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## OFFICE OF PERSONNEL MANAGEMENT

### 5 CFR Part 630

RIN 3206-AL93

#### Absence and Leave; Definitions of Family Member, Immediate Relative, and Related Terms

**AGENCY:** Office of Personnel Management.

**ACTION:** Final rule.

**SUMMARY:** The U.S. Office of Personnel Management is issuing final regulations to modify definitions related to *family member* and *immediate relative* in 5 CFR part 630 and to add other defined terms, for purposes of use of sick leave, funeral leave, voluntary leave transfer, voluntary leave bank, and emergency leave transfer. These changes implement Section 1 of the President's June 17, 2009, Memorandum on Federal Benefits and Non-Discrimination and help ensure that agencies consider the needs of a diverse workforce and provide employees the broadest possible support to help them balance their work, personal, and family obligations.

**DATES:** *Effective Date:* These regulations are effective on July 14, 2010.

*Applicability Date:* These regulations apply on the first day of the first applicable pay period beginning on or after July 14, 2010.

**FOR FURTHER INFORMATION CONTACT:** Anne Vonnhof 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 September 14, 2009, the U.S. Office of Personnel Management (OPM) issued proposed regulations to modify definitions in 5 CFR part 630, subparts B, H, I, J, and K, related to *family member* and *immediate relative* for the use of sick leave, funeral leave,

voluntary leave transfer, voluntary leave bank, and emergency leave transfer.

These proposed regulations were published in response to Section 1 of the President's June 17, 2009, Memorandum for the Heads of Executive Departments and Agencies on Federal Benefits and Non-Discrimination ([http://www.whitehouse.gov/the\\_press\\_office/Memorandum-for-the-Heads-of-Executive-Departments-and-Agencies-on-Federal-Benefits-and-Non-Discrimination-6-17-09](http://www.whitehouse.gov/the_press_office/Memorandum-for-the-Heads-of-Executive-Departments-and-Agencies-on-Federal-Benefits-and-Non-Discrimination-6-17-09)), to promote consistent application of policy across the Federal Government, and to allow the Federal Government to serve as a model employer. When implemented, these regulations will help ensure that agencies consider the needs of a diverse workforce and provide employees with the broadest support possible to help them balance their work, personal, and family obligations. As part of OPM's continuing efforts to support the needs of the Federal workforce during times of sickness, funerals, and medical or other emergencies, we are making the definitions of *family member* and *immediate relative* more explicit to include more examples of relationships that are covered under the phrase "[a]ny individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship." These examples include stepparents and stepchildren, grandparents, grandchildren, and same-sex and opposite-sex domestic partners. In addition, OPM's final regulations define the terms *committed relationship*, *domestic partner*, *parent*, and *son or daughter*. Please note that the new definitions do not apply to the Family and Medical Leave Act (FMLA). The situations in which an employee can invoke FMLA leave and the individuals for whom an employee can provide care under FMLA are specified in law. The proposed regulations are available at <http://edocket.access.gpo.gov/2009/pdf/E9-22030.pdf>.

The 60-day comment period ended on November 13, 2009. A total of 74 comments were received—4 from agencies, 3 from labor organizations, 2 from professional organizations, and 65 from individuals. An overwhelming majority of the comments were supportive of the proposed rule. We received 52 comments in support of the

proposed rule, with only 9 in opposition. A summary of the comments and concerns received and our responses follow.

#### Definitions of Family Member and Immediate Relative

Overall, the response to our changes to the definitions of *family member* and *immediate relative* was very positive. In the following paragraphs, we respond to the comments and concerns that we received on the proposed rule. (Throughout this **SUPPLEMENTARY INFORMATION**, all discussion of suggested changes to the definition of *family member* and terms related to the definition of *family member* also apply to the definition of *immediate relative* and terms related to the definition of *immediate relative*. Because the following comments and responses pertain to both sets of definitions, we will not repeat the discussion for both sets.)

#### Addition of Domestic Partner

While the new term *domestic partner* refers to same-sex and opposite-sex relationships, the majority of comments we received concern the inclusion of same-sex domestic partners in the definition of *family member*. Most of these commenters supported the proposed rule. Many comments that we received in support of the inclusion of same-sex partners included the following points: All employees deserve the same benefits; there will be better recruitment and retention of highly qualified employees who consciously choose public service, because the benefits are equal to or better than those offered in the private sector; productivity will be enhanced due to satisfied employees; and the changes recognize a diverse workforce. Many commenters applauded the Government's attempt to treat all employees equally, without creating any "second-class employees." Several commenters stated that they have been waiting a long time for authority to use their leave benefits to care for their domestic partner, and they viewed the changes as long overdue. Other commenters appreciated the respect OPM is showing for the many Federal employees from non-traditional families by providing employees with an equal opportunity to care for their family members. Two commenters stated that

this new rule would make it unnecessary for the employee to choose between keeping his or her job or caring for a loved one.

Although the overwhelming majority of commenters supported the inclusion of same-sex domestic partners in the definition of *family member*, OPM received nine comments from individuals in opposition to all or part of this portion of the rule. The commenters were opposed to opening up leave benefits to same-sex domestic partners, believing that it disrupts the integrity of traditional families and the institution of marriage. Some did not believe in giving any rights or benefits to a “special interest group,” and some were concerned about the use of additional tax dollars to cover the increase in costs that may result from this rule.

The purpose of modifying the current *family member* and *immediate relative* definitions is to promote consistency across agencies as we implement Section 1 of the President’s June 17, 2009, Memorandum on Federal Benefits and Non-Discrimination across the Federal Government in the administration of Federal leave benefits. The President’s memorandum states that the Secretary of State and the Director of OPM should “extend the benefits they have respectively identified to qualified same-sex domestic partners of Federal employees where doing so can be achieved and is consistent with Federal law.” Previously, OPM has permitted each agency to interpret the phrase “[a]ny individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship,” found in the current definitions of *family member* at §§ 630.201(b) and 630.902 (a similar phrase exists in the definition of *immediate relative* at § 630.803).

Although it has always been appropriate to consider same-sex domestic partners as a family relationship under the “related by blood or affinity” clause for the purposes covered under these regulations, agencies have not been consistent in their interpretation of the clause. These changes do not reflect an additional benefit provided to a “special interest group” or a fundamental change in the Government’s human resources policies. On the contrary, these final regulations are meant to ensure that an employee has an entitlement to use his or her leave for purposes authorized under applicable law and regulation. Therefore, OPM believes it is appropriate to specifically include same-sex partners in the definitions of *family member* and *immediate relative*

to ensure consistent application across the Federal Government. We are keeping domestic partners as part of the definitions of *family member* and *immediate relative* under 5 CFR part 630, subparts B, H, I, J, and K, for the use of sick leave, funeral leave, voluntary leave transfer, voluntary leave bank, and emergency leave transfer to ensure agencies meet the needs of a diverse workforce.

#### *Parent of a Domestic Partner*

We received five comments requesting the addition of a domestic partner’s parent to the definition of *family member*. One commenter suggested that we change paragraph (6) in the definition of *family member* to read “domestic partners and parents thereof, including domestic partners of any individual in paragraphs (2)–(5) of this definition.” Although the parent of the domestic partner is not specifically referenced in the proposed definitions of *family member* and *immediate relative*, he or she is covered under paragraph (4) of the proposed definitions of *parent* in 5 CFR §§ 630.201(b) and 630.803, which states that a parent means “(4) A parent, as described in paragraphs (1) through (3) of this definition, of an employee’s domestic partner.” Based upon the comments received, we agree to revise the definitions of *family member* and *immediate relative* to clarify that the parent of a domestic partner is included in these two definitions. Therefore, we are revising the proposed definitions of *family member* and *immediate relative* to add language to paragraph (6) to state: “domestic partner and parents thereof, including domestic partners of any individual in paragraphs (2) through (5) of the definition.”

#### *Any Individual Related by Blood or Affinity*

One commenter inquired why certain family members were specifically included in the proposed definitions while others fall under “[a]ny individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship.” We also received requests to add other relationships not specifically included in the *family member* and *immediate relative* definitions, such as nieces and nephews, aunts, brothers or sisters of an employee’s spouse, stepsiblings and their families, and stepparents. Stepparents are included under paragraph (1) of the definition of *parent*.

We note that it would be very difficult to list each and every type of *family member* or *immediate relative*, as it would be very difficult to consider all

the variations of a contemporary family. The fact that a specific relationship is not expressly included in these definitions is not meant to diminish the familial bond, or to imply that leave may not be used to care for a person with that relationship. Although we agree that any of the suggested relationships may be considered a close association with the employee that is equivalent to a family relationship, not every employee’s relationship will have this close association. For example, some employees may have been raised by an aunt, while others may have never had the opportunity to meet their aunt. All of the suggested relationships can be included under the phrase “[a]ny individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship,” if there exists a blood relationship (such as niece, nephew, aunt) or the equivalent of a family relationship (such as step family member). Also, if special legal status had been granted (*i.e.*, guardianship or loco parentis status), the relationship is covered by the definition of *parent*. OPM has broadly interpreted the “blood or affinity” clause in the past to include such relationships; agencies should continue to do so. As mentioned in the Supplementary Information accompanying the proposed rule, we have broadly interpreted the phrase to include such relationships as grandparent and grandchild, brother- and sister-in-law, fiancé and fiancée, cousin, aunt and uncle, other relatives not specified in current 5 CFR 630.201(1)–(4) and 630.902(1)–(4), and close friend, to the extent that the connection between the employee and the individual was significant enough to be regarded as having the closeness of a family relationship even though the individuals might not be related by blood or formally in law. Same-sex and opposite-sex domestic partners, as well as stepparents and stepchildren, grandparents, and grandchildren, are all examples of close relationships which were not explicitly included in the current *family member* definitions, but which may certainly be part of the affinity of an individual employee. The “blood or affinity” clause is therefore not altered by the new rule, and the examples provided are not intended to be exhaustive, but rather illustrative.

Two agencies requested that OPM include in the regulatory text the list of family relationships that have been interpreted to fall under the “blood or affinity” clause that were published in the Supplementary Information accompanying the proposed rule. One

agency stated that inclusion of this list in the regulatory text would assist agencies in understanding the intent of the phrase and allow for more consistent application of the regulations. For the reason stated in the paragraph above, we decline to include this language in the regulatory text. If it were possible to provide an exhaustive list, there would be no need for the “blood or affinity” clause.

We received a comment about employees who wish to use sick leave to care for an ill pet. While we agree that a person may have a close bond with his or her pet, an employee cannot use sick leave, or donated leave under the leave transfer programs, for this purpose. An employee must use his or her annual leave or leave without pay for this purpose. Therefore, no change is being made.

#### Definition of Parent

One agency pointed out that paragraph (4) of the definition of *parent* encompasses the parent of an employee’s domestic partner, but not the parent of an employee’s spouse, and recommended revising that paragraph to include the parent of an employee’s spouse. Although the parent of the employee’s spouse is not included in the proposed definition of *parent*, that person is included in paragraph (1) of the proposed definition of *family member*—“[f]amily member means an individual with any of the following relationships to the employee: (1) Spouse, and parents thereof.” Since it is important that we make it clear that by *parent* we mean the expanded definition (adoptive, step, or foster parents, legal guardians, persons in loco parentis status) of an employee’s spouse or domestic partner, we are revising paragraph (4) to read—“a parent, as described in paragraphs (1) through (3) of this definition, of an employee’s spouse or domestic partner.” The same agency recommended the addition of an employee’s former spouse to paragraph (4). As there is no guarantee that former family members continue to maintain significant relationships, we believe requests for leave for such relationships are better left to a case-by-case determination using the “blood or affinity” clause. Therefore, we are not adopting this suggestion.

In the definition of *parent* at § 630.201, the first paragraph reads, “(1) A biological, adoptive, step, or foster parent of the employee, or a person who was a foster parent of the employee when the employee was a minor.” However, the definitions of *parent* at §§ 630.803 and 630.902 in the proposed regulations were missing the words, “or

a person who was a foster parent of the employee when the employee was a minor.” This omission was unintentional. Therefore, we are adding these words to the definitions of *parent* at §§ 630.803 and 630.902 in the final regulations.

#### Definition of Son or Daughter

One professional organization was very supportive of the change to replace the term “children” in the definition of *family member* with “sons and daughters” and to create a new definition of *son or daughter*. The organization also supported the inclusion of biological, adopted, and stepchildren, legal wards, and relationships where the employee stands or stood in loco parentis, and a domestic partner’s son(s) or daughter(s). Another commenter endorsed the inclusion of persons who are wards or were wards, when a minor, of a legal guardian, as this supports employees who assume the care of a young person during a vulnerable period in his or her life. We received several questions about the status of certain sons or daughters. One question was whether children of a same-sex relationship would be considered an employee’s son or daughter. This is specifically addressed in paragraph (4) of the *son or daughter* definition which states “[a] son or daughter \* \* \* of an employee’s domestic partner.” Another question was whether adopted children would be considered an employee’s son or daughter, in a same-sex or opposite-sex relationship. This is covered in paragraph (1) of the *son or daughter* definition which states, “[a] biological, adopted, step, or foster son or daughter” is considered a son or daughter of the employee. A final question was whether sons or daughters from previous relationships of same-sex or opposite-sex partners or former spouses would be considered an employee’s son or daughter. Such sons or daughters would be covered, because paragraph (4) covers any son or daughter of an employee’s domestic partner who meets any of the categories described in paragraphs (1)–(3) (e.g., biological, step, adopted, ward or loco parentis status, as well as ward or loco parentis status when the son or daughter was a minor). We believe the proposed rule covers the applicable categories. We note, however, that paragraph (4) does not include a son or daughter of an employee’s spouse, so we are revising paragraph (4) to read—“a son or daughter, as described in paragraphs (1) through (3) of this definition, of an employee’s spouse or domestic partner.”

#### Definition of “In Loco Parentis”

Two agencies requested a plain language explanation or actual definition of the term “*in loco parentis*,” as they were concerned that the term may not be commonly used by the human resources practitioners interpreting the regulations. We decline to further define the term “*in loco parentis*,” as it is subject to interpretation under State law. In the unlikely event that an agency has a question about *in loco parentis* status, the agency should contact its Office of General Counsel for interpretation.

#### Definitions of Domestic Partner and Committed Relationship

One commenter supported the inclusion of both same-sex and opposite-sex partners in the definition of *domestic partner*, saying that including both “fostered equality.” Another commenter mistakenly believed that the regulations discriminate against opposite-sex domestic partners and consequently wanted the changes to apply also to opposite-sex domestic partners or domestic partners of legally recognized civil unions. The definition of *domestic partner* means “an adult in a committed relationship with another adult, including both same-sex and opposite-sex relationships.” Furthermore, the definition of *committed relationship* explicitly recognizes a civil union as one means of establishing the existence of a committed relationship, regardless of whether the individuals are of the same or opposite sex. Therefore, no change is necessary.

One agency expressed concern that the term *domestic partner* could be construed to apply to someone who does not share any familial or emotional bond with the employee, such as a roommate. To qualify as a domestic partner, the employee must be in a committed relationship as defined in the proposed regulations: “a *committed relationship* means that the employee, and the domestic partner of the employee, are each other’s sole domestic partner (and not married to or domestic partners with anyone else); and share responsibility for a significant measure of each other’s common welfare and financial obligations. This includes, but is not limited to, any relationship between two individuals of the same or opposite sex that is granted legal recognition by a State or by the District of Columbia as a marriage or analogous relationship (including but not limited to a civil union).” Therefore, the definition of a *committed relationship* would preclude casual

roommates from qualifying as each other's domestic partner. We note that two friends might qualify as family members under the "blood or affinity" clause if they have a sufficiently close relationship.

One agency expressed confusion because the terms "domestic partner" and "committed relationship" are each referenced in the definition of the other term. One commenter requested "solidifying" the process of confirming an employee's domestic partnership, while another commenter stated that the definitions are sufficiently narrow to be inclusive while preventing fraud and abuse. We do not agree that the terms are confusing and agree with another commenter that they are sufficiently narrow to be inclusive while preventing fraud and abuse. With regard to documentation, agencies continue to have the same authority to request more information in cases of suspected leave abuse that they have always exercised. In general, agencies should apply the same standards of verification for normal requests for leave to care for domestic partners that they apply to requests for leave to care for spouses.

One agency suggested that, rather than create definitions for *domestic partner* and *committed relationship*, OPM simply redefine the "blood or affinity" clause under the *family member* definition to read: "[a]ny individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship. *These examples include stepparents and stepchildren, grandparents, grandchildren, common law, civil union, and same-sex and opposite-sex domestic partners.*" (Italics added.) We do not agree that adding these examples to the "blood or affinity" clause is necessary, since as we stated above, we prefer to give agencies the discretion to interpret the phrase "blood or affinity" according to the standard provided. The suggested language implies we are limiting relationships covered under the "blood or affinity" clause to the examples listed, which is not the case.

#### **Documentation for a Committed Relationship**

We received several comments regarding what documentation and evidence would be necessary to prove a *committed relationship*. One commenter would like OPM to establish the required documentation since agencies will likely implement their own agency policies if no Governmentwide policy exists. One commenter wanted to know what standard, absent a marriage, civil union, or other form of legal validation,

an agency should use to determine whether a relationship fits the definition of "committed." One commenter suggested using a notarized affidavit to establish a same-sex domestic partner relationship. Another commenter agreed that a notarized document would be acceptable and also suggested the employee provide evidence of owning property together or joint bank accounts. Similar to other categories of employee relationships, OPM does not normally require proof of a domestic partnership for the purpose of leave administration. For example, an agency does not typically request specific documentation to prove an employee's relationship with his or her family member (e.g., parent, spouse, sister, brother). We find that agencies are in the best position to administer their own leave programs and should follow the same procedure for all employees. With regard to documentation, agencies continue to have the same authority to request more information in cases of suspected leave abuse.

#### **State Laws and Recognition of Marriages, Civil Unions, and Domestic Partnerships**

One professional organization requested confirmation that a domestic partnership would be established conclusively if the relationship has been granted legal recognition by a State or the District of Columbia as a marriage or analogous relationship. An agency asked whether the regulations excluded common-law marriages. With regard to the question about common-law marriages, we note that, in States allowing common-law marriage, establishment of a common-law marriage is the equivalent of establishing a spousal relationship, and spouses are already covered by the definition of *family member*. We confirm that both the proposed and final regulations cover common-law marriage and any relationship that is granted legal recognition by a State or the District of Columbia as a marriage or analogous relationship.

One agency believes that agencies should follow State laws regarding the recognition of marriage when determining whether to approve leave, and suggested limiting this benefit only to relationships granted legal recognition by a State. We disagree and believe the final regulations are more equitable and in line with the President's memorandum, because they apply even in States and other jurisdictions where same-sex marriage or civil unions are not recognized or in States or jurisdictions where domestic partners cannot register. OPM is

responsible for establishing Governmentwide policies and procedures for the Federal Government and believes the rules should be applied consistently across the Federal workforce. Therefore, no change is being made.

#### **Potential Discrimination**

One commenter was concerned that employees who declare a relationship with a same-sex partner for purposes of these regulations may experience employment discrimination, particularly in Federal agencies located in States where sexual orientation is not a statutorily protected class. The commenter was also concerned that if the same-sex domestic partner discloses his or her sexual orientation to receive these benefits, there is a risk and possibility of becoming a victim of hate crimes. In addition, the commenter states that because domestic partnerships are not recognized in many States, there is a question as to the legal standards a relationship must meet before it is recognized as a domestic partnership for purposes of the regulation.

Although these are very important issues to consider, these concerns are generally beyond the scope of these regulations, because OPM has not been given the authority to interpret and implement the statutes concerned. We note that 5 U.S.C. 2302(b)(10) prohibits discrimination against Federal employees or Federal job applicants based on factors not related to job performance, including sexual orientation. Employees who believe they have suffered such discrimination may thus pursue remedies under the civil service laws.

#### **Impact on Dual Status Military (Reserve) Technicians**

One commenter asked how military agencies should deal with the fact that an employee who has asked for leave to care for a domestic partner has just self-identified as being in a same-sex relationship in violation of 10 U.S.C. 654 (commonly referred to as, "Don't Ask, Don't Tell"). The commenter was particularly concerned about the case of National Guard Dual Status Military Technicians and Dual Status Reserve Military Technicians where civilian employment is tied to military membership. The invocation of OPM's leave regulations would not prove conclusively that a domestic partnership involves a relationship of the same sex, since the definition of *domestic partner* includes "both same-sex and opposite-sex relationships." Further, the regulations do not require

identification of the domestic partner or the domestic partner's gender. Nonetheless, we understand there may be consequences for employees who are in a same-sex partnership with a military member, or who have a part-time military status themselves, especially in those agencies with policies requiring documentation to support a request for leave, and where the domestic partner's gender would be clear from the submitted documentation. Employees must therefore evaluate their own situations and consider the possible impact of their request for leave on their partner's or their own military status.

#### Definition of Spouse

One commenter stated that if the proposed rule becomes final, every Federal law that uses the term *spouse* will need to be changed to recognize a domestic partner. This belief is unfounded. The proposed regulations add same-sex and opposite-sex domestic partners to the regulatory definitions of *family member* and *immediate relative*, and apply only to the sick leave, funeral leave, voluntary leave transfer, voluntary leave bank, and the emergency leave transfer programs. Further, changes in regulation do not cause changes in statute. Therefore, the new definition of *domestic partner* does not apply to any Federal laws where benefits are given specifically to spouses. In particular, the new definitions do not apply to the Family and Medical Leave Act (FMLA) at 5 U.S.C. 6381–6387 and its associated regulations at 5 CFR part 630, subpart L. The FMLA statute and regulations do not include a definition of *family member* or *immediate relative*; rather, they specify individuals for whose care an employee may take FMLA leave (e.g., a spouse). The statute does not authorize employees to take FMLA leave to care for domestic partners.

#### Application to United States Postal Service

We received two comments from employees of the United States Postal Service (USPS) who strongly support the proposed definition of *family member*, so they would be able to provide care for their same-sex domestic partners. OPM does not have jurisdiction over USPS policies or collective bargaining agreements. We regulate for employees covered by the leave provisions in chapter 63 of title 5, United States Code. Employees who work for USPS or other Government organizations not covered by title 5 should consult with their human resources office.

#### Request for Additional Benefits

Some commenters requested that OPM provide health care and other benefits to same-sex partners. This is outside the scope of these regulations; however, the President has directed OPM to review all benefits and to identify those, such as health care, where benefits cannot be provided to same-sex partners under the governing statute, and those where the benefits may be provided through a change in regulation alone. The resulting report will be provided to the President for his consideration.

#### 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.

U.S. Office of Personnel Management.

John Berry,  
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.

■ 2. In § 630.201, paragraph (b) is amended by revising the definition of *family member* and by adding definitions of *committed relationship*, *domestic partner*, *parent*, and *son or*

*daughter* in alphabetical order to read as follows:

#### § 630.201 Definitions.

\* \* \* \* \*

(b) \* \* \*

*Committed relationship* means one in which the employee, and the domestic partner of the employee, are each other's sole domestic partner (and are not married to or domestic partners with anyone else); and share responsibility for a significant measure of each other's common welfare and financial obligations. This includes, but is not limited to, any relationship between two individuals of the same or opposite sex that is granted legal recognition by a State or by the District of Columbia as a marriage or analogous relationship (including, but not limited to, a civil union).

*Domestic partner* means an adult in a committed relationship with another adult, including both same-sex and opposite-sex relationships.

\* \* \* \* \*

*Family member* means an individual with any of the following relationships to the employee:

- (1) Spouse, and parents thereof;
- (2) Sons and daughters, and spouses thereof;
- (3) Parents, and spouses thereof;
- (4) Brothers and sisters, and spouses thereof;
- (5) Grandparents and grandchildren, and spouses thereof;
- (6) Domestic partner and parents thereof, including domestic partners of any individual in paragraphs (2) through (5) of this definition; and
- (7) Any individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship.

\* \* \* \* \*

*Parent* means—

- (1) A biological, adoptive, step, or foster parent of the employee, or a person who was a foster parent of the employee when the employee was a minor;
- (2) A person who is the legal guardian of the employee or was the legal guardian of the employee when the employee was a minor or required a legal guardian;
- (3) A person who stands *in loco parentis* to the employee or stood *in loco parentis* to the employee when the employee was a minor or required someone to stand *in loco parentis*; or
- (4) A parent, as described in paragraphs (1) through (3) of this definition, of an employee's spouse or domestic partner.

\* \* \* \* \*

*Son or daughter* means—

(1) A biological, adopted, step, or foster son or daughter of the employee;

(2) A person who is a legal ward or was a legal ward of the employee when that individual was a minor or required a legal guardian;

(3) A person for whom the employee stands *in loco parentis* or stood *in loco parentis* when that individual was a minor or required someone to stand *in loco parentis*; or

(4) A son or daughter, as described in paragraphs (1) through (3) of this definition, of an employee's spouse or domestic partner.

\* \* \* \* \*

■ 3. In § 630.803, revise the definition of *immediate relative* and add definitions of *committed relationship*, *domestic partner*, *parent*, and *son or daughter* in alphabetical order to read as follows:

**§ 630.803 Definitions.**

\* \* \* \* \*

*Committed relationship* means one in which the employee, and the domestic partner of the employee, are each other's sole domestic partner (and are not married to or domestic partners with anyone else); and share responsibility for a significant measure of each other's common welfare and financial obligations. This includes, but is not limited to, any relationship between two individuals of the same or opposite sex that is granted legal recognition by a State or by the District of Columbia as a marriage or analogous relationship (including, but not limited to, a civil union).

*Domestic partner* means an adult in a committed relationship with another adult, including both same-sex and opposite-sex relationships.

\* \* \* \* \*

*Immediate relative* means an individual with any of the following relationships to the employee:

(1) Spouse, and parents thereof;

(2) Sons and daughters, and spouses thereof;

(3) Parents, and spouses thereof;

(4) Brothers and sisters, and spouses thereof;

(5) Grandparents and grandchildren, and spouses thereof;

(6) Domestic partner and parents thereof, including domestic partners of any individual in paragraphs (2) through (5) of this definition; and

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

*Parent* means—

(1) A biological, adoptive, step, or foster parent of the employee, or a

person who was a foster parent of the employee when the employee was a minor;

(2) A person who is the legal guardian of the employee or was the legal guardian of the employee when the employee was a minor or required a legal guardian; or

(3) A person who stands *in loco parentis* to the employee or stood *in loco parentis* to the employee when the employee was a minor or required someone to stand *in loco parentis*.

(4) A parent, as described in paragraphs (1) through (3) of this definition, of an employee's spouse or domestic partner.

*Son or daughter* means—

(1) A biological, adopted, step, or foster son or daughter of the employee;

(2) A person who is a legal ward or was a legal ward of the employee when that individual was a minor or required a legal guardian;

(3) A person for whom the employee stands *in loco parentis* or stood *in loco parentis* when that individual was a minor or required someone to stand *in loco parentis*; or

(4) A son or daughter, as described in paragraphs (1) through (3) of this definition, of an employee's spouse or domestic partner.

■ 4. In § 630.902, revise the definition of *family member* and add definitions of *committed relationship*, *domestic partner*, *parent*, and *son or daughter* in alphabetical order to read as follows:

**§ 630.902 Definitions.**

\* \* \* \* \*

*Committed relationship* means one in which the employee, and the domestic partner of the employee, are each other's sole domestic partner (and are not married to or domestic partners with anyone else); and share responsibility for a significant measure of each other's common welfare and financial obligations. This includes, but is not limited to, any relationship between two individuals of the same or opposite sex that is granted legal recognition by a State or by the District of Columbia as a marriage or analogous relationship (including, but not limited to, a civil union).

*Domestic partner* means an adult in a committed relationship with another adult, including both same-sex and opposite-sex relationships.

\* \* \* \* \*

*Family member* means an individual with any of the following relationships to the employee:

(1) Spouse, and parents thereof;

(2) Sons and daughters, and spouses thereof;

(3) Parents, and spouses thereof;

(4) Brothers and sisters, and spouses thereof;

(5) Grandparents and grandchildren, and spouses thereof;

(6) Domestic partner and parents thereof, including domestic partners of any individual in paragraphs (2) through (5) of this definition; and

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

\* \* \* \* \*

*Parent* means—

(1) A biological, adoptive, step, or foster parent of the employee, or a person who was a foster parent of the employee when the employee was a minor;

(2) A person who is the legal guardian of the employee or was the legal guardian of the employee when the employee was a minor or required a legal guardian; or

(3) A person who stands *in loco parentis* to the employee or stood *in loco parentis* to the employee when the employee was a minor or required someone to stand *in loco parentis*.

(4) A parent, as described in paragraphs (1) through (3) of this definition, of an employee's spouse or domestic partner.

\* \* \* \* \*

*Son or daughter* means—

(1) A biological, adopted, step, or foster son or daughter of the employee;

(2) A person who is a legal ward or was a legal ward of the employee when that individual was a minor or required a legal guardian;

(3) A person for whom the employee stands *in loco parentis* or stood *in loco parentis* when that individual was a minor or required someone to stand *in loco parentis*; or

(4) A son or daughter, as described in paragraphs (1) through (3) of this definition, of an employee's spouse or domestic partner.

■ 5. In § 630.1002, add the definitions of *committed relationship*, *domestic partner*, *parent*, and *son or daughter* in alphabetical order to read as follows:

**§ 630.1002 Definitions.**

\* \* \* \* \*

*Committed relationship* has the meaning given that term in subpart I of this part.

*Domestic partner* has the meaning given that term in subpart I of this part.

\* \* \* \* \*

*Parent* has the meaning given that term in subpart I of this part.

\* \* \* \* \*

*Son or daughter* has the meaning given that term in subpart I of this part.

■ 6. In § 630.1102, add the definitions of *committed relationship*, *domestic partner*, *parent*, and *son or daughter* in alphabetical order to read as follows:

**§ 630.1102 Definitions.**

\* \* \* \* \*

*Committed relationship* has the meaning given that term in subpart I of this part.

\* \* \* \* \*

*Domestic partner* has the meaning given that term in subpart I of this part.

\* \* \* \* \*

*Parent* has the meaning given that term in subpart I of this part.

*Son or daughter* has the meaning given that term in subpart I of this part.

\* \* \* \* \*

[FR Doc. 2010-14252 Filed 6-11-10; 8:45 am]

BILLING CODE 6325-39-P

## DEPARTMENT OF AGRICULTURE

### National Institute of Food and Agriculture

#### 7 CFR Part 3430

[0524-AA61]

#### Competitive and Noncompetitive Nonformula Federal Assistance Programs—Administrative Provisions for Biomass Research and Development Initiative

**AGENCY:** National Institute of Food and Agriculture, USDA.

**ACTION:** Interim rule and request for comments.

**SUMMARY:** The National Institute of Food and Agriculture (NIFA), formerly the Cooperative State Research, Education, and Extension Service (CSREES), is publishing a set of specific administrative requirements for the Biomass Research and Development Initiative (BRDI) to supplement the Competitive and Noncompetitive Nonformula Federal Assistance Programs—General Award Administrative Provisions for this program. The BRDI is authorized under section 9008 of the Farm Security and Rural Investment Act of 2002 (FSRIA), as amended by the Food, Conservation, and Energy Act of 2008 (FCEA).

**DATES:** This interim rule is effective on June 14, 2010. The Agency must receive comments on or before October 12, 2010.

**ADDRESSES:** You may submit comments, identified by 0524-AA61, by any of the following methods:

*Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

*E-mail:* [policy@NIFA.usda.gov](mailto:policy@NIFA.usda.gov). Include Regulatory Information Number (RIN) number 0524-AA61 in the subject line of the message.

*Fax:* 202-401-7752.

*Mail:* Paper, disk or CD-ROM submissions should be submitted to National Institute of Food and Agriculture; U.S. Department of Agriculture; STOP 2299; 1400 Independence Avenue, SW., Washington, DC 20250-2299.

*Hand Delivery/Courier:* National Institute of Food and Agriculture; U.S. Department of Agriculture; Room 2258, Waterfront Centre; 800 9th Street, SW.; Washington, DC 20024.

*Instructions:* All comments submitted must include the agency name and the RIN for this rulemaking. All comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided.

**FOR FURTHER INFORMATION CONTACT:**

Carmela Bailey, National Program Leader, Plant and Animal Systems, National Institute of Food and Agriculture, U.S. Department of Agriculture, STOP 3356, 1400 Independence Avenue, SW., Washington, DC 20250-2299; Voice: 202-401-6443; Fax: 202-401-4888; e-mail: [cbailey@NIFA.usda.gov](mailto:cbailey@NIFA.usda.gov).

**SUPPLEMENTARY INFORMATION:**

**I. Background and Summary**

*Authority*

Section 9008 of the Farm Security and Rural Investment Act of 2002 (FSRIA), Public Law 107-171 (7 U.S.C. 8108), as amended by section 9001 of the Food, Conservation, and Energy Act of 2008 (FCEA), Public Law 110-246, provides authority to the Secretary of Agriculture and the Secretary of Energy, to establish and carry out a joint Biomass Research and Development Initiative (BRDI) under which competitively awarded grants, contracts, and financial assistance are provided to, or entered into with, eligible entities to carry out research on and development and demonstration of biofuels and biobased products; and the methods, practices, and technologies for the production of biofuels and biobased products. Should the Secretaries of USDA and DOE decide to make competitive Federal assistance awards under this authority, the rules contained within subpart K apply. Activities authorized under BRDI are carried out in consultation with the Biomass Research and Development Board, established in section 9008(c) of FSRIA and the Biomass Research and

Development Technical Advisory committee established in section 9008(d) of FSRIA. The USDA authority to carry out this program has been delegated to NIFA through the Under Secretary for Research, Education, and Economics.

*Purpose*

The objectives of BRDI are to develop (a) technologies and processes necessary for abundant commercial production of biofuels at prices competitive with fossil fuels; (b) high-value biobased products (1) to enhance the economic viability of biofuels and power, (2) to serve as substitutes for petroleum-based feedstocks and products, and (3) to enhance the value of coproducts produced using the technologies and processes; and (c) a diversity of economically and environmentally sustainable domestic sources of renewable biomass for conversion to biofuels, bioenergy, and biobased products.

*Organization of 7 CFR Part 3430*

A primary function of NIFA is the fair, effective, and efficient administration of Federal assistance programs implementing agricultural research, education, and extension programs. As noted above, NIFA has been delegated the authority to administer this program and will be issuing Federal assistance awards for funding made available for this program; and thus, awards made under this authority will be subject to the Agency's assistance regulations at 7 CFR part 3430, Competitive and Noncompetitive Non-formula Federal Assistance Programs—General Award Administrative Provisions. The Agency's development and publication of these regulations for its non-formula Federal assistance programs serve to enhance its accountability and to standardize procedures across the Federal assistance programs it administers while providing transparency to the public. NIFA published 7 CFR part 3430 with subparts A through F as an interim rule on August 1, 2008 [73 FR 44897-44909] and as a final rule on [September 4, 2009] [74 FR 45736-45752]. These regulations apply to all Federal assistance programs administered by NIFA except for the formula grant programs identified in 7 CFR 3430.1(f), the Small Business Innovation Research programs, with implementing regulations at 7 CFR part 3403, and the Veterinary Medicine Loan Repayment Program (VMLRP) authorized under section 1415A of the National Agricultural Research, Extension, and