

# Rules and Regulations

Federal Register

Vol. 73, No. 68

Tuesday, April 8, 2008

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

## OFFICE OF PERSONNEL MANAGEMENT

### 5 CFR Part 630

RIN 3206-AL49

#### Absence and Leave; Annual Leave for Senior-Level Employees

**AGENCY:** U.S. Office of Personnel Management.

**ACTION:** Final rule.

**SUMMARY:** The U.S. Office of Personnel Management is issuing final regulations to implement a provision of the National Defense Authorization Act for Fiscal Year 2008 which provides a higher limit on the accumulation of annual leave for certain senior-level employees.

**DATES:** These regulations are effective April 8, 2008.

**FOR FURTHER INFORMATION CONTACT:** Doris Rippey 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:** The U.S. Office of Personnel Management (OPM) is issuing final regulations to implement a provision of the National Defense Authorization Act for Fiscal Year 2008 (Pub. L. 110-181, January 28, 2008) which provides a higher limit on the accumulation of annual leave for certain senior-level employees covered by 5 U.S.C. 5376 and 10 U.S.C. 1607(a).

Section 1112 of the Act amends 5 U.S.C. 6304(f)(1) to provide that the annual leave carryover ceiling for employees in senior-level (SL) and scientific and professional (ST) positions compensated under 5 U.S.C. 5376, and for employees serving in positions designated under 10 U.S.C. 1607(a) as Intelligence Senior Level positions, is 90 days (720 hours)—the same 90-day annual leave ceiling that

applies to members of the Senior Executive Service.

#### Waiver of Notice of Proposed Rulemaking

Pursuant to section 553(b)(B) of title 5 of the United States Code, OPM finds good cause exists for waiving the general notice of proposed rulemaking. Also, pursuant to 5 U.S.C. 553(d)(3), OPM finds good cause exists for making this rule effective in less than 30 days. These regulations implement section 1112 of Public Law 10X-181, which became effective on the date of enactment, January 28, 2008. The statutory change is unambiguous and does not require interpretation, because it only extends coverage under a particular provision of law to additional categories of employees. These regulations merely incorporate the statutory change. Thus, a notice of proposed rulemaking and a delayed effective date are unnecessary. This waiver will facilitate timely implementation of the law as intended by Congress.

#### 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 amending 5 CFR part 630 as follows:

#### PART 630—ABSENCE AND LEAVE

■ 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.

#### Subpart C—Annual Leave

■ 2. In § 630.301, the section heading and paragraphs (e), (f), and (g) are revised to read as follows:

#### § 630.301 Annual leave accrual and accumulation—Senior Executive Service, Senior-Level, and Scientific and Professional Employees.

\* \* \* \* \*

(e) Unused annual leave accrued by an employee while serving in a position subject to one of the pay systems under 5 U.S.C. 5383 (Senior Executive Service) or 5 U.S.C. 5376 (Senior-Level and Scientific or Professional) or 10 U.S.C. 1607(a) (Intelligence Senior Level), shall 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 (or corresponding period for an employee who is not paid on the basis of biweekly pay periods) occurring in a calendar year.

(f) When an employee in a position outside of those listed in paragraph (e) of this section moves to a position covered by paragraph (e) of this section, any annual leave accumulated prior to movement shall remain to the employee's credit.

(1) Annual leave accumulated prior to movement to a position covered by paragraph (e) of this section that is in excess of the amount allowed for the former position by 5 U.S.C. 6304(a), (b), or (c) and that is not used by the beginning of the first full biweekly pay period in the next leave year shall be subject to forfeiture.

(2) If an employee serves less than a full pay period in a position listed in paragraph (e) of this section, only that portion of accrued annual leave that is attributable to service in such a position shall be subject to the 90-day (720-hour) limitation on accumulation of annual leave. Annual leave accrued during the

remainder of the pay period shall be subject to the limitations in 5 U.S.C. 6304(a), (b), and (c), as appropriate.

(g) When an employee covered by paragraph (e) of this section moves to a position not covered by paragraph (e) of this section, any annual leave accumulated while serving in the former position that is in excess of the amount allowed for the position by 5 U.S.C. 6304(a), (b), or (c) shall remain to the employee's credit and shall be subject to reduction under procedures identical to those described in 5 U.S.C. 6304(c).

\* \* \* \* \*

[FR Doc. E8-7303 Filed 4-7-08; 8:45 am]

BILLING CODE 6325-39-P

## MERIT SYSTEMS PROTECTION BOARD

### 5 CFR Part 7401

RIN 3209-AA15

#### Supplemental Standards of Ethical Conduct for Employees of the Merit Systems Protection Board

**AGENCY:** Merit Systems Protection Board (MSPB).

**ACTION:** Final rule.

**SUMMARY:** The Merit Systems Protection Board, with the concurrence of the Office of Government Ethics (OGE), is adopting as final, without change, the interim MSPB rule that supplements the executive-branch-wide Standards of Ethical Conduct (Standards) issued by OGE and, with certain exceptions, requires MSPB employees to obtain approval before engaging in outside employment.

**DATES:** This final rule is effective April 8, 2008.

**FOR FURTHER INFORMATION CONTACT:** B. Chad Bungard, General Counsel, Merit Systems Protection Board, fax: (202) 653-6203; e-mail: [mspb@mspb.gov](mailto:mspb@mspb.gov).

**SUPPLEMENTARY INFORMATION:** The MSPB published, with OGE concurrence, an interim rule at 72 FR 26533, on May 10, 2007, governing the conduct of MSPB employees and requested comments. No comments were received. The MSPB has determined, with OGE concurrence, to adopt the interim rule as final without change. The interim rule being adopted as final provides that an MSPB employee, other than a special Government employee, must obtain approval before engaging in outside employment. The rule defines outside employment and sets out the procedures for seeking approval. The rule also provides that the Designated Agency Ethics Official (DAEO) or alternate

DAEO may exempt certain categories of employment from the prior approval requirement.

For a detailed section analysis of this final rule, see the preamble of the interim rule as published at 72 FR 26533.

#### Regulatory Flexibility Act

The MSPB has determined, pursuant to the Regulatory Flexibility Act, 5 U.S.C. chapter 6, that this rulemaking will not have a significant economic impact on a substantial number of small entities because it primarily affects MSPB employees.

#### Paperwork Reduction Act

The Paperwork Reduction Act, 44 U.S.C. chapter 35, does not apply because this rulemaking does not contain information collection requirements subject to the approval of the Office of Management and Budget.

#### Congressional Review Act

The Merit Systems Protection Board has determined that this rule is not a rule as defined in 5 U.S.C. 804, and thus, does not require review by Congress.

#### List of Subjects in 5 CFR Part 7401

Conflict of interests, Government employees.

#### Authority and Issuance

■ Accordingly, the Merit Systems Protection Board, with the concurrence of the Office of Government Ethics, is adopting the interim rule adding 5 CFR chapter LXIV, consisting of part 7401, which was published at 72 FR 26533 on May 10, 2007, as a final rule without change.

Dated: March 19, 2008.

**Neil A.G. McPhie,**

*Chairman, Merit Systems Protection Board.*

Approved: March 31, 2008.

**Robert I. Cusick,**

*Director, Office of Government Ethics.*

[FR Doc. E8-7324 Filed 4-7-08; 8:45 am]

BILLING CODE 7400-01-P

## DEPARTMENT OF HOMELAND SECURITY

### 8 CFR Parts 214 and 274a

[DHS No. ICEB-2008-0002; ICE No. 2124-08]

RIN 1653-AA56

#### Extending Period of Optional Practical Training by 17 Months for F-1 Nonimmigrant Students With STEM Degrees and Expanding Cap-Gap Relief for All F-1 Students With Pending H-1B Petitions

**AGENCY:** U.S. Immigration and Customs Enforcement, U.S. Citizenship and Immigration Services; DHS.

**ACTION:** Interim final rule with request for comments.

**SUMMARY:** Currently, foreign students in F-1 nonimmigrant status who have been enrolled on a full-time basis for at least one full academic year in a college, university, conservatory, or seminary certified by U.S. Immigration and Custom Enforcement's (ICE's) Student and Exchange Visitor Program (SEVP) are eligible for 12 months of optional practical training (OPT) to work for a U.S. employer in a job directly related to the student's major area of study. This interim final rule extends the maximum period of OPT from 12 months to 29 months for F-1 students who have completed a science, technology, engineering, or mathematics (STEM) degree and accept employment with employers enrolled in U.S. Citizenship and Immigration Services' (USCIS') E-Verify employment verification program. This interim rule requires F-1 students with an approved OPT extension to report changes in the student's name or address and changes in the employer's name or address as well as periodically verify the accuracy of this reporting information. The rule also requires the employers of F-1 students with an extension of post-completion OPT authorization to report to the student's designated school official (DSO) within 48 hours after the OPT student has been terminated from, or otherwise leaves, his or her employment with that employer prior to end of the authorized period of OPT.

This rule also ameliorates the so-called "cap-gap" problem by extending the authorized period of stay for all F-1 students who have a properly filed H-1B petition and change of status request (filed under the cap for the next fiscal year) pending with USCIS. If USCIS approves the H-1B petition, the students will have an extension that enables them to remain in the United