transfer program to be consistent with the procedures for the voluntary leave transfer program would greatly simplify the administration of this program. However, we are inviting further comments on this proposed policy change so we can fully consider all the

relevant issues before adopting any changes in the final regulations.

Participation of Judicial Branch Employees in an Emergency Leave Transfer Program

Public Law 109–229, effective May 31, 2006, amends 5 U.S.C. 6391 to authorize OPM to provide for the participation of Judicial branch employees in any emergency leave transfer program after consultation with the Administrative Office of the United States Courts. In the event of a major disaster or emergency, as declared by the President, that results in severe adverse effects for a substantial number of employees, the President may 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 agencies who are adversely affected by such disaster or emergency. After consultation with the Administrative Office of the U.S. Courts, OPM is amending 5 CFR part 630, subpart K, to allow for a Judicial branch entity to participate in any emergency leave transfer program established by OPM under 5 U.S.C. 6391.

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 will not have a significant economic impact on a substantial number of small entities because they will apply only to Federal agencies and employees.

List of Subjects in 5 CFR Part 630

Government employees.

Office of Personnel Management.

Linda M. Springer,

Director.

Accordingly, OPM is proposing to amend part 630 of title 5 of the Code of Federal Regulations as follows:

PART 630—ABSENCE AND LEAVE

Subpart K—Emergency Leave Transfer Program

1. The authority citation for part 630 continues to read as follows:

Authority: 5 U.S.C. 6311; 630.205 also issued under Pub. L. 108–411, 118 Stat 2312; 630.301 also issued under Pub. L. 103–356, 108 Stat. 3410 and Pub. L. 108–411, 118 Stat 2312; 630.303 also issued under 5 U.S.C. 6133(a); 630.306 and 630.308 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; 630.501 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; subpart L also issued under 5 U.S.C. 6387 and Pub. L. 103–3, 107 Stat. 23; and subpart M also issued under 5 U.S.C. 6391 and Pub. L. 102–25, 105 Stat. 92.

2. Part 630, subpart K is revised to read as follows:

Subpart K—Emergency Leave Transfer Program

Sec.

- 630.1101 Purpose, applicability, and administration.
- 630.1102 Definitions.
- 630.1103 Establishment of an emergency leave transfer program.
- 630.1104 Donations from a leave bank to an emergency leave transfer program.
- 630.1105 Application to become an emergency leave recipient.
- 630.1106 Approval of an application to become an emergency leave recipient.
- 630.1107 Notification of approval of an application.
- 630.1108 Disapproval of an application to become an emergency leave recipient.
- 630.1109 Use of available paid leave.
- 630.1110 Donating annual leave.
- 630.1111 Limitation on the amount of annual leave donated by an emergency leave donor.
- 630.1112 Limitation on the amount of donated annual leave received by an emergency leave recipient.
- 630.1113 Transferring donated annual leave between agencies.
- 630.1114 Using donated annual leave.
- 630.1115 Accrual of leave while using donated annual leave.
- 630.1116 Limitations on the use of donated annual leave.
- 630.1117 Termination of a disaster or emergency.
- 630.1118 Procedures for returning unused donated annual leave to emergency leave donors.
- 630.1119 Protection against coercion.

§ 630.1101 Purpose, applicability, and administration.

(a) *Purpose.* This subpart provides regulations to implement section 6391 of title 5, United States Code, and must be read together with section 6391. Section 6391 of title 5, United States Code, provides that in the event of a major disaster or emergency, as declared by the President, that results in severe adverse effects for a substantial number of employees, the President may direct the Office of Personnel Management 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 agencies who are adversely affected by such disaster or emergency.

(b) *Applicability.* This subpart applies to any individual who is defined as an “employee” in 5 U.S.C. 6331(1) and who is employed in—

- (1) An Executive agency; or
- (2) The Judicial branch.

(c) *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.

§ 630.1102 Definitions.

In this subpart:

Agency means—

- (1) An “Executive agency,” as defined in 5 U.S.C. 105; or
- (2) A Judicial branch entity.

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 § 630.902.

Leave year has the meaning given that term in § 630.201.

Paid leave status has the meaning given that term in § 630.902.

Transferred leave means donated leave credited to an approved emergency leave recipient’s annual leave account.

§ 630.1103 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 agencies who are adversely affected by a disaster or emergency as defined in § 630.1102. 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, each 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.

§ 630.1104 Donations from a leave bank to an emergency leave transfer program.

A leave bank established under subchapter IV of chapter 63 of title 5, United States Code, and subpart J of part 630 may, with the concurrence of the leave bank board established under § 630.1003, donate annual leave to an emergency leave transfer program administered by the employing agency or another Executive branch agency or Judicial branch entity during a Governmentwide transfer of emergency leave coordinated by OPM.

§ 630.1105 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 emergency 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 disaster or emergency, as defined in 5 CFR 630.1102.

§ 630.1106 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 disaster or emergency, as defined in 5 CFR 630.1102.

§ 630.1107 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).

§ 630.1108 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.

§ 630.1109 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.

§ 630.1110 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 § 630.1111, be transferred from his or her annual leave account to an emergency leave transfer program established under § 630.1103. An emergency leave donor may not donate annual leave for transfer to a specific emergency leave recipient under this subpart. Donated leave not used by an emergency leave recipient may be returned to the emergency leave donor(s) only as provided in § 630.1118.

§ 630.1111 Limitation on the amount of annual 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.

§ 630.1112 Limitation on the amount of donated annual 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.

§ 630.1113 Transferring donated annual 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 §§ 630.1110 and 630.1111 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.

§ 630.1114 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.

§ 630.1115 Accrual of leave while using donated annual 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.

§ 630.1116 Limitations on the use of donated annual leave.

Donated annual leave transferred to a leave recipient under this subpart may not be—

(a) Included in a lump-sum payment under 5 U.S.C. 5551 or 5552;

(b) Recredited to an employee who is reemployed by a Federal agency; or

(c) Used to establish initial eligibility for immediate retirement or acquire eligibility to continue health benefits into retirement under 5 U.S.C. 6302(g).

§ 630.1117 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.

§ 630.1118 Procedures for returning unused donated annual 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 as provided in paragraph (b) of this section. 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.

(c) At the election of the emergency leave donor, he or she may choose to have the agency restore unused donated annual leave by crediting the restored annual leave to the emergency leave donor's annual leave account in either the current leave year or the first pay period of the following leave year.

§ 630.1119 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).

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