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–AM11

Absence and Leave; Qualifying Exigency Leave

AGENCY: U.S. Office of Personnel Management.

ACTION: Proposed rule.

SUMMARY: The U.S. Office of Personnel Management is issuing proposed regulations to implement an amendment to the Family and Medical Leave Act (FMLA) that creates an additional qualifying reason for leave. Under this amendment, eligible Federal employees may take up to 12 administrative workweeks of FMLA leave without pay due to a qualifying exigency. Qualifying exigencies arise out of the fact that a covered family member is on covered active duty in the Armed Forces or has been notified of an impending call or order to covered active duty status. These regulations would help employees manage family affairs when a family member is on covered active duty.

DATES: Comments must be received on or before January 18, 2011.

ADDRESSES: You may submit comments, identified by RIN number "3206–AM11" using either of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments. All submissions received through the Portal must include the agency name and docket number or Regulation Identifier Number (RIN) for this rulemaking.

Mail: Jerome D. Mikowicz, Deputy Associate Director, Pay and Leave, U.S. Office of Personnel Management, Room 7H31, 1900 E Street, NW., Washington, DC 20415–8200.

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.*

SUPPLEMENTARY INFORMATION: The U.S. Office of Personnel Management (OPM) is issuing proposed regulations to implement section 565(b)(1) of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2010 (Pub. L. 111–84, October 28, 2009). Section 565(b)(1) amended 5 U.S.C. 6382(a)(1) by inserting a new subparagraph (E) that adds qualifying exigencies to the circumstances or events that entitle Federal employees to up to 12 administrative workweeks of Family and Medical Leave Act (FMLA) unpaid leave during any 12-month period. The proposed regulations would amend OPM's current regulations at part 630, subpart L, to cover qualifying exigencies when the spouse, son, daughter, or parent of the employee is on covered active duty in the Armed Forces or has been notified of an impending call or order to covered active duty. OPM proposes eight categories of qualifying exigencies: short-notice deployments, military events and related activities, childcare and school activities, financial and legal arrangements, counseling, rest and recuperation, post-deployment activities, and additional activities not encompassed in the other categories when the agency and employee agree they qualify as exigencies, including the timing and duration of the leave.

Background

The FMLA is divided into two titles that are governed by two different agencies; the Department of Labor (DOL) is responsible for the rules and regulations for title I of the FMLA (mostly the non-Federal sector), and OPM is responsible for the rules and regulations for title II of the FMLA (mostly Federal employees). Under title II of the FMLA (5 U.S.C. 6387), OPM is required to prescribe regulations that are consistent, to the extent appropriate, with regulations prescribed by the Secretary of Labor to carry out title I of the FMLA.

FY 2008 NDAA. Section 585 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2008 (Pub. L. 110–181, January 28, 2008) amended the FMLA provisions for both title I and title II of the FMLA to provide a specific military family leave entitlement (referred to by OPM as "leave to care for a covered servicemember") for an employee who (1) is the spouse, son, daughter, parent, or next of kin (defined as the nearest blood relative) of a covered servicemember with a serious injury or illness, and (2) provides care for such servicemember. The legislation provided 26 weeks of FMLA leave during a single 12-month period to care for a servicemember who was injured in the line of duty while on active duty. The legislation also provided a second military family leave entitlement—qualifying exigency leave—to title I employees, but remained silent on this entitlement for title II employees. Therefore, Federal employees were not provided the authority to use qualifying exigency leave in the FY 2008 NDAA legislation.

DOL issued its final regulations on November 17, 2008, (73 FR 67934) to implement the military family leave entitlements in the FY 2008 NDAA, as well as other changes that were part of a systemwide review of DOL's FMLA regulations. Following DOL's issuance of these regulations, OPM issued proposed FMLA regulations on August 26, 2009, (74 FR 43064, at *http://edocket.access.gpo.gov/2009/pdf/E9-20610.pdf*) concerning care for a covered servicemember.

FY 2010 NDAA. Before OPM could issue its final FMLA regulations implementing leave to care for a covered servicemember, section 565(b) of the FY 2010 NDAA made further changes to the FMLA. In summary, the FY 2010 NDAA amendments (1) provide a new entitlement to qualifying exigency leave for Federal employees covered by OPM's FMLA regulations parallel to the entitlement provided to employees covered by DOL's FMLA regulations, and (2) expand the coverage for the 26-week entitlement for family members to care for a covered servicemember undergoing medical treatment, recuperation, or therapy, for a serious injury or illness by amending the definitions of *covered servicemember* and *serious injury or illness.* These changes have a broad impact on the 26-week entitlement that requires changes to DOL's final FMLA regulations and OPM's proposed FMLA regulations. OPM must wait for DOL to implement proposed and final regulations on the expanded FMLA coverage provisions before we can implement corresponding regulations for the Federal Government. However, the FY 2010 NDAA did not

alter the qualifying exigency portion of the FY 2008 NDAA for employees covered by title I of DOL's regulations. Therefore, it is possible for OPM to issue proposed regulations implementing the qualifying exigency portion of the FY 2010 NDAA without having to wait for any further action on the part of DOL.

The military family leave amendments to the FY 2010 NDAA were effective upon enactment (October 28, 2009). Until OPM issues final regulations, agencies should follow OPM's guidance in CPM 2010–06 on March 5, 2010, at *http://www.chcoc.gov/Transmittals/TransmittalDetails.aspx?TransmittalId=2884.*

DOL Regulations on Qualifying Exigency Leave

The DOL regulations implementing title I of the FMLA are set out at 29 CFR part 825. The DOL provisions regarding qualifying exigency leave are prescribed at §§ 825.100, 825.101, 825.112, 825.126, 825.127, 825.200, 825.202, 825.203, 825.300, 825.302, 825.303, 825.305, 825.309, and 825.313. Supplementary information on the DOL regulations regarding qualifying exigency leave may be found in the DOL proposed regulations published on February 11, 2008, at 73 FR 7876 (*http://edocket.access.gpo.gov/2008/pdf/E8-2062.pdf*), and final regulations published on November 17, 2008, at 73 FR 67934 (*http://edocket.access.gpo.gov/2008/pdf/E8-26577.pdf*). (*See* in particular § 825.126 (Leave Because of a Qualifying Exigency) at 73 FR 67954.) To the extent appropriate, OPM is adopting the qualifying exigency portion of the DOL regulations to apply to the Federal workforce.

Exception to DOL Regulations

OPM's proposed regulations on qualifying exigency leave are parallel to DOL's final FMLA regulations with only minor adaptations to make them applicable to Federal employees. The one exception stems from a change to 5 U.S.C. 6381 made by the FY 2010 NDAA, which has not yet been incorporated into DOL's FMLA regulations. This change removes the definition of *active duty* from the statute and adds a definition of *covered active duty.* The new definition now covers duty of a servicemember who is deployed to a foreign country in either a regular component or a reserve component of the Armed Forces. (The previous definition covered only members of reserve components.)

OPM's proposed regulations published on August 26, 2009, at 74 FR 43064, included a definition of *active duty* that was derived from DOL's definition based on the FY 2008 NDAA statutory definition. Because the FY 2010 NDAA replaced the definition of *active duty* with *covered active duty* and this term is relevant to the qualifying exigency entitlement, we are proposing to add *covered active duty* to the definitions at 5 CFR 630.1202.

Additions to the FMLA Definitions

In § 630.1202, we propose to add new definitions to our existing FMLA regulations for *covered active duty* or *call to covered active duty status, covered military member,* and *son or daughter on covered active duty or call to covered active duty status.*

The definitions of *son or daughter on covered active duty or call to covered active duty status* and *covered active duty or call to covered active duty status* mostly parallel the DOL regulations at 29 CFR 825.126. The new definitions reflect the changes authorized in the FY 2010 NDAA that provide additional benefits to employees covered under both title I and title II. In summary, the coverage changed to add members of a regular component of the Armed Forces on active duty or call to active duty when deployed to a foreign country and members of reserve components on active duty or call to active duty during deployment to a foreign country in support of a contingency operation.

Amendment to FMLA Leave Entitlement

Section 565(b) of the FY 2010 NDAA amended the FMLA provisions at 5 U.S.C. 6382(a)(1) by adding new subparagraph (E) to provide Federal employees with an entitlement of up to 12 administrative workweeks of unpaid FMLA leave during any 12-month period for any qualifying exigency arising out of the fact that the spouse or a son, daughter, or parent of the employee is on covered active duty (or has been notified of an impending call or order to covered active duty) in the Armed Forces.

Therefore, we propose to amend our regulations at § 630.1203(a) to add a new paragraph (5) that includes a qualifying exigency among the list of reasons for which an employee is entitled to a total of 12 administrative workweeks of unpaid leave during any 12-month period.

New Section To Cover Qualifying Exigency Leave

We are adding a new § 630.1204, which is similar to a new section added to the DOL regulations at 29 CFR 825.126. Proposed § 630.1204(a) lists the qualifying exigencies for which eligible Federal employees may take up to 12 administrative workweeks of unpaid FMLA leave during a 12-month period. The qualifying exigencies fall under eight categories:

Short-notice deployment. Employees may take qualifying exigency leave to address any issue that arises when a covered military member receives notice of an impending call or order to active duty for 7 calendar days or fewer prior to the date of deployment. Up to 7 calendar days of leave may be taken beginning on the date the member receives the notice of a call or order to active duty.

Military events and related activities. Employees may take qualifying exigency leave to attend certain official ceremonies, programs, or events sponsored by the military, as well as family support and assistance programs and informational briefings sponsored or promoted by the military, military service organizations, or the American Red Cross. These events and activities must be related to the covered active duty or call to covered active duty status of a covered military member.

Childcare and school activities. Employees may take qualifying exigency leave when the covered active duty or call to covered active duty status of a covered military member makes it necessary for the employee to arrange for alternative childcare; provide childcare on an urgent, immediate need basis; enroll or transfer a child to a new school or daycare facility; or attend meetings with school or daycare officials regarding disciplinary measures, parent-teacher conferences, or meetings with school counselors. The child must be a biological, adopted, or foster child, a stepchild, or a legal ward of a covered military member, or a child for whom a covered military member stands in loco parentis, who is either under age 18, or age 18 or older and incapable of self-care because of a mental or physical disability at the time that FMLA leave is to commence.

Financial and legal arrangements. Employees may take qualifying exigency leave for financial or legal matters related to the covered military member's absence while on covered active duty or call to covered active duty status. Under this category, leave may be taken to prepare and execute financial and healthcare powers of attorney, transfer bank account signature authority, enroll in the Defense Enrollment Eligibility Reporting System, obtain military identification cards, prepare or update a will or living trust, or for other financial and legal arrangements related to the covered military member's absence.

Employees may also take leave under this category to act as the covered military member's representative before a Federal, State, or local agency for purposes of obtaining, arranging, or appealing military service benefits while the covered military member is on covered active duty or call to covered active duty status or within 90 days following the date of termination of covered active duty status.

Counseling. Employees may take qualifying exigency leave for counseling by someone other than a healthcare provider, provided that the need for counseling arises from the covered active duty or call to covered active duty status of a covered military member. This counseling may be for the employee, the covered military member, or a child (as previously described under "Childcare and school activities").

Rest and recuperation. Employees may take up to 5 days of qualifying exigency leave to spend time with a covered military member for each instance of short-term rest and recuperation leave during the period of deployment.

Post-deployment activities. Employees may take qualifying exigency leave to attend arrival ceremonies, reintegration briefings and events, and any other official ceremonies or programs sponsored by the military for a period of 90 days following the termination of the covered military member's covered active duty. Employees may also take leave under this category to address issues that arise from the death of a covered military member while on covered active duty status, such as making funeral arrangements.

Additional activities. Employees may take qualifying exigency leave to address other events that arise from the covered military member's covered active duty or call to covered active duty status if both the agency and employee agree the leave qualifies as an exigency and agree to the timing and duration of the leave.

Additional Changes to FMLA Regulations for Qualifying Exigency Leave

The proposed regulations make the following additional changes to the FMLA provisions in subpart L of 5 CFR part 630 to implement other FY 2010 NDAA amendments regarding use of qualifying exigency leave and to conform to DOL regulations:

Intermittent or reduced leave schedule. The proposed regulations revise § 630.1205(b) (formerly § 630.1204(b)) to clarify that employees may take qualifying exigency leave intermittently or on a reduced leave schedule basis, subject to the notification requirements in § 630.1207 (formerly § 630.1206) and the certification requirements in new § 630.1209.

Notice of leave. The proposed regulations add a new paragraph (c) to § 630.1207 (formerly § 630.1206) that requires an employee to notify his or her agency of future qualifying exigency leave needs, when foreseeable. The employee must provide notice as soon as practicable, regardless of how far in advance the leave is foreseeable.

Certification. The proposed regulations add a new § 630.1209, "Certification for leave taken because of a qualifying exigency." This section permits agencies to (1) require employees to provide documentation of the family member's covered active duty status, (2) require certification of qualifying exigency leave use, and (3) verify certain information regarding meetings, appointments, or active duty status with third-party sources.

Active duty orders. The proposed regulations require an employee, upon request from the agency, to provide a copy of the covered military member's active duty orders or other documentation issued by the military that indicates that the covered military member is on covered active duty or call to covered active duty status and the dates of the covered military member's active duty service. This information needs to be provided to the agency only once. A copy of new active duty orders or other documentation issued by the military must be provided to the agency if the need for leave because of a qualifying exigency arises out of a different covered active duty or call to covered active duty status of the same or a different covered military member.

Required information. An agency may require that leave for any qualifying exigency specified in § 630.1204 be supported by a certification from the employee, which includes the following information:

(1) A statement or description, signed by the employee, of appropriate facts regarding the qualifying exigency for which FMLA leave is requested. The facts must be sufficient to support the need for leave. Such facts should include information on the type of qualifying exigency for which leave is requested and any available written documentation that supports the request for leave. The documentation may include, for example, a copy of a meeting announcement for informational briefings sponsored by the military, a document confirming an appointment with a counselor or school official, or a copy of a bill for services for the handling of legal or financial affairs.

(2) The approximate date on which the qualifying exigency commenced or will commence.

(3) If an employee requests leave because of a qualifying exigency for a single, continuous period of time, the beginning and end dates for the absence.

(4) If an employee requests leave because of a qualifying exigency on an intermittent or reduced leave schedule basis, an estimate of the frequency and duration of the qualifying exigency.

(5) If the qualifying exigency involves meeting with a third party, appropriate contact information for the individual or entity with whom the employee is meeting (such as the name, title, organization, address, telephone number, fax number, and email address) and a brief description of the purpose of the meeting.

Verification. The agency may not request additional information from the employee if an employee submits a complete and sufficient certification to support his or her request for leave because of a qualifying exigency. However, if the qualifying exigency involves meeting with a third party, the agency may contact the individual or entity with whom the employee is meeting for purposes of verifying a meeting or appointment schedule and the nature of the meeting between the employee and the specified individual or entity. The employee's permission is not required in order to verify meetings or appointments with third parties, but no additional information may be requested by the agency. An agency also may contact an appropriate unit of the Department of Defense, without seeking the employee's permission, to request verification that a covered military member is on covered active duty or call to covered active duty status; however, no additional information may be requested.

Certification Form

DOL has developed an optional form (Form WH-384) for employees covered by DOL's FMLA regulations to use in obtaining a certification that meets the qualifying exigency certification requirements. (*See http://www.dol.gov/whd/forms/WH–384.pdf.*) Form WH–384 requests documentation to confirm that a covered servicemember's active duty (or call to active duty) is in support of a contingency operation. However, under the FY 2010 NDAA FMLA amendments, the active duty of a covered servicemember in a regular component of the Armed Forces does not need to be in support of a

contingency operation for qualifying exigency leave purposes. Until DOL updates Form WH–384, agencies that wish to use the form for their qualifying exigency certifications should provide separate instructions regarding the active duty documentation requirements for servicemembers in a regular component of the Armed Forces. Agencies that do not wish to use Form WH–384 may use another document containing the same basic information. We welcome any comments on whether an updated Form WH–384 would be sufficient for qualifying exigency certifications by Federal agencies or whether OPM should develop a similar optional form for this purpose.

Interaction with Basic FMLA

All other provisions of OPM's FMLA regulations at subpart L of part 630 that apply to the leave entitlements under § 630.1203(a) will also apply to qualifying exigency leave.

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 proposing to amend 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 § 630.1202, add the definitions of "Covered active duty or call to covered active duty status," "Covered military member," and "Son or daughter on covered active duty or call to covered active duty status" alphabetically to read as follows:

§ 630.1202 Definitions.

* * * * *

Covered active duty or *call to covered active duty status* means—

(1) In the case of a member of a regular component of the Armed Forces, duty during the deployment of the member with the Armed Forces to a foreign country under a call or order to active duty (or notification of an impending call or order to active duty); and

(2) In the case of a member of a reserve component of the Armed Forces, duty during the deployment of the member with the Armed Forces to a foreign country under a call or order to active duty (or notification of an impending call or order to active duty) in support of a contingency operation pursuant to any of the following sections of title 10, United States Code, or any other provision of law during a war or during a national emergency declared by the President or Congress:

(i) Section 688, which authorizes ordering to active duty retired members of the Regular Armed Forces and members of the Retired Reserve retired after 20 years for length of service, and members of the Fleet Reserve or Fleet Marine Corps Reserve;

(ii) Section 12301(a), which authorizes ordering all reserve component members to active duty in the case of war or national emergency declared by Congress, or when otherwise authorized by law;

(iii) Section 12302, which authorizes ordering any unit or unassigned member of the Ready Reserve to active duty in time of national emergency declared by the President after January 1, 1953, or when otherwise authorized by law;

(iv) Section 12304, which authorizes ordering any unit or unassigned member of the Selected Reserve and certain members of the Individual Ready Reserve to active duty;

(v) Section 12305, which authorizes the suspension of promotion, retirement, or separation rules for certain Reserve components;

(vi) Section 12406, which authorizes calling the National Guard into Federal service in certain circumstances; or

(vii) Chapter 15, which authorizes calling the National Guard and State militia into Federal service in the case of insurrections and national emergencies.

Covered military member means the employee's spouse, son, daughter, or parent on covered active duty or call to covered active duty status.

* * * * *

Son or daughter on covered active duty or call to covered active duty status means the employee's biological, adopted, or foster child, stepchild, legal ward, or a child for whom the employee stood in loco parentis, who is on covered active duty or call to covered active duty status, and who is of any age.

* * * * *

3. In § 630.1203, add a new paragraph (a)(5), revise the first sentence of paragraph (b), and revise the last sentence of paragraph (h) to read as follows:

§ 630.1203 Leave entitlement.

(a) * * *

(5) Any qualifying exigency arising out of the fact that the employee's spouse, son, daughter, or parent is a covered military member on covered active duty (or has been notified of an impending call or order to covered active duty) in the Armed Forces.

(b) An employee must invoke his or her entitlement to family and medical leave under paragraph (a) of this section, subject to the notification and medical certification requirements in §§ 630.1207 and 630.1208. * * *

* * * * *

(h) * * * An employee's notice of his or her intent to take leave under § 630.1207 may suffice as the employee's confirmation.

4. Redesignate current §§ 630.1204 through 630.1211 as §§ 630.1205 through 630.1212, respectively, and add a new § 630.1204 to read as follows:

§ 630.1204 Qualifying exigency leave.

(a) Eligible employees may take FMLA leave while the employee's spouse, son, daughter, or parent (the "covered military member") is on covered active duty or call to covered active duty status for one or more of the following qualifying exigencies:

(1) *Short-notice deployment.* To address any issue that arises from the fact that a covered military member is notified of an impending call or order to covered active duty seven or fewer calendar days prior to the date of deployment. Leave taken for this purpose can be used for a period of up to 7 calendar days beginning on the date a covered military member is notified of an impending call or order to covered active duty.

(2) *Military events and related activities.* (i) To attend any official ceremony, program, or event sponsored by the military that is related to the covered active duty or call to covered active duty status of a covered military member; and

(ii) To attend family support or assistance programs and informational briefings sponsored or promoted by the military, military service organizations, or the American Red Cross that are related to the covered active duty or call to covered active duty status of a covered military member.

(3) *Childcare and school activities.* (i) To arrange for alternative childcare when the covered active duty or call to covered active duty status of a covered military member necessitates a change in the existing childcare arrangement for a child;

(ii) To provide childcare on an urgent, immediate need basis (but not on a routine, regular, or everyday basis) when the need to provide such care arises from the covered active duty or call to covered active duty status of a covered military member for a child;

(iii) To enroll in or transfer to a new school or day care facility a child, when enrollment or transfer is necessitated by the covered active duty or call to covered active duty status of a covered military member; and

(iv) To attend meetings with staff at a school or a daycare facility, such as meetings with school officials regarding disciplinary measures, parent-teacher conferences, or meetings with school counselors, for a child when such meetings are necessary due to circumstances arising from the covered active duty or call to covered active duty status of a covered military member.

(v) For purposes of paragraphs (a)(3)(i) through (a)(3)(iv) of this section, "child" means a biological, adopted, or foster child, a stepchild, or a legal ward of a covered military member, or a child for whom a covered military member stands in loco parentis, who is either under age 18, or age 18 or older and incapable of self-care because of a mental or physical disability at the time the FMLA leave is to commence

(4) *Financial and legal arrangements.* (i) To make or update financial or legal arrangements to address the covered military member's absence while on covered active duty or call to covered active duty status, such as preparing and executing financial and healthcare powers of attorney, transferring bank account signature authority, enrolling in the Defense Enrollment Eligibility Reporting System (DEERS), obtaining military identification cards, or preparing or updating a will or living trust; and

(ii) To act as the covered military member's representative before a Federal, State, or local agency for purposes of obtaining, arranging, or appealing military service benefits while the covered military member is on covered active duty or call to covered active duty status, and for a period of 90 days following the termination of the covered military member's covered active duty status.

(5) *Counseling.* To attend counseling provided by someone other than a health care provider for oneself, for the covered military member, or for a child as defined in paragraph (a)(3)(v) of this section, provided that the need for counseling arises from the covered active duty or call to covered active duty status of a covered military member.

(6) *Rest and recuperation.* To spend time with a covered military member who is on short-term, temporary, rest and recuperation leave during the period of deployment. Eligible employees may take up to 5 days of leave for each instance of rest and recuperation.

(7) *Post-deployment activities.* (i) To attend arrival ceremonies, reintegration briefings and events, and any other official ceremony or program sponsored by the military for a period of 90 days following the termination of the covered military member's covered active duty status; and

(ii) To address issues that arise from the death of a covered military member while on covered active duty status, such as meeting and recovering the body of the covered military member and making funeral arrangements.

(8) *Additional activities.* To address other events which arise out of the covered military member's covered active duty or call to covered active duty status provided that the agency and employee agree that such leave shall qualify as an exigency, and that they agree to both the timing and duration of such leave.

(b) Employees are eligible to take FMLA leave because of a qualifying exigency when the covered military member is on covered active duty or call to covered active duty status as a member of a regular component of the Armed Forces, or when the covered military member is on covered active duty or call to covered active duty status in support of a contingency operation pursuant to one of the provisions of law identified in the definition of *covered active duty or call to covered active duty status* as either a member of the reserve components (Army National Guard of the United States, Army Reserve, Navy Reserve, Marine Corps Reserve, Air National Guard of the United States, Air Force Reserve and Coast Guard Reserve), or a retired member of the Regular Armed Forces or Reserve.

(c) For those called to covered active duty status in support of a contingency operation—

(1) A call to active duty for purposes of leave taken because of a qualifying exigency refers to a Federal call to active duty. State calls to active duty are not covered unless under order of the President of the United States pursuant to one of the provisions of law identified in paragraph (b) of this section in support of a contingency operation.

(2) For such members, the active duty orders of a covered military member will generally specify whether the servicemember is serving in support of a contingency operation by citation to the relevant section of title 10 of the United States Code or by reference to the specific name of the contingency operation, or both. A military operation qualifies as a contingency operation if it:

(i) Is designated by the Secretary of Defense as an operation in which members of the Armed Forces are or may become involved in military actions, operations, or hostilities against an enemy of the United States or against an opposing military force; or

(ii) Results in the call or order to, or retention on, active duty of members of the uniformed services under section 688, 12301(a), 12302, 12304, 12305, or 12406, or chapter 15 of title 10 of the United States Code, or any other provision of law during a war or during a national emergency declared by the President or Congress. (See 10 U.S.C. 101(a)(13).)

5. In newly designated § 630.1205, revise paragraph (b) and the last sentence of paragraph (c) to read as follows:

§ 630.1205 Intermittent leave or reduced leave schedule.

* * * * *

(b) Leave under § 630.1203(a)(3) or (4) may be taken intermittently or on a reduced leave schedule when medically necessary, subject to §§ 630.1207 and 630.1208(b)(6). Leave under § 630.1203(a)(5) may be taken on an intermittent or reduced leave schedule basis, subject to §§ 630.1207 and 630.1209.

(c) * * * Upon returning from leave, the employee shall be entitled to be returned to his or her permanent position or an equivalent position, as provided in § 630.1210(a) of this part.

* * * * *

6. In newly designated § 630.1207, redesignate paragraphs (c) through (f) as paragraphs (d) through (g), respectively, and add a new paragraph (c) to read as follows:

§ 630.1207 Notice of leave.

* * * * *

(c) If the need for leave taken under § 630.1203(a)(5) is foreseeable, the employee must provide notice as soon as practicable, regardless of how far in advance such leave is being requested.

* * * * *

7. In newly designated § 630.1208, revise paragraph (k) to read as follows:

§ 630.1208 Medical certification.

* * * * *

(k) To ensure the security and confidentiality of any written medical certification under §§ 630.1208 or 630.1210(h) of this part, the medical certification shall be subject to the provisions for safeguarding information about individuals under subpart A or part 293 of this chapter.

8. Further redesignate newly designated §§ 630.1209 through 630.1212 as §§ 630.1210 through 630.1213, respectively, and add new § 630.1209 to read as follows:

§ 630.1209 Certification for leave taken because of a qualifying exigency.

(a) *Active duty orders.* The first time an employee requests leave because of a qualifying exigency arising out of the covered active duty or call to covered active duty status of a covered military member, an agency may require the employee to provide a copy of the covered military member's active duty orders or other documentation issued by the military which indicates that the covered military member is on covered active duty or call to covered active duty status, and the dates of the covered military member's active duty service. This information need only be provided to the agency once. A copy of new active duty orders or other documentation issued by the military must be provided to the agency if the need for leave because of a qualifying exigency arises out of a different covered active duty or call to covered active duty status of the same or a different covered military member.

(b) *Required information.* An agency may require that leave for any qualifying exigency specified in § 630.1204 be supported by a certification from the employee that sets forth the following information:

(1) A statement or description, signed by the employee, of appropriate facts regarding the qualifying exigency for which FMLA leave is requested. The facts must be sufficient to support the need for leave. Such facts include the type of qualifying exigency for which leave is requested and any available written documentation that supports the request for leave, such as a copy of a meeting announcement for informational briefings sponsored by the military, a document confirming an appointment with a counselor or school official, or a copy of a bill for services for the handling of legal or financial affairs;

(2) The approximate date on which the qualifying exigency commenced or will commence;

(3) If an employee requests leave because of a qualifying exigency for a single, continuous period of time, the beginning and end dates for such absence;

(4) If an employee requests leave because of a qualifying exigency on an intermittent or reduced leave schedule basis, an estimate of the frequency and duration of the qualifying exigency; and

(5) If the qualifying exigency involves meeting with a third party, appropriate contact information for the individual or entity with whom the employee is meeting (such as the name, title, organization, address, telephone number, fax number, and email address) and a brief description of the purpose of the meeting.

(c) *Verification.* If an employee submits a complete and sufficient certification to support his or her request for leave because of a qualifying exigency, the agency may not request additional information from the employee. However, the agency may verify the information described in paragraphs (c)(1) and (c)(2) of this section and does not need the employee's permission to do so.

(1) If the qualifying exigency involves meeting with a third party, the agency may contact the individual or entity with whom the employee is meeting for purposes of verifying a meeting or appointment schedule and the nature of the meeting between the employee and the specified individual or entity.

(2) An agency may contact an appropriate unit of the Department of Defense to request verification that a covered military member is on covered active duty or call to covered active duty status.

9. In newly designated § 630.1210, revise the last three sentences in paragraph (h) and all of paragraph (l) to read as follows:

§ 630.1210 Protection of employment and benefits.

* * * * *

(h) * * * The same conditions for verifying the adequacy of a medical certification in § 630.1208(c) shall apply to the medical certification to return to work. No second or third opinion on the medical certification to return to work may be required. An agency may not require a medical certification to return to work during the period the employee takes leave intermittently or under a reduced leave schedule under § 630.1205.

* * * * *

(l) An employee who does not comply with the notification requirements in § 630.1207 and does not provide medical certification signed by the health care provider that includes all of the information required in § 630.1208(b) is not entitled to family and medical leave.

10. In § 630.1213, revise paragraph (b)(3) to read as follows:

§ 630.1213 Records and reports.

* * * * *

(b) * * *

(3) The number of hours of leave taken under § 630.1203(a), including any paid leave substituted for leave without pay under § 630.1206(b); and

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DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 457

RIN 0563–AC27

Common Crop Insurance Regulations; Extra Long Staple Cotton Crop Provisions

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Proposed rule with request for comments.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) proposes to amend the Common Crop Insurance Regulations, Extra Long Staple Cotton Crop Insurance Provisions to remove all references to the Daily Spot Cotton Quotation and replace the reference with the National Average Loan Rate published by the Farm Service Agency (FSA), to incorporate a current Special Provisions statement into the Crop Provisions, and to make the Extra Long Staple Cotton Crop Insurance Provisions consistent with the Upland Cotton Crop Insurance Provisions. The intended effect of this action is to provide policy changes, to clarify existing policy