

§ 610.401

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§ 610.401 General.

This subpart contains regulatory requirements prescribed by the Office of Personnel Management to implement certain provisions of subchapter 11 of chapter 61 of title 5, United States Code. These regulations supplement that subchapter and must be read together with it.

§ 610.402 Coverage.

The regulations contained in this subpart apply only to flexible work schedules and compressed work schedules established under subchapter 11 of chapter 61 of title 5, United States Code.

§ 610.403 Definitions.

In this subpart, *Agency*, *Credit Hours*, and *Employee* have the meaning given these terms in section 6121 of title 5, United States Code.

[58 FR 58262, Nov. 1, 1993]

§ 610.404 Requirement for time-accounting method.

An agency that authorizes a flexible work schedule or a compressed work schedule under this subpart shall establish a time-accounting method that will provide affirmative evidence that each employee subject to the schedule has worked the proper number of hours in a biweekly pay period.

§ 610.405 Holiday for part-time employees on flexible work schedules.

If a part-time employee is relieved or prevented from working on a day within the employee's scheduled tour of duty that is designated as a holiday by Federal statute or Executive order, the employee is entitled to basic pay with respect to the holiday for the number of hours the employee is scheduled to work on that day, not to exceed 8 hours. When a holiday falls on a non-workday of a part-time employee, he or she is not entitled to an in-lieu-of day for that holiday.

§ 610.406 Holiday for employees on compressed work schedules.

(a) If a full-time employee is relieved or prevented from working on a day designated as a holiday by Federal statute or Executive order, the em-

ployee is entitled to basic pay for the number of hours of the compressed work schedule on that day.

(b) If a part-time employee is relieved or prevented from working on a day within the employee's scheduled tour of duty that is designated as a holiday by Federal statute or Executive order, the employee is entitled to basic pay for the number of hours of the compressed work schedule on that day. When a holiday falls on a non-workday of a part-time employee, he or she is not entitled to an in-lieu-of day for that holiday.

§ 610.407 Premium pay for holiday work for employees on compressed work schedules.

(a) An employee on a compressed schedule who performs work on a holiday is entitled to basic pay, plus premium pay at a rate equal to basic pay, for the work that is not in excess of the employee's compressed work schedule for that day. For hours worked on a holiday in excess of the compressed work schedule, a full-time employee is entitled to overtime pay under applicable provisions of law and a part-time employee is entitled to straight time pay or overtime pay, depending on whether the excess hours are non-overtime hours or overtime hours.

(b) An employee on a compressed work schedule is not entitled to holiday premium pay while engaged in training, except as provided in § 410.402 of this chapter.

[48 FR 44060, Sept. 27, 1983, as amended at 64 FR 69182, Dec. 10, 1999]

§ 610.408 Use of credit hours.

Members of the Senior Executive Service (SES) may not accumulate credit hours under an alternative work schedule. Any credit hours accumulated in the SES prior to December 1, 1993, must be used within 6 months of that date.

[58 FR 58262, Nov. 1, 1993]

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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.

SOURCE: 33 FR 12475, Sept. 4, 1968, unless otherwise noted.

Subpart A—General Provisions

§ 630.101 Responsibility for administration.

The head of an agency having employees subject to this part is responsible for the proper administration of this part so far as it pertains to employees under his jurisdiction, and for maintaining an account of leave for each employee in accordance with methods prescribed by the General Accounting Office.

[34 FR 13655, Aug. 26, 1969]

Subpart B—Definitions and General Provisions for Annual and Sick Leave

§ 630.201 Definitions.

(a) In section 6301(2)(iii) of title 5, United States Code, the term *temporary employee engaged in construction work at an hourly rate* means an employee hired on a temporary basis solely for the purpose of work on a specific construction project and paid on an hourly rate.

(b) In subparts B through G of this part:

Accrued leave means the leave earned by an employee during the current leave year that is unused at any given time in that year.

Accumulated leave means the unused leave remaining to the credit of an employee at the beginning of the leave year.

Employee means an employee to whom subchapter I of chapter 63 of title 5, United States Code, applies.

Family member means the following relatives of the employee:

- (1) Spouse, and parents thereof;
- (2) Children, including adopted children and spouses thereof;
- (3) Parents;
- (4) Brothers and sisters, and spouses thereof; and
- (5) Any individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship.

Health care provider has the meaning given that term in § 630.1202.

Leave year means the period beginning with the first day of the first complete pay period in a calendar year and ending with the day immediately before the first day of the first complete pay period in the following calendar year.

Medical certificate means a written statement signed by a registered practicing physician or other practitioner certifying to the incapacitation, examination, or treatment, or to the period of disability while the patient was receiving professional treatment.

Serious health condition has the meaning given that term in § 630.1202.

Uncommon tour of duty means an established tour of duty that exceeds 80 hours of work in a biweekly pay period, provided the tour—

- (1) Includes hours for which the employee is compensated by standby duty pay under 5 U.S.C. 5545(c)(1) and § 550.141 of this chapter;
- (2) Is a regular tour of duty (as defined in § 550.1302 of this chapter) established for firefighters compensated under 5 U.S.C. 5545b and part 550, subpart M, of this chapter; or
- (3) Is authorized for a category of employees by the Office of Personnel Management.

United States means the several States and the District of Columbia.

[61 FR 64450, Dec. 5, 1996, as amended at 63 FR 64595, Nov. 23, 1998; 65 FR 37239, June 13, 2000]

§ 630.202 Full biweekly pay period; leave earnings.

(a) *Full-time employees.* A full-time employee earns leave during each full biweekly pay period while in a pay status or in a combination of a pay status and a nonpay status.

(b) *Part-time employees.* Hours in a pay status in excess of an agency's basic working hours in a pay period are disregarded in computing the leave earnings of a part-time employee.

[33 FR 12475, Sept. 4, 1968, as amended at 55 FR 6595, Feb. 26, 1990]

§ 630.203 Pay periods other than bi-weekly.

An employee paid on other than a bi-weekly pay period basis earns leave on a pro rata basis for a full pay period.

§ 630.204 Fractional pay periods.

When an employee's service is interrupted by a non-leave-earning period, he earns leave on a pro rata basis for each fractional pay period that occurs within the continuity of his employment.

§ 630.205 [Reserved]

§ 630.206 Minimum charge.

(a) Unless an agency establishes a minimum charge of less than one hour, or establishes a different minimum charge through negotiations, the minimum charge for leave is one hour, and additional charges are in multiples thereof. If an employee is unavoidably or necessarily absent for less than one hour, or tardy, the agency, for adequate reason, may excuse him without charge to leave.

(b) When an employee is charged with leave for an unauthorized absence or tardiness, the agency may not require him to perform work for any part of the leave period charged against his account.

[33 FR 12475, Sept. 4, 1968, as amended at 38 FR 18446, July 11, 1973; 38 FR 26601, Sept. 24, 1973]

§ 630.207 Travel time.

The travel time granted an employee under section 6303(d) of title 5, United States Code, is inclusive of the time necessarily occupied in traveling to and from his post of duty and (a) the United States, or (b) his place of residence, which is outside the area of employment, in the Commonwealth of Puerto Rico or the territories or possessions of the United States. The employee shall designate his place of residence in his request for leave under

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section 6303(d) of title 5, United States Code.

§ 630.208 Reduction in leave credits.

(a) When the number of hours in a nonpay status in a full-time employee's leave year equals the number of basepay hours in a pay period, the agency shall reduce his credits for leave by an amount equal to the amount of leave the employee earns during the pay period. When the employee's number of hours of nonpay status does not require a reduction of leave credits, the agency shall drop those hours at the end of the employee's leave year. For the purpose of determining the reduction of leave credits under this paragraph when an employee has one or more breaks in service during a leave year, the agency shall include all hours in a nonpay status (other than nonpay status during a fractional pay period when no leave accrues) for each period of service during the leave year in which annual leave accrued.

(b) An employee who is in a nonpay status for his entire leave year does not earn leave.

(c) When a reduction in leave credits results in a debit to an employee's annual leave account at the end of a leave year, the agency shall:

(1) Carry the debit forward as a charge against the annual leave to be earned by the employee in the next leave year; or

(2) Require the employee to refund the amount paid him for the period covering the excess leave that resulted in the debit.

(d) A period covered by an employee's refund for unearned advanced leave is deemed not a nonpay status under this section.

§ 630.209 Refund for unearned leave.

(a) When an employee who is indebted for unearned leave is separated, the agency shall:

(1) Require him to refund the amount paid him for the period covering the leave for which he is indebted; or

(2) Deduct that amount from any pay due him.

An employee who enters active military service with a right of restoration

is deemed not separated for the purpose of this paragraph.

(b) This section does not apply when an employee:

(1) Dies;

(2) Retires for disability; or

(3) Resigns or is separated because of disability which prevents him from returning to duty or continuing in the service, and which is the basis of the separation as determined by his agency on medical evidence acceptable to it.

§ 630.210 Uncommon tours of duty.

(a) An agency may require that an employee with an uncommon tour of duty accrue and use leave on the basis of that uncommon tour of duty. The leave accrual rates for such employees shall be directly proportional (based on the number of hours in the biweekly tour of duty and the accrual rate of the corresponding leave category) to the standard leave accrual rates for employees who accrue and use leave on the basis of an 80-hour biweekly tour of duty. One hour (or appropriate fraction thereof) of leave shall be charged for each hour (or appropriate fraction thereof) of absence from the uncommon tour of duty.

(b) When an employee is converted to a different tour of duty for leave purposes, his or her leave balances shall be converted to the proper number of hours based on the proportion of hours in the new tour of duty compared to the former tour of duty.

(c) An agency must require that firefighters compensated under § 550.1303(a) of this chapter accrue and use leave on the basis of the applicable uncommon tour of duty.

[59 FR 66635, Dec. 28, 1994, as amended at 63 FR 64595, Nov. 23, 1998]

§ 630.211 Exclusion of Presidential appointees.

(a) *Authority.* (1) Section 6301(2)(xi) of title 5, United States Code, authorizes the President to exclude certain Presidential appointees in the executive branch or the government of the District of Columbia from the annual and sick leave provisions of subchapter I of chapter 63 of title 5, United States Code, and from the related provisions of this part.

(2) The President, by Executive Order 10540, as amended, has delegated to the Office of Personnel Management the responsibility for making exclusions under section 6301(2)(xi), and the Office of Personnel Management has delegated responsibility to the head of each agency consistent with the provisions of this section.

(3) Presidential appointees in positions where the rate of basic pay is equal to or exceeds the rate for level V of the Executive Schedule are already excluded from the annual and sick leave provisions by 5 U.S.C. 6301(2)(x). Therefore, no further action by an agency is necessary to exclude these appointees.

(b) *Criteria for exclusions.* The head of an agency may exclude an officer in the agency from the annual and sick leave provisions only if the officer meets all of the following criteria:

(1) The officer is a Presidential appointee;

(2) The officer is not a United States attorney or United States marshal; and

(3) The officer's responsibilities for carrying out the duties of the position continue outside normal duty hours and while away from the normal duty post.

(c) *Revocation of exclusion.* The head of an agency may revoke an exclusion from the annual and sick leave provisions which was made under this section.

(d) *Reports.* The head of an agency must report any exclusion, or revocation of an exclusion, authorized under this section to the Office of Personnel Management.

(e) *Continuation of previous authorizations.* Any officer in an agency who was excluded by action of the President or the Civil Service Commission prior to February 15, 1979, from the annual and sick leave provisions under the authority of 5 U.S.C. 6301(2)(xi) shall continue to be excluded from annual and sick leave unless the exclusion is revoked by the agency under the provisions of this section.

[44 FR 54694, Sept. 21, 1979, as amended at 56 FR 18663, Apr. 23, 1991]

§ 630.212 Use of annual leave to establish initial eligibility for retirement or continuation of health benefits.

(a) An employee may elect to use annual leave and remain on the agency's rolls in order to establish initial eligibility for immediate retirement under 5 U.S.C. 8336, 8412, or 8414, and/or to establish initial eligibility under 5 U.S.C. 8905 to continue health benefits coverage into retirement, as provided in:

(1) Section 351.606(b)(1) for an employee who would otherwise have been separated by reduction in force procedures under part 351 of this chapter; or

(2) Section 351.606(b)(2) of this chapter for an employee who would otherwise have been separated by adverse action procedures under authority of part 752 of this chapter because of the employee's decision to decline relocation (including transfer of function).

(b)(1) Annual leave that may be used for the purposes described in paragraph

(a) of this section includes all accumulated, accrued, and restored annual leave to the employee's credit prior to the effective date of the reduction in force or relocation (including transfer of function) and annual leave earned by an employee while in a paid leave status after the effective date of the reduction in force or relocation (including transfer of function).

(2) Annual leave that is advanced to an employee under 5 U.S.C. 6302(d), including any advance annual leave that may be credited to an employee's leave account after the effective date of the reduction in force or relocation (including transfer of function), may not be used for purpose of this section.

(3) For purposes of this section, the employing agency may approve the use of any or all annual leave donated to an employee under part 630, subpart I, of this chapter (Voluntary Leave Transfer Program), or made available to the employee under part 630, subpart J, of this chapter (Voluntary Leave Bank Program), as of the effective date of the reduction in force or relocation.

[62 FR 10683, Mar. 10, 1997]

Subpart C—Annual Leave**§ 630.301 Annual leave accumulation—Senior Executive Service.**

(a) Unused annual leave accrued by an employee while serving under an appointment in the Senior Executive Service under 5 U.S.C. chapter 33, subchapter VIII, 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.

(b) When an employee in a position outside of the Senior Executive Service moves to a position in the Senior Executive Service, any annual leave accumulated prior to movement shall remain to the employee's credit.

(1) Annual leave accumulated prior to movement to the Senior Executive Service 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 under an appointment in the Senior Executive Service, only that portion of accrued annual leave that is attributable to service in the Senior Executive Service shall be subject to the 90-day (720-hour) limitation on accumulation of annual leave provided in paragraph (a) of this section. 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.

(c) When an employee in the Senior Executive Service moves to a position outside the Senior Executive Service, any annual leave accumulated while serving in the Senior Executive Service that is in excess of the amount allowed for the position by subsection (a), (b), or (c) of 5 U.S.C. 6304 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).

(1) If the employee has more than 720 hours of annual leave at the time of the move and has a personal leave ceiling

under paragraph (d) of this section, the employee may not carry over to the next leave year an amount greater than the employee's personal leave ceiling.

(2) If the employee has more than 720 hours of annual leave at the time of the move and does not have a personal leave ceiling under paragraph (d) of this section, the employee may not carry over to the next leave year more than 720 hours.

(d) An employee in the Senior Executive Service who, as of the first day of the first pay period beginning after October 13, 1994, has accumulated annual leave in excess of 90 days (720 hours) is entitled to retain that leave as a personal leave ceiling. The leave shall be credited to the employee and shall be subject to reduction in the following manner:

(1) Annual leave credited to an employee shall be based on the amount of annual leave accumulated by the employee as of the end of the pay period preceding the first pay period beginning after October 13, 1994. The credited leave shall exclude—

(i) Any annual leave restored to the employee under 5 U.S.C. 6304(d); and

(ii) Any annual leave advanced to the employee under 5 U.S.C. 6302(d) that had not yet been earned.

(2) Annual leave credited to an employee that is in excess of 90 days (720 hours) shall be subject to reduction in the same manner as provided in 5 U.S.C. 6304(c) until the employee's accumulated annual leave is equal to or less than 90 days (720 hours). For the 1994 leave year, 5 U.S.C. 6304(c) shall be applied only for leave earned and used between the start of the first pay period beginning after October 13, 1994, and the end of the 1994 leave year.

(e) Agencies shall notify affected employees and maintain records on the accumulated annual leave credited to each employee under paragraph (d) of this section and on any reductions in the credited annual leave made under 5 U.S.C. 6304(c). If the employee transfers to another agency, such records shall be provided to the gaining agency.

[59 FR 65705, Dec. 21, 1994, as amended at 60 FR 33328, June 28, 1995]

§ 630.302 Maximum annual leave accumulation—forty-five day limitation.

(a) The effective date on which an employee (otherwise eligible thereunder) becomes subject to section 6304(b) of title 5, United States Code, is the:

- (1) Date of his entry on duty when he is employed locally;
- (2) Date of his arrival at a post of regular assignment for duty; or
- (3) Date on which he begins to perform duty in an area outside the United States and the area of recruitment or from which transferred, when the employee is required to perform duty en route to his post of regular assignment for duty.

(b) Subject to section 6304(c) of title 5, United States Code, the maximum amount of annual leave that may be carried forward into the next leave year by an employee who is transferred or reassigned to a position in which he is no longer subject to section 6304(b) of that title is determined as follows:

- (1) When, on the date prescribed by paragraph (c) of this section, the amount of an employee's accumulated and accrued annual leave is 30 days or less, he may carry forward the amount prescribed by section 6304(a) of title 5, United States Code;
- (2) When, on the date prescribed by paragraph (c) of this section, the amount of an employee's accumulated and accrued annual leave is more than 30 days but not more than 45 days, he may carry forward the full amount thereof that is unused at the end of the current leave year;
- (3) When, on the date prescribed by paragraph (c) of this section, the amount of an employee's accumulated and accrued annual leave is more than 45 days, he may carry forward the amount of unused annual leave to his credit at the end of the current leave year that does not exceed:

- (i) 45 days, if he is not entitled to a greater accumulation under section 6304(c) of title 5, United States Code; or
- (ii) The amount he is entitled to accumulate under section 6304(c) of that title, if that amount is greater than 45 days.

(c) For the purposes of paragraph (b) of this section, an agency shall determine the amount of an employee's ac-

cumulated and accrued annual leave at the end of the pay period which includes:

(1) The date on which the employee departs from his post of regular assignment for transfer or reassignment, except that when the employee is required to perform duty en route in an area in which he would be subject to section 6304(b) of title 5, United States Code, if assigned there, it is the date on which he ceases to perform the duty; or

(2) The date on which final administrative approval is given to effect a change in the employee's duty station when he is on detail or leave in the United States, or in an area (the Commonwealth of Puerto Rico or a territory or possession of the United States) from which he was recruited or transferred.

§ 630.303 Part-time employees; earnings.

A part-time employee for whom there has been established in advance a regular tour of duty on 1 or more days during each administrative workweek, and a part-time employee on a flexible work schedule for whom there has been established only a biweekly work requirement, earn annual leave as follows:

(a) An employee with less than 3 years of service earns 1 hour of annual leave for each 20 hours in a pay status.

(b) An employee with 3 but less than 15 years of service earns 1 hour of annual leave for each 13 hours in a pay status.

(c) An employee with 15 years or more of service earns 1 hour of annual leave for each 10 hours in a pay status.

[33 FR 12475, Sept. 4, 1968, as amended at 48 FR 44061, Sept. 27, 1983]

§ 630.304 Accumulation limitation for part-time employees.

A part-time employee may accumulate not more than 240 or 360 hours' annual leave on the same basis that a full-time employee may accumulate not more than 30 or 45 days' annual leave.

§ 630.305 Designating agency official to approve exigencies.

Before annual leave may be restored under 5 U.S.C. 6304, the determination

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that an exigency is of major importance and that therefore annual leave may not be used by employees to avoid forfeiture must be made by the head of the agency or someone designated to act for him or her on this matter. Except where made by the head of the agency, the determination may not be made by any official whose leave would be affected by the decision.

[53 FR 42933, Oct. 25, 1988]

§ 630.306 Time limit for use of restored annual leave.

(a) Except as otherwise authorized under paragraphs (b) and (c) of this section or other regulation, annual leave restored under 5 U.S.C. 6304(d) must be scheduled and used not later than the end of the leave year ending 2 years after:

(1) The date of restoration of the annual leave forfeited because of administrative error; or

(2) The date fixed by the agency head, or his or her designee, as the termination date of the exigency of the public business that resulted in forfeiture of the annual leave; or,

(3) The date the employee is determined to be recovered and able to return to duty if the leave was forfeited because of sickness.

(b) Annual leave restored to an employee under 5 U.S.C. 6304(d)(3) must be scheduled and used within the time limits prescribed in paragraphs (b)(1) and (b)(2) of this section:

(1) A full-time employee shall schedule and use excess annual leave of 416 hours or less by the end of the leave year in progress 2 years after the date the employee is no longer subject to 5 U.S.C. 6304(d)(3). The agency shall extend this period by 1 leave year for each additional 208 hours of excess annual leave or any portion thereof.

(2) A part-time employee shall schedule and use excess annual leave in an amount equal to or less than 20 percent of the number of hours in the employee's scheduled annual tour of duty by the end of the leave year in progress 2 years after the date the employee is no longer subject to 5 U.S.C. 6304(d)(3). The agency shall extend this period by 1 leave year for each additional number of hours of excess annual leave, or any

portion thereof, equal to 10 percent of the number of hours in the employee's scheduled annual tour of duty.

(c) The time limits established under paragraphs (a) and (b) of this section for using restored annual leave accounts shall not apply for the entire period during which an employee is subject to 5 U.S.C. 6304(d)(3). When coverage under 5 U.S.C. 6304(d)(3) ends, a new time limit shall be established under paragraph (b) of this section for all annual leave restored to an employee under 5 U.S.C. 6304(d).

[59 FR 62972, Dec. 7, 1994]

§ 630.307 Time limit for use of restored annual leave—former missing employees.

Annual leave restored under section 5562 of title 5, United States Code, shall be used within a time limit to be prescribed by the Office of Personnel Management in each case taking into consideration the amount of the restored leave and other relevant factors.

[39 FR 1575, Jan. 11, 1974]

§ 630.308 Scheduling of annual leave.

(a) Except as provided in paragraph (b) of this section and §§ 630.310 and 630.311, before annual leave forfeited under 5 U.S.C. 6304 may be considered for restoration under that section, use of the annual leave must have been scheduled in writing before the start of the third biweekly pay period prior to the end of the leave year.

(b) The requirement for advance scheduling of annual leave in paragraph (a) of this section shall not apply to an employee who is covered by 5 U.S.C. 6304(d)(3). When coverage under 5 U.S.C. 6304(d)(3) terminates during a leave year, the employee shall make a reasonable effort to comply with the scheduling requirement in paragraph (a) of this section. The head of the agency or his or her designee may exempt employees from the advance scheduling requirement in paragraph (a) of this section if coverage under 6304(d)(3) terminated during the leave year and the employee was unable to

comply with the advance scheduling requirement due to circumstances beyond his or her control.

[59 FR 62973, Dec. 7, 1994; 59 FR 65839, Dec. 21, 1994, as amended at 64 FR 46258, Aug. 25, 1999; 66 FR 55558, Nov. 2, 2001]

§ 630.309 Time limit for use of restored annual leave—extended exigency of the public business.

(a) Annual leave restored under 5 U.S.C. 6304(d)(1)(B) because of an extended exigency, as defined in paragraph (b) of this section, must be scheduled and used within a time period that equals twice the number of full calendar years, or parts thereof, that the exigency existed. This time period begins at the beginning of the leave year following the leave year in which the exigency is declared to be ended.

(b) An *extended exigency* means an exigency of such significance as to—

(1) Threaten the national security, safety, or welfare;

(2) Last more than 3 calendar years;

(3) Affect a segment of an agency or occupational class; and

(4) Preclude subsequent use of both restored and accrued annual leave within the time limit specified in § 630.306.

[50 FR 29937, July 23, 1985]

§ 630.310 Scheduling of annual leave by employees determined necessary for Year 2000 computer conversion efforts.

(a) Year 2000 computer conversion efforts are deemed to be an exigency of the public business for the purpose of restoring annual leave forfeited under 5 U.S.C. 6304. This exigency terminates on January 31, 2000.

(b) For any employee who forfeits annual leave under 5 U.S.C. 6304 at the beginning of leave year 2000 because the agency determined the employee's services were required during the Year 2000 computer conversion exigency, the forfeited annual leave is deemed to have been scheduled in advance for the purpose of 5 U.S.C. 6304(d)(1)(B) and § 630.308.

(c) Annual leave restored under 5 U.S.C. 6304(d) because of the Year 2000 computer conversion exigency must be

scheduled and used not later than the end of leave year 2002.

(d) The time limits established under paragraphs (a) and (b) of § 630.306 for using previously restored annual leave do not apply for the period during which an employee's services were determined necessary for the completion of Year 2000 computer conversion efforts. On January 31, 2000, a new time limit will be established under paragraph (c) of this section for all annual leave restored to such an employee.

(e) An employee whose services were determined necessary during the Year 2000 computer conversion exigency for a portion of leave year 1999, but who subsequently moves to a position not involving Year 2000 computer conversion efforts, must make a reasonable effort to comply with the scheduling requirement in § 630.308(a). The head of the agency or his or her designee may exempt such an employee from the advance scheduling requirement in § 630.308(a) if coverage under paragraphs (a) and (b) of this section terminated during leave year 1999 and the employee can demonstrate that he or she was unable to comply with the advance scheduling requirement due to circumstances beyond his or her control.

[64 FR 46259, Aug. 25, 1999, as amended at 64 FR 72253, Dec. 27, 1999]

§ 630.311 Scheduling of annual leave by employees determined necessary to respond to the "National Emergency by Reason of Certain Terrorist Attacks."

(a) The "National Emergency by Reason of Certain Terrorist Attacks" (Presidential Proclamation of September 14, 2001) is deemed to be an exigency of the public business for the purpose of restoring annual leave forfeited under 5 U.S.C. 6304.

(b) For any employee who forfeits annual leave under 5 U.S.C. 6304 at the beginning of a leave year because the agency determined the employee's services were required in response to the national emergency, the forfeited annual leave is deemed to have been scheduled in advance for the purpose of 5 U.S.C. 6304(d)(1)(B) and § 630.308.

(c) Annual leave restored under 5 U.S.C. 6304(d) because of the national emergency must be scheduled and used

within the time limits prescribed in paragraphs (c)(1) and (c)(2) of this section:

(1) A full-time employee must schedule and use excess annual leave of 416 hours or less by the end of the leave year in progress 2 years after the date the employee's services are no longer required by the national emergency. The agency must extend this period by 1 leave year for each additional 208 hours of excess annual leave or any portion thereof.

(2) A part-time employee must schedule and use excess annual leave in an amount equal to or less than 20 percent of the number of hours in the employee's scheduled annual tour of duty by the end of the leave year in progress 2 years after the date the employee's services are no longer required by the national emergency. The agency must extend this period by 1 leave year for each additional number of hours of excess annual leave, or any portion thereof, equal to 10 percent of the number of hours in the employee's scheduled annual tour of duty.

(d) The time limits established under paragraphs (c)(1) and (c)(2) of this section for using restored annual leave accounts do not apply for the entire period during which an employee's services are required for the national emergency. When coverage under paragraphs (a) and (b) of this section ends, a new time limit will be established under paragraph (c) of this section for all annual leave restored to an employee under 5 U.S.C. 6304(d).

(e) An employee whose services were determined essential during the national emergency, but who subsequently moves to a position not considered essential, must make a reasonable effort to comply with the scheduling requirement in § 630.308(a). The head of the agency or his or her designee may exempt such an employee from the advance scheduling requirement in § 630.308(a) if coverage under paragraphs (a) and (b) of this section terminated during the leave year and the employee can demonstrate that he or she was unable to comply with the advance scheduling requirement due to circumstances beyond his or her control.

[66 FR 55558, Nov. 2, 2001]

Subpart D—Sick Leave

§ 630.401 Grant of sick leave.

(a) Subject to paragraphs (b) through (f) of this section, an agency must grant sick leave to an employee when the employee—

(1) Receives medical, dental, or optical examination or treatment;

(2) Is incapacitated for the performance of duties by physical or mental illness, injury, pregnancy, or childbirth;

(3)(i) Provides care for a family member who is incapacitated by a medical or mental condition or attends to a family member receiving medical, dental, or optical examination or treatment; or

(ii) Provides care for a family member with a serious health condition.

(4) Makes arrangements necessitated by the death of a family member or attends the funeral of a family member;

(5) Would, as determined by the health authorities having jurisdiction or by a health care provider, jeopardize the health of others by his or her presence on the job because of exposure to a communicable disease; or

(6) Must be absent from duty for purposes relating to the adoption of a child, including appointments with adoption agencies, social workers, and attorneys; court proceedings; required travel; and any other activities necessary to allow the adoption to proceed.

(b) The amount of sick leave granted to an employee during any leave year for the purposes described in paragraphs (a)(3)(i) and (4) of this section may not exceed a total of 104 hours (or, in the case of a part-time employee or an employee with an uncommon tour of duty, the number of hours of sick leave normally accrued by that employee during a leave year).

(c)(1) An employee who is caring for a family member with a serious health condition under paragraph (a)(3)(ii) of this section may use not more than a total of up to 480 hours of sick leave (or, in the case of a part-time employee or an employee with an uncommon tour of duty, an amount of sick leave equal to 12 times the average number of hours in his or her scheduled tour of duty each week) during a leave year,

subject to the limitation found in paragraph (c)(2) of this section.

(2) If, at the time an employee uses sick leave to care for a family member with a serious health condition under paragraph (c)(1) of this section, he or she has used any portion of the sick leave authorized under paragraph (b) of this section during that leave year, the agency must subtract that amount from the maximum number of hours authorized under paragraph (c)(1) of this section to determine the total amount of sick leave that may be used during the remainder of the leave year to care for a family member with a serious health condition. If the employee previously has used the maximum amount of sick leave permitted under paragraph (c)(1) of this section in a leave year, he or she is not entitled to use additional sick leave under paragraph (b).

(3) A full-time employee may use not more than a total of 480 hours of sick leave (or, in the case of a part-time employee or an employee with an uncommon tour of duty, an amount of sick leave equal to 12 times the average number of hours in his or her scheduled tour of duty each week) for all family care purposes under paragraphs (a)(3) and (4) of this section.

(d) For family care purposes as described in paragraphs (a)(3) and (4) of this section—

(1) A full-time employee may use a total of up to 40 hours (or, in the case of a part-time employee or an employee with an uncommon tour of duty, the average number of hours in his or her regularly scheduled administrative workweek) of accrued and accumulated sick leave without further regard to his or her sick leave balance.

(2) A full-time employee may use more than 40 hours of his or her accrued and accumulated sick leave up to the maximum provided by paragraphs (b) and (c)(1) of this section only if he or she maintains a sick leave balance of at least 80 hours (or, in the case of a part-time employee or an employee with an uncommon tour of duty, two times the average number of hours in his or her regularly scheduled administrative workweek). An employee must maintain this balance during any period of time during which the employee

is using more than his or her basic entitlement to sick leave under paragraph (d)(1) of this section.

(3) An agency may advance only the initial 40 hours of sick leave under paragraph (d)(1) of this section, or a proportional amount for an employee with a part-time or uncommon tour of duty. An agency may not advance sick leave for the purpose of meeting the requirement to retain a minimum sick leave balance under paragraph (d)(2) of this section or, if the employee has the required minimum sick leave balance, for using additional sick leave as provided in paragraphs (b) and (c) of this section.

(e) To be granted any sick leave for the purposes described in paragraphs (a) (3) or (4) of this section during any leave year in an amount exceeding a total of 40 hours (or, in the case of a part-time employee or an employee with an uncommon tour of duty, the average number of hours in the employee's scheduled tour of duty each week), the employee concerned shall retain in his or her sick leave account a balance of at least 80 hours (or, in the case of a part-time employee or an employee with an uncommon tour of duty, an amount equal to twice the average number of hours in the employee's scheduled tour of duty each week). No sick leave may be advanced under 5 U.S.C. 6307(d) for the purpose of meeting the requirement to retain a minimum sick leave balance or for using additional sick leave for the purposes described in paragraphs (a) (3) and (4) of this section when such use would otherwise cause the employee's sick leave balance to fall below the minimum required.

(f) When sick leave is granted to an employee under the condition specified in paragraph (d) of this section, the amount of sick leave retained in the employee's sick leave account shall, in each instance, be at least equal to the minimum prescribed by paragraph (d) of this section after deducting the amount to be used for the purposes described in paragraphs (a)(3) and (4) of this section.

(g) If the number of hours in the employee's tour of duty is changed during the leave year, the employee's entitlement to use sick leave for the purposes

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described in paragraphs (a)(3) and (4) of this section shall be recalculated based on the employee's new tour of duty.

[59 FR 62271, Dec. 2, 1994, as amended at 59 FR 62274, Dec. 2, 1994; 59 FR 67125, Dec. 29, 1994; 60 FR 26979, May 22, 1995; 61 FR 64450, Dec. 5, 1996; 65 FR 37239, June 13, 2000]

§ 630.402 Application for sick leave.

An employee shall file a written application for sick leave within such time limits as the agency may require. An employee shall request advance approval for sick leave for the purposes of receiving medical, dental, or optical examination or treatment and, to the extent possible, for the purposes described in § 630.401(a) (3), (4), and (6).

[59 FR 62274, Dec. 2, 1994]

§ 630.403 Supporting evidence.

(a) An agency may grant sick leave only when supported by administratively acceptable evidence. Regardless of the duration of the absence, an agency may consider an employee's certification as to the reason for his or her absence as administratively acceptable evidence. For an absence in excess of 3 workdays, or for a lesser period when determined necessary, the agency may also require a medical certificate or other administratively acceptable evidence as to the reason for an absence for any of the purposes described in § 630.401(a).

(b) An agency may establish a uniformly applied policy that requires employees to provide administratively acceptable evidence or medical certification for a request for sick leave within a specified time period. An employee who does not provide the required evidence or medical certification within the specified time period is not entitled to sick leave.

(c) An agency may require an employee requesting sick leave to care for a family member under § 630.401(a)(3)(ii) to provide an additional written statement from the health care provider concerning the family member's need for psychological comfort and/or physical care. The statement must certify that—

(1) The family member requires psychological comfort and/or physical care;

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(2) The family member would benefit from the employee's care or presence; and

(3) The employee is needed to care for the family member for a specified period of time.

[65 FR 37240, June 13, 2000]

§ 630.404 Limitation on advance sick leave.

When an employee is serving under a limited appointment or one which will be terminated on a specified date, an agency may advance sick leave to him up to the total sick leave which he would otherwise earn during the term of his appointment. For the purposes of this section, an employee serving a probationary or trial period is not serving under a limited appointment.

§ 630.405 Use of sick leave during annual leave or to become eligible for donated leave.

(a) Subject to § 630.401(b) through (f), an agency may grant sick leave during a period of annual leave for any of the purposes described in § 630.401(a).

(b) An employee's entitlement to use sick leave to care for a family member under § 630.401 shall be considered as available paid leave for the purpose of determining an employee's eligibility to become a leave recipient under the voluntary leave transfer and leave bank program established under subchapters III and IV of title 5, United States Code, if the medical emergency involves a family member of the employee.

(c) In the case of an employee already in a shared leave status (*i.e.*, using donated annual leave) on June 20, 2000 under the voluntary leave transfer or leave bank programs established under subchapters III and IV of chapter 63 of title 5, United States Code, any sick leave available to care for a family member under § 630.401 must be used before continuing to use transferred annual leave or annual leave withdrawn from a leave bank.

[59 FR 62271, Dec. 2, 1994, as amended at 65 FR 37240, June 13, 2000]

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§ 630.406 Part-time employees; earnings.

A part-time employee earns 1 hour of sick leave for each 20 hours in a pay status.

§ 630.407 Sick leave used in computation of annuity.

(a) Sick leave which is used in the computation of annuity for an employee shall be charged against his sick leave account and may not thereafter be used, transferred, or recredited.

(b) An employee on a compressed work schedule is not entitled to holiday premium pay while engaged in training, except as provided in § 410.402 of this chapter.

[34 FR 17617, Oct. 31, 1969, as amended at 64 FR 69182, Dec. 10, 1999]

§ 630.408 Records and reports.

(a) Beginning with leave year 1995, each agency shall maintain records concerning the use of sick leave to care for a family member or to make arrangements for or attend the funeral of a family member under § 630.401(a) (3) and (4) and shall report such information as may be required by the Office of Personnel Management (OPM) for the purpose of evaluating the use of sick leave.

(b) Beginning with leave year 1995, each agency shall maintain the following information by leave year for each employee using sick leave for the purpose described in § 630.401(a) (3) or (4):

(1) The grade or pay level and gender of each employee;

(2) The total number of hours of sick leave used by each employee—

(i) For the purposes described in § 630.401(a) (3) or (4); and

(ii) For all other purposes described in § 630.401(a); and

(3) Any additional information OPM may require.

[59 FR 62271, Dec. 2, 1994]

§ 630.409 Substitution of sick leave for annual leave for adoption-related purposes.

(a) Upon the written request of an employee under the procedures set forth in paragraph (b) of this section, an individual who is employed by the

Federal Government on September 30, 1994, or who is reemployed by the Federal Government on or after September 30, 1994, in a position covered by subchapter I of chapter 63 of title 5, United States Code, may elect to substitute his or her accrued and accumulated sick leave for all or any portion of any annual leave used for purposes relating to the adoption of a child between September 30, 1991, and September 30, 1994.

(b) An employee's written request under paragraph (a) of this section to substitute any accrued and accumulated sick leave for annual leave used for adoption-related purposes must be submitted to his or her employing agency by September 30, 1996. The employee's written request shall—

(1) Specify the period(s) and amount(s) of annual leave involved;

(2) Include copies of any available contemporaneous earnings and leave statement(s) or other contemporaneous documentation acceptable to the agency that specifies the period(s) and amount(s) of annual leave used by the employee for purposes relating to the adoption of a child between September 30, 1991, and September 30, 1994;

(3) Specify the amount(s) of accrued and accumulated sick leave to be substituted under paragraph (b)(1) of this section; and

(4) Include evidence of the adoption that is administratively acceptable to the employing agency.

(c) In the absence of a written request by the employee that meets the requirements of paragraph (b) of this section, no substitution of sick leave may be approved under this section.

(d) Within a reasonable period of time after receiving an employee's written request that meets the requirements set forth in paragraph (b) of this section, the employing agency shall—

(1) Deduct from the employee's sick leave account any amount(s) of accrued and accumulated sick leave the employee elects to substitute for annual leave used for adoption-related purposes between September 30, 1991, and September 30, 1994, that is supported by written documentation acceptable to the employing agency; and

(2) Credit the employee's annual leave account with an amount of annual leave equal to the amount of sick

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leave the employee elects to substitute under paragraphs (a) and (b) of this section.

(e) If the agency determines that insufficient written documentation exists to honor the employee's request, the employing agency shall inform the employee of this determination in writing.

(f) Any annual leave credited to an employee's current annual leave account under paragraph (d)(2) of this section shall be available for use by the employee on or after the date the annual leave is credited in the same manner and for the same purposes as the employee's current accrued and accumulated annual leave. The annual leave credited to an employee under this section may not be substituted for any period of otherwise paid leave or leave without pay used prior to the date the annual leave is credited to the employee's annual leave account under paragraph (d)(2) of this section.

[59 FR 62274, Dec. 2, 1994]

Subpart E—Recredit of Leave

§ 630.501 Annual leave recredit.

(a) When an employee transfers between positions under subchapter I of chapter 63 of title 5, United States Code, the agency from which he transfers shall certify his annual leave account to the employing agency for credit or charge.

(b) When annual leave is transferred between different leave systems under section 6308 of title 5, United States Code, or is recredited under a different leave system as the result of a refund under section 6306 of that title, 7 calendar days of annual leave are deemed equal to 5 workdays of annual leave.

[35 FR 18581, Dec. 8, 1970]

§ 630.502 Sick leave recredit.

(a) When an employee transfers between positions under subchapter I of chapter 63 of title 5, United States Code, the agency from which the employee transfers shall certify his or her sick leave account to the employing agency for credit or charge.

(b) Except as provided in § 630.407 and in paragraph (c) of this section, an employee who has had a break in service

is entitled to a recredit of sick leave (without regard to the date of his or her separation), if he or she returns to Federal employment on or after December 2, 1994, unless the sick leave was forfeited upon reemployment in the Federal Government before December 2, 1994.

(c) Except as provided in § 630.407, an employee of the government of the District of Columbia who was first employed by the government of the District of Columbia before October 1, 1987, who has had a break in service is entitled to a recredit of sick leave (without regard to the date of his or her separation), if he or she returns to Federal employment on or after December 2, 1994, unless the sick leave was forfeited upon reemployment in the Federal Government before December 2, 1994.

(d) When sick leave is transferred between different leave systems under section 6308 of title 5, United States Code, 7 calendar days of sick leave are deemed equal to 5 workdays of sick leave.

(e) An employee who transfers to a position under a different leave system to which he or she can transfer only a part of his or her sick leave is entitled to a recredit of the untransferred sick leave (without regard to the date of the original transfer) if the employee returns to the leave system under which it was earned on or after December 2, 1994.

(f) An employee who transfers to a position to which he or she cannot transfer his or her sick leave is entitled to a recredit of the untransferred sick leave (without regard to the date of the original transfer) if the employee returns to the leave system under which it was earned on or after December 2, 1994.

(g) The recredit of sick leave under this section shall be supported by written documentation available to the employing agency in its official personnel records concerning the employee, the official records of the employee's former employing agency, copies of contemporaneous earnings and leave statement(s) provided by the employee, or copies of other contemporaneous written documentation acceptable to the agency.

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(h) The sick leave to be recredited under this section must have been accrued under 5 U.S.C. 6307 or transferred to the employee's credit under 5 U.S.C. 6308 (or the corresponding provisions of prior statutes).

[59 FR 62271, Dec. 2, 1994]

§ 630.503 Leave from former leave systems.

An employee who earned leave under the leave acts of 1936 or any other leave system merged under subchapter I of chapter 63 of title 5, United States Code, is entitled to a recredit of that leave under that subchapter if he would have been entitled to recredit for it on reentering the leave system under which it was earned. However, this section does not revive leave already forfeited.

§ 630.504 Reestablishment of leave account after military service.

(a) When an employee leaves his or her civilian position to enter the military service, the employing agency shall certify his or her leave account for credit or charge.

(b) If the employee returns to a civilian position following military service, the agency to which the employee returns shall reestablish the certified leave account as a credit or charge (without regard to the date he or she left the civilian position) when the employee is—

(1) Restored in accordance with a right of restoration after separation from active military duty or hospitalization continuing thereafter as provided by law or in accordance with the mandatory provisions of a statute, Executive order, or regulation; or

(2) Reemployed in a position under subchapter I of chapter 63 of title 5, United States Code, on or after December 2, 1994.

(c) For the purpose of documenting a returning employee's entitlement to a recredit of sick leave under this section, the documentation criteria established in § 630.502(g) shall apply.

[59 FR 62272, Dec. 2, 1994]

§ 630.505 Restoration after appeal.

When an employee is restored to an agency as a result of an appeal, the

agency shall reestablish his leave account as a credit or charge as it was at the time of separation.

§ 630.506 Minimum unit.

(a) When an employee moves between positions under subchapter I of chapter 63 of title 5, United States Code, in different agencies, only his leave in whole hour units may be transferred.

(b) When an employee moves between positions under subchapter I of chapter 63 of title 5, United States Code, covered by different leave charging systems within the same agency, his leave is transferable in accordance with paragraph (a) of this section, unless the agency establishes a different policy making fractions of an hour of leave transferable.

[38 FR 18446, July 11, 1973; 38 FR 26601, Sept. 24, 1973]

Subpart F—Home Leave

§ 630.601 Definitions.

In this subpart:

Home leave means leave authorized by section 6305(a) of title 5, United States Code, and earned by service abroad for use in the United States, in the Commonwealth of Puerto Rico, or in the territories or possessions of the United States.

Month means a period which runs from a given day in 1 month through the date preceding the numerically corresponding day in the next month.

Service abroad means service on and after September 6, 1960, by an employee at a post of duty outside the United States and outside the employee's place of residence if his place of residence is in the Commonwealth of Puerto Rico or a territory or possession of the United States.

[33 FR 12475, Sept. 4, 1967, as amended at 60 FR 67287, Dec. 29, 1995]

§ 630.602 Coverage.

An employee who meets the requirements of section 6304(b) of title 5, United States Code, for the accumulation of a maximum of 45 days of annual leave earns and may be granted home leave in accordance with section 6305(a) of that title and this subpart.

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§ 630.603 Computation of service abroad.

For the purpose of this subpart, service abroad:

(a) Begins on the date of the employee's arrival at a post of duty outside the United States, or on the date of his entrance on duty when recruited abroad;

(b) Ends on the date of the employee's departure from the post for separation or for assignment in the United States, or on the date of his separation from duty when separated abroad; and

(c) Includes (1) absence in a nonpay status up to a maximum of 2 workweeks within each 12 months of service abroad, (2) authorized leave with pay, (3) time spent in the Armed Forces of the United States which interrupts service abroad (but only for eligibility, not leave-earning, purposes), and (4) a period of detail.

In computing service abroad, full credit is given for the day of arrival and the day of departure.

[33 FR 12475, Sept. 4, 1968, as amended at 35 FR 14763, Sept. 23, 1970]

§ 630.604 Earning rates.

(a) For each 12 months of service abroad, an employee earns home leave at the following rate:

(1) An employee who accepts an appointment to, or occupies, a position for which the agency has prescribed the requirement that the incumbent accept assignments anywhere in the world as the needs of the agency dictate—15 days.

(2) An employee who is serving with a U.S. mission to a public international organization—15 days.

(3) An employee who is serving at a post for which payment of a foreign or nonforeign (but not a tropical) differential of 20 percent or more is authorized by law or regulation—15 days.

(4) An employee not included in paragraph (a) (1), (2), or (3) of this section who is serving at a post for which payment of a foreign or territorial (but not a tropical) differential of at least 10 percent but less than 20 percent is authorized by law or regulation—10 days.

(5) An employee not included in paragraph (a) (1), (2), (3), or (4) of this section—5 days.

(6) An employee included under (a) (1) through (5) of this section whose civilian service abroad is interrupted by a tour of duty in the Armed Forces of the United States, for the duration of such tour—0 (zero) days.

(b) An agency shall credit home leave to an employee's leave account, as earned, in multiples of 1 day.

[33 FR 12475, Sept. 4, 1968, as amended at 35 FR 14763, Sept. 23, 1970]

§ 630.605 Computation of home leave.

(a) For each month of service abroad, an employee earns home leave under the rates fixed by § 630.604(a) in the amounts set forth in the following table:

HOME LEAVE-EARNING TABLE
[Days earned]

Months of service abroad	Earning rate (days for each 12 months)		
	15	10	5
1	1	0	0
2	2	1	0
3	3	2	1
4	5	3	1
5	6	4	2
6	7	5	2
7	8	5	2
8	10	6	3
9	11	7	3
10	12	8	4
11	13	9	4
12	15	10	5

(b) When an employee moves between different home leave-earning rates during a month of service abroad, or when a change in the differential during a month of service abroad results in a different home leave-earning rate, the agency shall credit the employee with the amount of home leave for the month at the rate to which he was entitled before the change in his home leave-earning rate.

§ 630.606 Grant of home leave.

(a) *Entitlement.* Except as otherwise authorized by statute, an employee is entitled to home leave only when he has completed a basic service period of 24 months of continuous service abroad. This basic service period is terminated by (1) a break in service of 1 or more workdays, or (2) an assignment (other than a detail) to a position in which an employee is no longer subject

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to section 6305(a) of title 5, United States Code.

(b) *Agency authority.* A grant of home leave is at the discretion of an agency. An agency may grant home leave in combination with other leaves of absence in accordance with established agency policy.

(c) *Limitations.* An agency may grant home leave only:

(1) For use in the United States, the Commonwealth of Puerto Rico, or a territory or possession of the United States; and

(2) During an employee's period of service abroad, or within a reasonable period after his return from service abroad when it is contemplated that he will return to service abroad immediately or on completion of an assignment in the United States.

Home leave not granted during a period named in paragraph (c)(2) of this section may be granted only when the employee has completed a further substantial period of service abroad. This further substantial period of service abroad may not be less than the tour of duty prescribed for the employee's post of assignment, except when the agency determines that an earlier grant of home leave is warranted in an individual case.

(d) *Charging of home leave.* The minimum charge for home leave is 1 day and additional charges are in multiples thereof.

(e) *Refund for home leave.* An employee is indebted for the home leave used by him when he fails to return to service abroad after the period of home leave, or after the completion of an assignment in the United States. However, a refund for this indebtedness is not required when (1) the employee has completed not less than 6 months' service in an assignment in the United States following the period of home leave; (2) the agency determines that the employee's failure to return was due to compelling personal reasons of a humanitarian or compassionate nature, such as may involve physical or mental health or circumstances over which the employee has no control; or (3) the agency which granted the home leave determines that it is in the public interest not to return the employee to his overseas assignment.

§ 630.607 Transfer and recredit of home leave.

An employee is entitled to have his home leave account transferred or recredited to his account when he moves between agencies or is reemployed without a break in service of more than 90 days.

Subpart G—Shore Leave

AUTHORITY: 5 U.S.C. 6305.

§ 630.701 Coverage.

This subpart applies to an employee as defined in section 6301 of title 5, United States Code, who is regularly assigned to duties aboard an oceangoing vessel. An employee is considered to be regularly assigned when his continuing duties are such that all or a significant part of them require that he serve aboard an oceangoing vessel. Temporary assignments of a shore-based employee, such as for limited work projects or for training, do not constitute a regular assignment.

§ 630.702 Definitions.

Extended voyage means a voyage of not less than 7 consecutive calendar days duration.

Oceangoing vessel means a vessel in use on the high seas or the Great Lakes; but does not include a vessel which operates primarily on rivers, other lakes, bays, sounds or within the 3-nautical-mile limit of the coastal area of the 48 contiguous States, except when used in mapping, charting, or surveying operations or when in or sailing to or from foreign, territorial, Hawaiian, or Alaskan waters, or waters outside its normal area of operations or outside the 3-nautical-mile limit.

Shore leave means leave authorized by section 6305(c) of title 5, United States Code, and this subpart.

Voyage means the sailing of an oceangoing vessel from one port and its return to that port or the final port of discharge.

[33 FR 12475, Sept. 4, 1968, as amended at 60 FR 67287, Dec. 29, 1995]

§ 630.703 Computation of shore leave.

(a) An employee earns shore leave at the rate of 1 day of shore leave for each

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15 calendar days of absence on one or more extended voyages.

(b) (1) For an employee who is an officer or crewmember, a voyage begins either on the date he assumes his duties aboard an oceangoing vessel to begin preparation for a voyage or on the date he comes aboard when a voyage is in progress. The voyage terminates on the date he ceases to be an officer or crewmember of the oceangoing vessel or on the date on which he is released from assignment of his duties relating to that voyage aboard the oceangoing vessel at the port of origin or port of final discharge, whichever is earlier.

(2) For an employee other than an officer or crewmember, a voyage begins on the date of sailing and terminates on the date the oceangoing vessel returns to a port at which the employee will disembark in completion of his assignment aboard the vessel, or on the date he is released from his assignment aboard the vessel, whichever is earlier.

(c) In computing days of absence, an agency shall include (1) the beginning date of a voyage and the termination date of a voyage; (2) the days an employee spends traveling to join an oceangoing vessel to which assigned when the vessel is at a place other than the port of origin; (3) the days an employee spends traveling between oceangoing vessels when the employee is assigned from one vessel to another; (4) the period representing the number of days within which an employee is reasonably expected to return to the port of origin when his oceangoing vessel's voyage is terminated, or his employment as an officer or crewmember is terminated, at a port other than the port of origin; (5) for an employee who is an officer or crewmember, the days on which he is on sick leave when he becomes sick during a voyage (whether or not continued as a member of the crew) but not beyond the termination date of the voyage of the oceangoing vessel or his repatriation to the port of origin, whichever is earlier; (6) for an employee other than an officer or crewmember, the days on which he is carried on sick leave but not beyond the date on which he returns to the port of origin or the termination date of the voyage, whichever is earlier; and (7)

the days of approved leave from a vessel (paid or unpaid) during a voyage.

§ 630.704 Granting shore leave.

(a) *Authority.* (1) An employee has an absolute right to use shore leave, subject to the right of the head of the agency to fix the time at which shore leave may be used.

(2) Shore leave may be granted during a voyage only when requested by an employee.

(3) An employee shall submit his request for shore leave in writing and whenever an employee's request for shore leave is denied, the denial shall be in writing.

(b) *Accumulation.* Shore leave is in addition to annual leave and may be accumulated for future use without limitation.

(c) *Charge for shore leave.* The minimum charge for shore leave is one day and additional charges are in multiples thereof.

(d) *Lump-sum payment.* Shore leave may not be the basis for lump-sum payment on separation from the service.

(e) *Terminal leave.* (1) Except as provided by paragraph (e)(2) of this section, an agency shall not grant shore leave to an employee as terminal leave. For the purpose of this paragraph terminal leave is approved absence immediately before an employee's separation when an agency knows the employee will not return to duty before the date of his separation.

(2) An agency shall grant shore leave as terminal leave when the employee's inability to use shore leave was due to circumstances beyond his control and not due to his own act or omission.

(f) *Forfeiture of shore leave.* Shore leave not granted before (1) separation from the service, or (2) official assignment (other than by temporary detail) to a position in which the employee does not earn shore leave, is forfeited. When an official assignment will result in forfeiture of shore leave, the agency to the extent administratively practicable shall give an employee an opportunity to use the shore leave he has to his credit either before the reassignment or not later than 6 months after the date of his reassignment when the agency is unable to grant the shore leave before the reassignment.

Subpart H—Funeral Leave

SOURCE: 34 FR 13655, Aug. 26, 1969, unless otherwise noted.

§ 630.801 Applicability.

This subpart and section 6326 of title 5, United States Code, apply to the granting of funeral leave to an employee in connection with the funeral of, or memorial service for, his immediate relative who died as a result of wounds, disease, or injury incurred while serving as a member of the armed forces in a combat zone.

§ 630.802 Coverage.

This subpart applies to:

(a) An employee as defined in section 2105 of title 5, United States Code, who is employed by an executive agency as defined in section 105 of title 5, United States Code; and

(b) An individual who is employed by the government of the District of Columbia.

§ 630.803 Definitions.

Armed forces means the Army, Navy, Air Force, Marine Corps, and Coast Guard.

Combat zone means those areas determined by the President in accordance with section 112 of the Internal Revenue Code.

Employee means an employee or individual covered by § 630.802.

Funeral leave means leave authorized by section 6326 of title 5, United States Code, and this subpart.

Immediate relative means the following relatives of the deceased member of the armed forces:

- (1) Spouse, and parents thereof;
- (2) Children, including adopted children, and spouses thereof;
- (3) Parents;
- (4) Brothers and sisters, and spouses thereof; and
- (5) Any individual related by blood or affinity whose close association with the deceased was such as to have been the equivalent of a family relationship.

[34 FR 13655, Aug. 26, 1969, as amended at 60 FR 67287, Dec. 29, 1995]

§ 630.804 Granting of funeral leave.

(a) An agency shall grant an employee such funeral leave as is needed and requested by him, not to exceed 3 workdays, without loss of or reduction in pay, leave to which he is otherwise entitled, or credit for time or service, and without adversely affecting his performance or efficiency rating. Funeral leave is granted to allow an employee to make arrangements for, or to attend, the funeral or memorial service for an immediate relative who died as the result of a wound, disease, or injury incurred while serving as a member of the armed forces in a combat zone. The 3 days need not be consecutive but if not, the employee shall furnish the approving authority satisfactory reasons justifying a grant of funeral leave for nonconsecutive days.

(b) An agency may grant funeral leave only from a prescribed tour of duty, including regularly scheduled overtime, or, in the case of a substitute employee in the postal field service, from a period during which, except for absence on funeral leave, the employee would have worked.

Subpart I—Voluntary Leave Transfer Program

SOURCE: 59 FR 67125, Dec. 29, 1994, unless otherwise noted.

§ 630.901 Purpose and applicability.

(a) *Purpose.* The purpose of this subpart is to set forth procedures and requirements for a voluntary leave transfer program under which the unused accrued annual leave of one agency officer or employee may be transferred for use by another agency officer or employee who needs such leave because of a medical emergency.

(b) *Applicability.* This subpart applies to officers and employees to whom subchapter I of chapter 63 of title 5, United States Code, applies.

§ 630.902 Definitions.

Agency means—

(a) An *Executive agency*, as defined in 5 U.S.C. 105;

(b) A *military department*, as defined in 5 U.S.C. 102; or

(c) Any other entity of the Federal Government that employs officers or employees to whom subchapter I of chapter 63 of title 5, United States Code, applies. *Agency* does not include the Central Intelligence Agency; the Defense Intelligence Agency; the National Security Agency; the Federal Bureau of Investigation; or any other Executive agency or unit thereof, as determined by the President, whose principal function is the conduct of foreign intelligence or counterintelligence activities.

Available paid leave means accrued or accumulated annual or sick leave under subchapter I of chapter 63 of title 5, United States Code, and recredited and restored annual or sick leave under subpart E of this part. *Available paid leave* does not include annual or sick leave advanced to an employee under 5 U.S.C. 6302(d) or 6307(c) or any annual or sick leave accrued under § 630.907(a) that has not been transferred to the appropriate leave account under § 630.907(c).

Employee has the meaning given that term in 5 U.S.C. 6301(2), except an individual employed by the government of the District of Columbia.

Family member means the following relatives of the employee:

- (a) Spouse, and parents thereof;
- (b) Children, including adopted children, and spouses thereof;
- (c) Parents;
- (d) Brothers and sisters, and spouses thereof; and

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

Leave donor means an employee whose voluntary written request for transfer of annual leave to the annual leave account of a leave recipient is approved by his or her own employing agency.

Leave recipient means a current employee for whom the employing agency has approved an application to receive annual leave from the annual leave accounts of one or more leave donors.

Medical emergency means a medical condition of an employee or a family member of such employee that is likely to require an employee's absence from duty for a prolonged period of time and

to result in a substantial loss of income to the employee because of the unavailability of paid leave.

Paid leave status under subchapter I means the administrative status of an employee while the employee is using annual or sick leave accrued or accumulated under subchapter I of chapter 63 of title 5, United States Code.

Shared leave status means the administrative status of an employee while the employee is using transferred leave under this subpart or leave transferred from a leave bank under subpart J of this part.

§ 630.903 Administrative procedures.

Each Federal agency shall establish and administer procedures to permit the voluntary transfer of annual leave consistent with this subpart.

§ 630.904 Application to become a leave recipient.

(a) An employee may make written application to his or her employing agency to become a leave recipient. If an employee is not capable of making application on his or her own behalf, a personal representative of the potential leave recipient may make written application on his or her behalf.

(b) Each application shall be accompanied by the following information concerning each potential leave recipient:

(1) The name, position title, and grade or pay level of the potential leave recipient;

(2) The reasons transferred leave is needed, including a brief description of the nature, severity, and anticipated duration of the medical emergency, and if it is a recurring one, the approximate frequency of the medical emergency affecting the potential leave recipient;

(3) Certification from one or more physicians, or other appropriate experts, with respect to the medical emergency, if the potential leave recipient's employing agency so requires; and

(4) Any additional information that may be required by the potential leave recipient's employing agency.

(c) If the potential leave recipient's employing agency requires that a potential leave recipient obtain certification from two or more sources under paragraph (b)(3) of this section, the potential leave recipient's employing agency shall ensure, either by direct payment to the expert involved or by reimbursement, that the potential leave recipient is not required to pay for the expenses associated with obtaining certification from more than one source.

§ 630.905 Approval of application to become a leave recipient.

(a) The potential leave recipient's employing agency shall review an application to become a leave recipient under procedures established by the employing agency for the purpose of determining that the potential leave recipient is or has been affected by a medical emergency.

(b) Before approving an application to become a leave recipient, the potential leave recipient's employing agency shall determine that the absence from duty without available paid leave because of the medical emergency is (or is expected to be) at least 24 hours (or, in the case of a part-time employee or an employee with an uncommon tour of duty, at least 30 percent of the average number of hours in the employee's biweekly scheduled tour of duty).

(c) In making a determination as to whether a medical emergency is likely to result in a substantial loss of income, an agency shall not consider factors other than whether the absence from duty without available paid leave is (or is expected to be) at least 24 hours (or, in the case of a part-time employee or an employee with an uncommon tour of duty, at least 30 percent of the average number of hours in the employee's biweekly scheduled tour of duty).

(d) If the application is approved, the employing agency shall notify the leave recipient (or the personal representative who made application on behalf of the leave recipient), within 10 calendar days (excluding Saturdays, Sundays, and legal public holidays) after the date the application was received (or the date the employing agen-

cy established its administrative procedures, if that date is later), that—

(1) The application has been approved; and

(2) Other employees of the leave recipient's employing agency may request the transfer of annual leave to the account of the leave recipient.

(e) If the application is not approved, the employing agency shall notify the applicant (or the personal representative who made application on behalf of the potential leave recipient), within 10 calendar days (excluding Saturdays, Sundays, and legal public holidays) after the date the application was received (or the date the employing agency established its administrative procedures, if that date is later)—

(1) That the application has not been approved; and

(2) The reasons for its disapproval.

[59 FR 67125, Dec. 29, 1994, as amended at 60 FR 26979, May 22, 1995; 61 FR 64451, Dec. 5, 1996]

§ 630.906 Transfer of annual leave.

(a) An employee may submit a voluntary written request to his or her own employing agency that a specified number of hours of his or her accrued annual leave be transferred from his or her annual leave account to the annual leave account of a specified leave recipient. Except as provided in paragraph (f) of this section, annual leave may be transferred only to a leave recipient employed by the leave donor's employing agency.

(b) Except as provided in paragraph (d) of this section and subject to the limitations on the amount of annual leave that may be donated by a leave donor under § 630.908, all or any portion of the annual leave requested under paragraph (a) of this section may be transferred to the annual leave account of the specified leave recipient under procedures established by the leave recipient's employing agency.

(c) An agency having employees who earn and use annual leave on the basis of an uncommon tour of duty shall establish procedures for administering the transfer of annual leave to or from such employees under this subpart.

(d) A leave recipient's employing agency shall not transfer annual leave

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to a leave donor's immediate supervisor.

(e) Annual leave transferred under this section may be substituted retroactively for period of leave without pay (LWOP) or used to liquidate an indebtedness for advanced annual or sick leave granted on or after a date fixed by the leave recipient's employing agency as the beginning of the period of medical emergency for which LWOP or advanced annual or sick leave was granted.

(f) A leave recipient's employing agency shall accept the transfer of annual leave from leave donors employed by one or more other agencies when—

(1) A family member of a leave recipient is employed by another agency and requests the transfer of annual leave to the leave recipient;

(2) In the judgment of the leave recipient's employing agency, the amount of annual leave transferred from leave donors employed by the leave recipient's employing agency may not be sufficient to meet the needs of the leave recipient; or

(3) In the judgment of the leave recipient's employing agency, acceptance of leave transferred from another agency would further the purpose of the voluntary leave transfer program.

(g) The employing agency of a leave donor who wishes to donate annual leave to a leave recipient in another agency shall verify the availability of annual leave in the leave donor's annual leave account, determine that the amount of annual leave to be donated does not exceed the limitations in § 630.908, and ascertain that the leave recipient's employing agency has made any determination that may be required under paragraph (f) of this section. Upon satisfying these requirements, the leave donor's employing agency shall—

(1) Reduce the amount of annual leave credited to the leave donor's annual leave account, as appropriate; and

(2) Notify the leave recipient's employing agency in writing of the amount of annual leave to be credited to the leave recipient's annual leave account.

§ 630.907 Accrual of annual and sick leave.

(a) Except as otherwise provided in this section, while an employee is in a shared leave status, annual and sick leave shall accrue to the credit of the employee at the same rate as if the employee were then in a paid leave status under subchapter I of chapter 63 of title 5, United States Code, except that—

(1) The maximum amount of annual leave that may be accrued by an employee while in a shared leave status in connection with any particular medical emergency may not exceed 40 hours (or, in the case of a part-time employee or an employee with an uncommon tour of duty, the average number of hours in the employee's weekly scheduled tour of duty); and

(2) The maximum amount of sick leave that may be accrued by an employee while in a shared leave status in connection with any particular medical emergency may not exceed 40 hours (or, in the case of a part-time employee or an employee with an uncommon tour of duty, the average number of hours in the employee's weekly scheduled tour of duty).

(b) Any annual or sick leave accrued by an employee under this subpart and subpart J of this part—

(1) Shall be credited to an annual or sick leave account, as appropriate, separate from any leave account of the employee under subchapter I of chapter 63 of title 5, United States Code; and

(2) Shall not become available for use by the employee and may not otherwise be taken into account under subchapter I of chapter 63 of title 5, United States Code, until it is transferred to the appropriate leave account of the employee under subchapter I of chapter 63 of title 5, United States Code, as provided in paragraph (c) of this section.

(c) Any annual or sick leave accrued by an employee under this section shall be transferred to the appropriate leave account of the employee under subchapter I of chapter 63 of title 5, United States Code, and shall become available for use—

(1) As of the beginning of the first pay period beginning on or after the date on which the employee's medical

emergency terminates as described in § 630.910(a)(2) or (3); or

(2) If the employee's medical emergency has not yet terminated, once the employee has exhausted all leave made available to such employee under this subpart or subpart J of this part.

(d) If the leave recipient's employing agency advances at the beginning of the leave year the amount of annual leave the employee normally would accrue during the entire leave year under 5 U.S.C. 6302(d)—

(1) The leave recipient's employing agency shall establish procedures to ensure that 40 hours (or, in the case of a part-time employee or an employee with an uncommon tour of duty, the average number of hours in the employee's weekly scheduled tour of duty) of annual leave are placed in a separate annual leave account and made available for use by the employee as described in paragraph (c) of this section; and

(2) The employee shall continue to accrue annual leave while in a shared leave status to the extent necessary for the purpose of reducing any indebtedness caused by the use of annual leave advanced at the beginning of the leave year.

(e) If the employee's medical emergency terminates as described in § 630.910(a)(1), no leave shall be credited to the employee under this section.

[59 FR 67125, Dec. 29, 1994, as amended at 60 FR 26979, May 22, 1995; 61 FR 64451, Dec. 5, 1996]

§ 630.908 Limitations on donation of annual leave.

(a) In any one leave year, a leave donor may donate no more than a total of one-half of the amount of annual leave he or she would be entitled to accrue during the leave year in which the donation is made.

(b) In the case of a leave donor who is projected to have annual leave that otherwise would be subject to forfeiture at the end of the leave year under 5 U.S.C. 6304(a), the maximum amount of annual leave that may be donated during the leave year shall be the lesser of—

(1) One-half of the amount of annual leave he or she would be entitled to ac-

crue during the leave year in which the donation is made; or

(2) The number of hours remaining in the leave year (as of the date of the transfer) for which the leave donor is scheduled to work and receive pay.

(c) Each agency shall establish written criteria for waiving the limitations on donating annual leave under paragraphs (a) and (b) of this section. Any such waiver shall be documented in writing.

(d) The limitations in this section shall apply to the total amount of annual leave donated or contributed under subparts I and J of this part.

§ 630.909 Use of transferred annual leave.

(a) A leave recipient may use annual leave transferred to his or her annual leave account under § 630.906 only for the purpose of a medical emergency for which the leave recipient was approved.

(b) Except as provided in § 630.907, during each biweekly pay period that a leave recipient is affected by a medical emergency, he or she shall use any accrued annual leave (and sick leave, if applicable) before using transferred annual leave.

(c) The approval and use of transferred annual leave shall be subject to all of the conditions and requirements imposed by chapter 63 of title 5, United States Code, part 630 of this chapter, and the employing agency on the approval and use of annual leave accrued under 5 U.S.C. 6303, except that transferred annual leave may accumulate without regard to the limitation imposed by 5 U.S.C. 6304(a).

(d) Transferred annual leave may be substituted retroactively for any period of leave without pay or used to liquidate an indebtedness for any period of advanced leave that began on or after the date fixed by the agency as the beginning of the medical emergency.

(e) Transferred annual leave may not be—

(1) Transferred to another leave recipient under this subpart, except as provided in § 630.911(e)(3);

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

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(3) Made available for recredit under 5 U.S.C. 6306 upon reemployment by a Federal agency.

§ 630.910 Termination of medical emergency.

(a) The medical emergency affecting a leave recipient shall terminate—

(1) When the leave recipient's Federal service is terminated;

(2) At the end of the biweekly pay period in which the leave recipient's employing agency receives written notice from the leave recipient or from a personal representative of the leave recipient that the leave recipient is no longer affected by a medical emergency;

(3) At the end of the biweekly pay period in which the leave recipient's employing agency determines, after written notice from the agency and an opportunity for the leave recipient (or, if appropriate, a personal representative of the leave recipient) to answer orally or in writing, that the leave recipient is no longer affected by a medical emergency; or

(4) At the end of the biweekly pay period in which the leave recipient's employing agency receives notice that the Office of Personnel Management has approved an application for disability retirement for the leave recipient under the Civil Service Retirement System or the Federal Employees' Retirement System.

(b) The leave recipient's employing agency shall continuously monitor the status of the medical emergency affecting the leave recipient to ensure that the leave recipient continues to be affected by a medical emergency.

(c) When the medical emergency affecting a leave recipient terminates, no further requests for transfer of annual leave to the leave recipient may be granted, and any unused transferred annual leave remaining to the credit of the leave recipient shall be restored to the leave donors under § 630.911.

(d) An agency may deem a medical emergency to continue for the purpose of providing a leave recipient an adequate period of time within which to receive donations of annual leave.

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§ 630.911 Restoration of transferred annual leave.

(a) Under procedures established by the leave recipient's employing agency, any transferred annual leave remaining to the credit of a leave recipient when the medical emergency terminates shall be restored, as provided in paragraphs (b) and (c) of this section and to the extent administratively feasible, by transfer to the annual leave accounts of leave donors who, on the date leave restoration is made, are employed by a Federal agency and subject to chapter 63 of title 5, United States Code.

(b) The amount of unused transferred annual leave to be restored to each leave donor shall be determined as follows:

(1) Divide the number of hours of unused transferred annual leave by the total number of hours of annual leave transferred to the leave recipient;

(2) Multiply the ratio obtained in paragraph (b)(1) of this section by the number of hours of annual leave transferred by each leave donor eligible for restoration under paragraph (a) of this section; and

(3) Round the result obtained in paragraph (b)(2) of this section to the nearest increment of time established by the leave donor's employing agency to account for annual leave.

(c) If the total number of eligible leave donors exceeds the total number of hours of annual leave to be restored, no unused transferred annual leave shall be restored. In no case shall the amount of annual leave restored to a leave donor exceed the amount transferred to the leave recipient by the leave donor.

(d) If the leave donor retires from Federal service, dies, or is otherwise separated from Federal service before the date unused transferred annual leave can be restored, the employing agency of the leave recipient shall not restore the unused transferred annual leave. If (e) At the election of the leave donor, unused transferred annual leave restored to the leave donor under paragraph (a) of this section may be restored by—

(1) Crediting the restored annual leave to the leave donor's annual leave account in the current leave year;

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(2) Crediting the restored annual leave to the leave donor's annual leave account effective as of the first day of the first leave year beginning after the date of election; or

(3) Donating such leave in whole or part to another leave recipient.

(f) If a leave donor elects to donate only part of his or her restored leave to another leave recipient under paragraph (e)(3) of this section, the donor may elect to have the remaining leave credited to the leave donor's annual leave account under paragraph (e)(1) or (e)(2) of this section.

(g) Transferred annual leave restored to the account of a leave donor under paragraph (e) (1) or (2) of this section shall be subject to the limitation imposed by 5 U.S.C. 6304(a) at the end of the leave year in which the restored leave is credited to the leave donor's annual leave account.

(h) If a leave recipient elects to buy back annual leave as a result of claim for an employment-related injury approved by the Office of Workers' Compensation Programs under 20 CFR 10.202 and 10.310, and the annual leave was leave transferred under § 630.906, the amount of annual leave bought back by the leave recipient shall be restored to the leave donor(s).

[59 FR 67125, Dec. 29, 1994, as amended at 61 FR 64451, Dec. 5, 1996]

§ 630.912 Prohibition of coercion.

(a) An employee may not directly or indirectly intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce, any other employee for the purpose of interfering with any right such employee may have with respect to donating, receiving, or using annual leave under this subpart.

(b) For the purpose of paragraph (a) of this section, the term "intimidate, threaten, or coerce" includes promising to confer or conferring any benefit (such as an appointment or promotion or compensation) or effecting or threatening to effect any reprisal (such as deprivation of appointment, promotion, or compensation).

§ 630.913 Records and reports.

(a) Each agency shall maintain records concerning the administration of the voluntary leave transfer pro-

gram and may be required by the Office of Personnel Management to report any information necessary to evaluate the effectiveness of the program.

(b) Agencies shall maintain the following information:

(1) The number of applications approved for medical emergencies affecting the employee and the number of applications approved for medical emergencies affecting an employee's family member;

(2) The grade or pay level of each leave recipient and leave donor, the gender of each leave recipient, and the total amount of transferred annual leave used by each leave recipient; and

(3) Any additional information OPM may require.

Subpart J—Voluntary Leave Bank Program

SOURCE: 59 FR 67129, Dec. 29, 1994, unless otherwise noted.

§ 630.1001 Purpose and applicability.

(a) *Purpose.* The purpose of this subpart is to establish procedures and requirements for a voluntary leave bank program under which the unused accrued annual leave of an employee may be contributed to a leave bank for use by a leave bank member who needs such leave because of a medical emergency.

(b) *Applicability.* This subpart applies to officers and employees—

(1) To whom subchapter I of chapter 63 of title 5, United States Code applies; and

(2) Who are employed in agencies and their organizational subunits operating a voluntary leave bank program under this subpart.

§ 630.1002 Definitions.

Agency means an "Executive agency," as defined in 5 U.S.C. 105, or a "military department," as defined in 5 U.S.C. 102. "Agency" does not include the Central Intelligence Agency, the Defense Intelligence Agency, the National Security Agency, the Federal Bureau of Investigation, or any other Executive agency or subunit thereof, as determined by the President, whose

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principal function is the conduct of foreign intelligence or counterintelligence activities.

Available paid leave has the meaning given that term in subpart I of this part.

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

Family member has the meaning given that term in subpart I of this part.

Leave bank means a pooled fund of annual leave established by an agency under § 630.1003.

Leave bank member means a leave contributor who has contributed, in an open enrollment period (or individual enrollment period, as applicable) of the current leave year, at least the minimum amount of annual leave required by § 630.1004.

Leave contributor means an employee who contributes annual leave to a leave bank under § 630.1004.

Leave recipient means a leave bank member whose application to receive contributions of annual leave from a leave bank has been approved under § 630.1007.

Medical emergency has the meaning given that term in subpart I of this part.

Paid leave status under subchapter I has the meaning given that term in subpart I of this part.

Shared leave status has the meaning given that term in subpart I of this part.

§ 630.1003 Establishing leave banks and leave bank boards.

(a) Each agency that participates in the voluntary leave bank program shall, in accordance with this subpart—

(1) Develop written policies and procedures for establishing and administering leave banks and leave bank boards;

(2) Establish one or more leave bank boards to perform the duties authorized by this subpart; and

(3) Establish and begin operating one or more leave banks.

(b) No more than one leave bank board may be established for each leave bank.

(c) Each leave bank board shall consist of three members. At least one member shall represent a labor organization or employee group.

(d) Each leave bank board shall—

(1) Establish its internal decision-making procedures;

(2) Review and approve or disapprove each application to become a leave contributor under § 630.1004 and a leave recipient under §§ 630.1006 and 630.1007;

(3) Monitor the status of each leave recipient's medical emergency;

(4) Monitor the amount of leave in the leave bank and the number of applications to become a leave recipient;

(5) Maintain an adequate amount of annual leave in the leave bank to the greatest extent practicable in accordance with § 630.1004; and

(6) Perform other functions prescribed in this subpart.

(e) Annual leave may not be borrowed, contributed, or otherwise transferred between leave banks.

§ 630.1004 Application to become a leave contributor and leave bank member.

(a) An employee may make voluntary written application to the leave bank board to become a leave contributor. The application shall specify the number of hours of annual leave to be contributed and any other information the leave bank board may reasonably require.

(b) An employee may request that annual leave be contributed to a specified bank member other than the leave contributor's immediate supervisor.

(c) A leave contributor shall become a leave bank member for a particular leave year if he or she submits an application meeting the requirements of this section during an open enrollment period established by the leave bank board under paragraphs (d) and (e) of this section (or where applicable, during an individual enrollment period established under paragraph (f) of this section).

(d) The leave bank board shall establish at least one open enrollment period for each leave year of leave bank operation.

(e) An open enrollment period shall last at least 30 calendar days. The agency shall take appropriate action to inform employees of each open enrollment period.

(f) An employee entering the agency or participating organizational subunit

or returning from an extended absence outside an open enrollment period may become a leave bank member for the leave year by submitting an application meeting the requirements of this section during an individual enrollment period lasting at least 30 calendar days, beginning on the date the employee entered or returned to the agency or organizational subunit.

(g) Except as provided in paragraph (h) of this section, the minimum contribution required to become a leave bank member for a leave year shall be—

(1) 4 hours of annual leave for an employee who has less than 3 years of service at the time he or she submits an application to contribute annual leave;

(2) 6 hours of annual leave for an employee who has at least 3, but less than 15, years of service at the time he or she submits an application to contribute annual leave; and

(3) 8 hours of annual leave for an employee who has 15 or more years of service at the time he or she submits an application to contribute annual leave.

(h) The leave bank board may—

(1) Decrease the minimum contribution required by paragraph (g) of this section for the following leave year when the leave bank board determines that there is a surplus of leave in the bank;

(2) Increase the minimum contribution required by paragraph (g) of this section for the following leave year when the leave bank board determines that such action is necessary to maintain an adequate balance of annual leave in the leave bank; or

(3) Eliminate the requirement for a minimum contribution under paragraph (g) of this section when a leave bank member transfers within his or her employing agency to an organization covered by a different leave bank.

(i) If a leave recipient does not have sufficient available accrued annual leave to his or her credit to make the full minimum contribution required by this section, he or she shall be deemed to have made the minimum contribution.

(j) The leave bank board shall deposit all contributions of annual leave under

this subpart in the leave bank. Except as provided in § 630.1016(c), the leave bank board may not return a contribution of annual leave to a leave contributor after deposit in the leave bank.

(k) A leave bank member may apply to contribute additional annual leave at any time. An employee who is not a leave bank member may apply to become a leave contributor at any time.

§ 630.1005 Limitations on contribution of annual leave.

(a) In any one leave year, a leave contributor may contribute no more than a total of one-half of the amount of annual leave he or she would be entitled to accrue during the leave year in which the contribution is made.

(b) In the case of a leave contributor who is projected to have annual leave that otherwise would be subject to forfeiture at the end of the leave year under 5 U.S.C. 6304(a), the maximum amount of annual leave that may be contributed during the leave year shall be the lesser of—

(1) One-half of the amount of annual leave he or she would be entitled to accrue during the leave year in which the contribution is made; or

(2) The number of hours remaining in the leave year (as of the date of the contribution) for which the leave contributor is scheduled to work and receive pay.

(c) The agency shall establish written criteria permitting a leave bank board to waive the limitations on contributing annual leave under paragraphs (a) and (b) of this section. Any such waiver shall be documented in writing.

(d) The limitations in this section shall apply to the total amount of annual leave donated or contributed during the leave year under subparts I and J of this part.

§ 630.1006 Application to become a leave recipient.

(a) A leave bank member may make written application to the leave bank board to become a leave recipient. If a leave bank member is not capable of making application on his or her own behalf, a personal representative may make written application on his or her behalf.

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(b) The leave bank board may require leave bank members to submit applications under this section within a prescribed period of time following the termination of a medical emergency.

(c) An application by a leave bank member to become a leave recipient shall be accompanied by the following information concerning the potential leave recipient:

(1) The leave bank member's name, position title, and grade or pay level;

(2) The reasons leave is needed, including a brief description of the nature, severity, anticipated duration, and if it is a recurring one, the approximate frequency of the medical emergency affecting the leave bank member;

(3) Certification from one or more physicians, or other appropriate experts, with respect to the medical emergency, if the leave bank board so requires; and

(4) Any additional information that may be required by the leave bank board.

(d) If the leave bank board requires a leave bank member to submit certification from two or more sources under paragraph (b)(3) of this section, the agency shall ensure, either by direct payment to the expert involved or by reimbursement, that the leave bank member is not required to pay for the expenses associated with obtaining certification from more than one source.

§ 630.1007 Approval of application to become a leave recipient.

(a) The leave bank board shall review an employee's application to become a leave recipient under procedures established by the agency for the purpose of determining whether the employee is a leave bank member who is or has been affected by a medical emergency.

(b) Before approving an application to become a leave recipient, the leave bank board shall determine that the absence from duty without available paid leave because of the medical emergency is (or is expected to be) at least 24 hours (or, in the case of a part-time employee or an employee with an uncommon tour of duty, at least 30 percent of the average number of hours in the employee's biweekly scheduled tour of duty).

(c) In making a determination as to whether a medical emergency is likely to result in a substantial loss of income, the leave bank board shall not consider factors other than whether the absence from duty without available paid leave is (or is expected to be) at least 24 hours (or, in the case of a part-time employee or an employee with an uncommon tour of duty, at least 30 percent of the average number of hours in the employee's biweekly scheduled tour of duty).

(d) The leave bank board shall provide timely written notification to the applicant of the action taken on the application. If the leave bank board disapproves the application, notification shall include the reasons for disapproval.

(e) The leave bank board may establish written policies limiting the amount of annual leave that may be granted to a leave recipient.

[59 FR 67125, Dec. 29, 1994, as amended at 60 FR 26979, May 22, 1995]

§ 630.1008 Accrual of annual and sick leave.

(a) Except as otherwise provided in this section, while an employee is in a shared leave status, annual and sick leave shall accrue to the credit of the employee at the same rate as if the employee were then in a paid leave status under subchapter I of chapter 63 of title 5, United States Code, except that—

(1) The maximum amount of annual leave that may be accrued by a leave recipient while in a shared leave status in connection with any particular medical emergency may not exceed 40 hours (or, in the case of a part-time employee or an employee with an uncommon tour of duty, the average number of hours in the employee's weekly scheduled tour of duty); and

(2) The maximum amount of sick leave that may be accrued by a leave recipient while in a shared leave status in connection with any particular medical emergency may not exceed 40 hours (or, in the case of a part-time employee or an employee with an uncommon tour of duty, the average number of hours in the employee's weekly scheduled tour of duty).

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(b) Any annual or sick leave accrued by an employee under this subpart and subpart I of this part—

(1) Shall be credited to an annual or sick leave account, as appropriate, separate from any leave account of the employee under subchapter I of chapter 63 of title 5, United States Code; and

(2) Shall not become available for use by the employee and may not otherwise be taken into account under subchapter I of chapter 63 of title 5, United States Code, until it is transferred to the appropriate leave account of the employee under subchapter I of chapter 63 of title 5, United States Code, as provided in paragraph (c) of this section.

(c) Any annual or sick leave accrued by an employee under this section shall be transferred to the appropriate leave account of the employee under subchapter I of chapter 63 of title 5, United States Code, and shall become available for use—

(1) As of the beginning of the first pay period beginning on or after the date on which the employee's medical emergency terminates as described in § 630.1010(a)(3) or (4); or

(2) If the employee's medical emergency has not yet terminated, once the employee has exhausted all leave made available to such employee under this subpart of subpart I of this part.

(d) If the leave recipient's employing agency advances at the beginning of the leave year the amount of annual leave the employee normally would accrue during the entire leave year under 5 U.S.C. 6302(d)—

(1) The leave recipient's employing agency shall establish procedures to ensure that 40 hours (or, in the case of a part-time employee or an employee with an uncommon tour of duty, the average number of hours in the employee's weekly scheduled tour of duty) of annual leave are placed in a separate annual leave account and made available for use by the employee as described in paragraph (c) of this section; and

(2) The employee shall continue to accrue annual leave while using annual leave withdrawn from a leave bank to the extent necessary for the purpose of reducing an indebtedness caused by the use of annual leave advanced at the beginning of the leave year.

(e) If the leave recipient's medical emergency terminates as described in § 630.1010(a)(1), no leave shall be credited to the employee under this section.

[59 FR 67125, Dec. 29, 1994, as amended at 60 FR 26979, May 22, 1995]

§ 630.1009 Use of annual leave withdrawn from a leave bank.

(a) A leave recipient may use annual leave withdrawn from a leave bank only for the purpose of medical emergency for which the leave recipient was approved.

(b) Except as provided in § 630.1008, during each biweekly pay period that a leave recipient is affected by a medical emergency, he or she shall use any accrued annual leave (and sick leave, if applicable) before using annual leave withdrawn from a leave bank.

(c) The approval and use of annual leave withdrawn from a leave bank shall be subject to all of the conditions and requirements imposed by chapter 63 of title 5, United States Code, part 630 of this chapter, and the agency on the approval and use of annual leave accrued under 5 U.S.C. 6303, except that annual leave withdrawn from a leave bank may accumulate without regard to any limitation imposed by 5 U.S.C. 6304(a).

(d) Annual leave withdrawn from a leave bank may be substituted retroactively for any period of leave without pay or used to liquidate an indebtedness for any period of advanced leave that began on or after the date fixed by the leave bank board as the beginning of the medical emergency.

(e) Annual leave withdrawn from a leave bank may not be—

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

(2) Made available for recredit under 5 U.S.C. 6306 upon reemployment by a Federal agency.

(f) An agency having employees who earn and use annual leave on the basis of an uncommon tour of duty shall establish procedures for administering the contribution and withdrawal of annual leave by such employees under this subpart.

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§ 630.1010 Termination of medical emergency.

(a) The medical emergency affecting a leave recipient shall terminate—

(1) When the leave recipient's Federal service terminates;

(2) When the leave recipient leaves the agency or participating organizational subunit, if the bank board so determines;

(3) At the end of the biweekly pay period in which the leave bank board receives written notice from the leave recipient or from a personal representative of the leave recipient that the leave recipient is no longer affected by a medical emergency;

(4) At the end of the biweekly pay period in which the leave bank board determines, after written notice from the bank board and an opportunity for the leave recipient (or, if appropriate, a personal representative of the leave recipient) to answer orally or in writing, that the leave recipient is no longer affected by a medical emergency; or

(5) At the end of the biweekly pay period in which the agency receives notice that the Office of Personnel Management has approved an application for disability retirement for the leave recipient under the Civil Service Retirement System or the Federal Employees Retirement System.

(b) The leave bank board shall ensure that annual leave withdrawn from the leave bank and not used before the termination of a leave recipient's medical emergency shall be returned to the leave bank.

(c) The leave bank board may deem a medical emergency to continue for the purpose of providing a leave recipient an adequate period of time within which to receive contributions of annual leave.

(d) If a leave recipient elects to buy back annual leave as a result of a claim for an employment-related injury approved by the Office of Workers' Compensation Programs under 20 CFR 10.202 and 10.310, the amount of annual leave withdrawn from the leave bank that is bought back by the leave recipient shall be restored to the leave bank.

[59 FR 67129, Dec. 29, 1994, as amended at 61 FR 64451, Dec. 5, 1996]

§ 630.1011 Prohibition of coercion.

(a) An employee may not directly or indirectly intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce, any other employee for the purpose of interfering with any right such employee may have with respect to contributing, withdrawing, or using annual leave under this subpart.

(b) For the purpose of paragraph (a) of this section—

(1) The term "employee" has the meaning given that term in 5 U.S.C. 6301(2), excluding an individual employed by the District of Columbia; and

(2) The term "intimidate, threaten, or coerce" includes promising to confer or conferring any benefit (such as an appointment or promotion or compensation) or effecting or threatening to effect any reprisal (such as deprivation of appointment, promotion, or compensation).

[59 FR 67125, Dec. 29, 1994, as amended at 60 FR 26979, May 22, 1995]

§ 630.1012 Records and reports.

(a) Each agency shall maintain records concerning the administration of the voluntary leave bank program and may be required by the Office of Personnel Management to report any information necessary to evaluate the effectiveness of the program.

(b) An agency shall maintain the following information for each leave bank:

(1) The number of leave bank members for each leave year;

(2) The number of applications approved for medical emergencies affecting the employee and the number of applications approved for medical emergencies affecting an employee's family member;

(3) The grade or pay level of each leave contributor and the total amount of annual leave he or she contributed to the bank;

(4) The grade or pay level and gender of each leave recipient and the total amount of annual leave he or she actually used; and

(5) Any additional information OPM may require.

§ 630.1013 Participation in voluntary leave transfer and leave bank programs.

(a) If an agency or organizational subunit establishes a voluntary leave bank program under this subpart—

(1) A covered employee may also participate in a voluntary leave transfer program under subpart I of this part;

(2) Except as provided in paragraphs (b) and (c) of this section, any annual leave previously transferred to an employee under the voluntary leave transfer program shall remain to the credit of the employee who later becomes a leave recipient in a leave bank and shall become subject to the agency's policies and procedures for administering this subpart; and

(3) The agency or organizational subunit shall establish policies or procedures governing the use of donated or transferred leave for any leave recipient who receives leave under both a voluntary leave transfer program and a voluntary leave bank program for the same medical emergency.

(b) Upon termination of a leave recipient's medical emergency, any annual leave previously transferred under the voluntary leave transfer program and remaining to the credit of a leave recipient shall be restored under § 630.911(a) through (d).

(c) Transferred annual leave restored to the account of a leave donor under paragraph (b) of this section shall be subject to the limitation imposed by 5 U.S.C. 6304(a) at the end of the leave year in which the annual leave is restored.

§ 630.1014 Movement between voluntary leave bank programs.

If an employee moves between an agency or organizational subunit operating a leave bank to an agency or organizational subunit operating a different leave bank, the following procedures shall apply:

(a) On the date of the employee's move, he or she shall become subject to the policies and procedures of the voluntary leave bank program of the new agency or organizational subunit; and

(b) Nothing in § 630.1010(a)(2) or (b) shall interfere with the employee's right to submit an application to become a leave contributor or leave re-

ipient in accordance with the policies and procedures of the voluntary leave bank program of the new agency or organizational subunit.

§ 630.1015 Movement between voluntary leave bank and leave transfer programs.

If an employee moves between an agency or organizational subunit covered by a voluntary leave bank program under this subpart and an agency or organizational subunit covered by a voluntary leave transfer program under subpart I of this part, the following procedures shall apply.

(a) On the date of the employee's move, he or she shall become subject to the policies and procedures of the voluntary leave transfer and voluntary leave bank program (if applicable) of the new agency or organizational subunit; and

(b) Nothing in § 630.1010(a)(2) or (b) shall interfere with the employee's right to submit an application to become a leave donor (or leave contributor, as applicable) or leave recipient under the voluntary leave transfer or voluntary leave bank program (as applicable) of the new agency or organizational subunit.

§ 630.1016 Termination of a voluntary leave bank program.

(a) An agency may terminate a voluntary leave bank program only after it gives at least 30 calendar days advance written notice to current leave bank members.

(b) If an agency terminates a voluntary leave bank program before the termination of the medical emergency affecting a leave bank recipient, annual leave transferred to a leave bank recipient shall remain available for use under the rules set forth in subpart I of this part.

(c) An agency that terminates a voluntary leave bank program shall make provisions for the timely and equitable distribution of any leave remaining in the leave bank. The agency may allocate the leave to current leave recipients, recredit the leave to the accounts of the voluntary leave bank members, or a combination of both. The agency may distribute the leave immediately or may delay the distribution, in whole

or part, until the beginning of the following leave year.

Subpart K—Emergency Leave Transfer Program

SOURCE: 64 FR 72253, Dec. 27, 1999, unless otherwise noted.

§ 630.1101 Purpose, applicability, and administration.

(a) *Purpose.* This subpart provides regulations to implement section 6391 of title 5, United States Code, and must be read together with section 6391. Section 6391 of title 5, United States Code, provides that in the event of a major disaster or emergency, as declared by the President, that results in severe adverse effects for a substantial number of employees, the President may direct the Office of Personnel Management (OPM) to establish an emergency leave transfer program under which an employee may donate unused annual leave for transfer to employees of his or her agency or to employees in other Executive agencies who are adversely affected by such disaster or emergency.

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

(c) *Administration.* The head of each agency having employees subject to this subpart is responsible for the proper administration of this subpart. Each Federal agency must establish and administer procedures to permit the voluntary transfer of annual leave consistent with this subpart.

§ 630.1102 Definitions.

In this subpart—

Agency means an “Executive agency,” as defined in 5 U.S.C. 105.

Disaster or emergency means a major disaster or emergency, as declared by the President, that results in severe adverse effects for a substantial number of employees (e.g., loss of life or property, serious injury, or mental illness as a result of a direct threat to life or health).

Emergency leave donor means a current employee whose voluntary written request for transfer of annual leave to an emergency leave transfer program is

approved by his or her employing agency.

Emergency leave transfer program means a program established by OPM that permits Federal employees to transfer their unused annual leave to other Federal employees adversely affected by a disaster or emergency, as declared by the President.

Emergency leave recipient means a current employee for whom the employing agency has approved an application to receive annual leave from an emergency leave transfer program.

Employee has the meaning given that term in 5 U.S.C. 6331(1).

Family member has the meaning given that term in § 630.902.

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

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

§ 630.1103 Establishment of an emergency leave transfer program.

(a) When directed by the President, OPM will establish an emergency leave transfer program that permits an employee to donate his or her accrued annual leave to employees of the same or other Executive agencies who are adversely affected by such a disaster or emergency.

(b) OPM will notify agencies of the establishment of an emergency leave transfer program for a specific disaster or emergency, as declared by the President. Once notified, each agency affected by the disaster or emergency is authorized to do the following:

(1) Determine whether, and how much, donated annual leave is needed by affected employees;

(2) Approve leave donors and/or leave recipients in their agencies, as appropriate;

(3) Facilitate the distribution of donated annual leave from approved leave donors to approved leave recipients within their agencies; and

(4) Determine the period of time for which donated annual leave may be accepted for distribution to approved leave recipients.

(c) A leave bank established under subchapter IV of chapter 63 of title 5, United States Code, and subpart J of part 630 may, with the concurrence of

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the leave bank board established under § 630.1003, donate annual leave to an emergency leave transfer program administered by the leave bank's employing agency.

§ 630.1104 Application to become an emergency leave recipient.

(a) An employee who has been adversely affected by a disaster or emergency may make written application to his or her employing agency to become an emergency leave recipient. If an employee is not capable of making written application, a personal representative of the potential leave recipient may make written application on his or her behalf.

(b) An employee who has a family member who has been adversely affected by a disaster or emergency may also make written application to his or her employing agency to become an emergency leave recipient. An emergency leave recipient may use donated annual leave to assist an affected family member, provided such family member has no reasonable access to other forms of assistance.

(c) For the purpose of this subpart, an employee will be considered to be adversely affected by a major disaster or emergency if the disaster or emergency has caused severe hardship to the employee or a family member of the employee to such a degree that the employee's absence from work is required.

(d) The employee's application must be accompanied by the following information concerning each potential leave recipient:

(1) The name, position title, and grade or pay level of the potential emergency leave recipient;

(2) A statement describing his or her need for leave from the emergency leave transfer program;

(3) Any additional information that may be required by the potential leave recipient's employing agency.

(e) Agencies may administratively determine a time period by which employees must apply to become an emergency leave recipient after the occurrence of a major disaster or emergency.

§ 630.1105 Approval of application to become an emergency leave recipient.

(a) The potential emergency leave recipient's employing agency will review the application to become a leave recipient under procedures established by the employing agency for the purpose of determining that the potential leave recipient is or has been affected by the major disaster or emergency.

(b) If the application is approved, the employing agency must notify the leave recipient (or his or her personal representative) within 10 calendar days (excluding Saturdays, Sundays, and legal public holidays) after the date the application was received (or the date the employing agency established its administrative procedures, if that date is later).

(c) If the application is not approved, the employing agency must notify the applicant (or the personal representative who made application on behalf of the potential emergency leave recipient) within 10 calendar days (excluding Saturdays, Sundays, and legal public holidays) after the date the application was received (or the date the employing agency establishes its administrative procedures, if that date is later). The agency must give the reasons for its disapproval.

(d) An approved emergency leave recipient is not required to exhaust his or her accrued annual and sick leave before receiving donated leave under the emergency leave transfer program.

§ 630.1106 Limitations on donation and use of annual leave.

(a) An employee may voluntarily submit a written request to his or her employing agency that a specified number of hours of his or her accrued annual leave, consistent with the limitations in paragraph (b) of this section, be transferred from his or her annual leave account to an emergency leave transfer program established under § 630.1103(b). An emergency leave donor may not donate annual leave for transfer to a specific emergency leave recipient under this subpart.

(b) An emergency leave donor may not contribute less than 1 hour nor more than 104 hours of annual leave in

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a leave year. Each agency may establish written criteria for waiving the 104-hour limitation on donating annual leave in a leave year.

(c) Annual leave donated under this subpart may not be applied against the limitations on the donation of annual leave under the voluntary leave transfer or leave bank programs established under 5 U.S.C. 6332 and 6362, respectively.

(d) An emergency leave recipient may receive a maximum of 240 hours of donated annual leave at any one time from an emergency leave transfer program for each disaster or emergency.

(e) Each emergency leave recipient must use the donated annual leave for purposes related to the disaster or emergency for which the emergency leave recipient was approved.

(f) Annual leave transferred under this subpart may be—

(1) Substituted retroactively for any period of leave without pay used because of the adverse effects of the disaster or emergency; or

(2) Used to liquidate an indebtedness incurred by the emergency leave recipient for advance annual or sick leave used due to the adverse effects of the disaster or emergency. An agency may advance an emergency leave recipient annual or sick leave, as appropriate (even if the employee has available annual and sick leave), so that the emergency leave recipient is not forced to use his or her accrued leave before donated annual leave becomes available.

(g) While an emergency leave recipient is using donated annual leave from an emergency leave transfer program, annual and sick leave will accrue to the credit of the employee at the same rate as if the employee were in a paid leave status under subchapter I of chapter 63 of title 5, United States Code, and will be subject to the limitations imposed by 5 U.S.C. 6304(a), (b), (c), and (f) at the end of the leave year in which the transferred annual leave is received.

(h) Annual leave transferred under this subpart may not be—

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

(2) Made available for recredit under 5 U.S.C. 6306 upon reemployment by a Federal agency; or

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

(i) Agencies are responsible for ensuring that annual leave donated under the emergency leave transfer program is used appropriately.

§ 630.1107 Governmentwide transfer of emergency leave.

(a) If an agency does not receive sufficient amounts of donated annual leave to meet the needs of approved emergency leave recipients within the agency, the agency may contact OPM for assistance. The agency must notify OPM of the total amount of donated annual leave needed for transfer to its approved emergency leave recipients. OPM will solicit and coordinate the transfer of donated annual leave from other Federal agencies to affected agencies who may have a shortfall of donated annual leave. OPM will determine the period of time for which donations of accrued annual leave may be accepted for transfer to affected agencies.

(b) Each Federal agency contacted by OPM for the purpose of providing donated annual leave to an agency in need will—

(1) Approve leave donors under the conditions specified in § 630.1106(a) and (b) and determine how much donated annual leave is available for transfer to an affected agency;

(2) Maintain records on the amount of leave donated by each emergency leave donor to the emergency leave transfer program (for the purpose of restoring unused transferred annual leave under § 630.1108(c));

(3) Report the total amount of annual leave donated to the emergency leave transfer program to OPM; and

(4) When OPM has accepted the donated annual leave, debit the amount of annual leave donated to the emergency leave transfer program from each emergency leave donor's annual leave account.

(c) OPM will notify each affected agency of the aggregate amount of donated annual leave that will be credited to the agency for transfer by the agency to its approved emergency leave recipient(s). The affected agency will determine the amount of donated annual leave to be transferred to each emergency leave recipient (an amount that may vary according to individual needs).

(d) The affected agency must credit the annual leave account of each approved emergency leave recipient as soon as possible after the date OPM notifies the agency of the amount of donated annual leave that will be credited to the agency under paragraph (b) of this section.

(e) Any annual leave donated to an emergency leave transfer program that is not used by the approved emergency leave recipients will be returned by OPM to the donating agencies for restoring to their emergency leave donors under § 630.1108(b). The donating agencies must determine the amount of donated annual leave to be returned to each of their emergency leave donors consistent with the provisions in § 630.1108(c).

§ 630.1108 Termination of disaster or emergency.

(a) The disaster or emergency affecting an emergency leave recipient terminates—

(1) When the employing agency or OPM determines that the disaster or emergency has terminated;

(2) When the emergency leave recipient's Federal service terminates;

(3) At the end of the biweekly pay period in which the emergency leave recipient, or his or her personal representative, notifies the employing agency that he or she is no longer affected by such disaster or emergency;

(4) At the end of the biweekly pay period in which the employing agency determines, after written notice from the agency and an opportunity for the emergency leave recipient or his or her personal representative to answer orally or in writing, that the emergency leave recipient is no longer affected by such disaster or emergency; or

(5) At the end of the biweekly pay period in which the emergency leave re-

ipient's employing agency receives notice that OPM has approved an application for disability retirement for the emergency leave recipient under the Civil Service Retirement System or the Federal Employees' Retirement System, as appropriate.

(b) When a disaster or emergency affecting an emergency leave recipient is terminated, any annual leave donated to an emergency leave transfer program that is not used by an approved emergency leave recipient must be returned to the emergency leave donors. The amount of remaining annual leave to be returned to each emergency leave donor must be proportional to the amount of annual leave donated by the employee to the emergency leave transfer program for such disaster or emergency. Annual leave donated to an emergency leave transfer program for a specific disaster or emergency may not be transferred to another emergency leave transfer program established for a different disaster or emergency.

(c) Under procedures established by the donating agency, the agency will determine the amount of annual leave returned under paragraph (b) of this section to be restored to each of the emergency leave donors who, on the date leave restoration is made, is employed by a Federal agency. At the election of the emergency leave donor, unused transferred annual leave restored to the emergency leave donor may be restored by—

(1) Crediting the restored annual leave to the emergency leave donor's annual leave account in the current leave year; or

(2) Crediting the restored annual leave to the emergency leave donor's annual leave account effective as of the first day of the following leave year.

§ 630.1109 Prohibition of coercion.

(a) An employee may not directly or indirectly intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce, any other employee for the purpose of interfering with any right such employee may have with respect to donating, receiving, or using annual leave under this subpart.

(b) For the purpose of paragraph (a) of this section, the term "intimidate,

threaten, or coerce” includes promising to confer or conferring any benefit (such as appointment or promotion or compensation) or effecting or threatening to effect any reprisal (such as deprivation of appointment, promotion, or compensation).

Subpart L—Family and Medical Leave

SOURCE: 58 FR 39602, July 23, 1993, unless otherwise noted.

§ 630.1201 Purpose, applicability, and administration.

(a) *Purpose.* This subpart provides regulations to implement sections 6381 through 6387 of title 5, United States Code. This subpart must be read together with those sections of law. Sections 6381 through 6387 of title 5, United States Code, provide a standard approach to providing family and medical leave to Federal employees by prescribing an entitlement to a total of 12 administrative workweeks of unpaid leave during any 12-month period for certain family and medical needs, as specified in § 630.1203(a) of this part.

(b) *Applicability.* (1) Except as otherwise provided in this paragraph, this subpart applies to any employee who—

(i) Is defined as an “employee” under 5 U.S.C. 6301(2), excluding employees covered under paragraph (b)(2) of this section; and

(ii) Has completed at least 12 months of service (not required to be 12 recent or consecutive months) as—

(A) An employee, as defined under 5 U.S.C. 6301(2), excluding any service as an employee under paragraph (b)(2) of this section;

(B) An employee of the Veterans Health Administration appointed under title 38, United States Code, in occupations listed in 38 U.S.C. 7401(1);

(C) A “teacher” or an individual holding a “teaching position,” as defined in section 901 of title 20, United States Code; or

(D) An employee identified in section 2105(c) of title 5, United States Code, who is paid from nonappropriated funds.

(2) This subpart does not apply to—

(i) An individual employed by the government of the District of Columbia;

(ii) An employee serving under a temporary appointment with a time limitation of 1 year or less;

(iii) An intermittent employee, as defined in 5 CFR 340.401(c); or

(iv) Any employee covered by Title I or Title V of the Family and Medical Leave Act of 1993 (Pub. L. 103–3, February 5, 1993). The Department of Labor has issued regulations implementing Title I at 29 CFR part 825.

(3) For the purpose of applying sections 6381 through 6387 of title 5, United States Code—

(i) An employee of the Veterans Health Administration appointed under title 38, United States Code, in occupations listed in 38 U.S.C. 7401(1) is governed by the terms and conditions of regulations prescribed by the Secretary of Veterans Affairs;

(ii) A “teacher” or an individual holding a “teaching position,” as defined in section 901 of title 20, United States Code, shall be governed by the terms and conditions of regulations prescribed by the Secretary of Defense; and

(iii) An employee identified in section 2105(c) of title 5, United States Code, who is paid from nonappropriated funds shall be governed by the terms and conditions of regulations prescribed by the Secretary of Defense or the Secretary of Transportation, as appropriate.

(4) The regulations prescribed by the Secretary of Veterans Affairs, Secretary of Defense, or Secretary of Transportation under paragraph (b)(3) of this section shall, to the extent appropriate, be consistent with the regulations prescribed in this subpart and the regulations prescribed by the Secretary of Labor to carry out Title I of the Family and Medical Leave Act of 1993 at 29 CFR part 825.

(c) *Administration.* The head of an agency having employees subject to this subpart is responsible for the proper administration of this subpart.

[58 FR 39602, July 23, 1993, as amended at 61 FR 64451, Dec. 5, 1996; 65 FR 26486, May 8, 2000]

§ 630.1202 Definitions.

In this subpart:

Accrued leave has the meaning given that term in § 630.201 of this part.

Accumulated leave has the meaning given that term in § 630.201 of this part.

Administrative workweek has the meaning given that term in § 610.102 of this chapter.

Adoption refers to a legal process in which an individual becomes the legal parent of another's child. The source of an adopted child—e.g., whether from a licensed placement agency or otherwise—is not a factor in determining eligibility for leave under this subpart.

Employee means an individual to whom this subpart applies.

Essential functions means the fundamental job duties of the employee's position, as defined in 29 CFR 1630.2(n). An employee who must be absent from work to receive medical treatment for a serious health condition is considered to be unable to perform the essential functions of the position during the absence for treatment.

Family and medical leave means an employee's entitlement to 12 administrative workweeks of unpaid leave for certain family and medical needs, as prescribed under sections 6381 through 6387 of title 5, United States Code.

Foster care means 24-hour care for children in substitution for, and away from, their parents or guardian. Such placement is made by or with the agreement of the State as a result of a voluntary agreement by the parent or guardian that the child be removed from the home, or pursuant to a judicial determination of the necessity for foster care, and involves agreement between the State and foster family to take the child. Although foster care may be with relatives of the child, State action is involved in the removal of the child from parental custody.

Health care provider means—

(1) A licensed Doctor of Medicine or Doctor of Osteopathy or a physician who is serving on active duty in the uniformed services and is designated by the uniformed service to conduct examinations under this subpart;

(2) Any health care provider recognized by the Federal Employees Health Benefits Program or who is licensed or

certified under Federal or State law to provide the service in question;

(3) A health care provider as defined in paragraph (2) of this definition who practices in a country other than the United States, who is authorized to practice in accordance with the laws of that country, and who is performing within the scope of his or her practice as defined under such law;

(4) A Christian Science practitioner listed with the First Church of Christ, Scientist, in Boston, Massachusetts; or

(5) A Native American, including an Eskimo, Aleut, and Native Hawaiian, who is recognized as a traditional healing practitioner by native traditional religious leaders who practices traditional healing methods as believed, expressed, and exercised in Indian religions of the American Indian, Eskimo, Aleut, and Native Hawaiians, consistent with Public Law 95-314, August 11, 1978 (92 Stat. 469), as amended by Public Law 103-344, October 6, 1994 (108 Stat. 3125).

In loco parentis refers to the situation of an individual who has day-to-day responsibility for the care and financial support of a child or, in the case of an employee, who had such responsibility for the employee when the employee was a child. A biological or legal relationship is not necessary.

Incapacity means the inability to work, attend school, or perform other regular daily activities because of a serious health condition or treatment for or recovery from a serious health condition.

Intermittent leave or leave taken intermittently means leave taken in separate blocks of time, rather than for one continuous period of time, and may include leave periods of 1 hour to several weeks. Leave may be taken for a period of less than 1 hour if agency policy provides for a minimum charge for leave of less than 1 hour under § 630.206(a).

Leave without pay means an absence from duty in a nonpay status. Leave without pay may be taken only for those hours of duty comprising an employee's basic workweek.

Parent means a biological parent or an individual who stands or stood *in loco parentis* to an employee when the employee was a son or daughter. This

term does not include parents “in law.”

Reduced leave schedule means a work schedule under which the usual number of hours of regularly scheduled work per workday or workweek of an employee is reduced. The number of hours by which the daily or weekly tour of duty is reduced are counted as leave for the purpose of this subpart.

Regularly scheduled has the meaning given that term in § 610.102 of this chapter.

Regularly scheduled administrative workweek has the meaning given that term in § 610.102 of this chapter.

Serious health condition. (1) Serious health condition means an illness, injury, impairment, or physical or mental condition that involves—

(i) Inpatient care (i.e., an overnight stay) in a hospital, hospice, or residential medical care facility, including any period of incapacity or any subsequent treatment in connection with such inpatient care; or

(ii) Continuing treatment by a health care provider that includes (but is not limited to) examinations to determine if there is a serious health condition and evaluations of such conditions if the examinations or evaluations determine that a serious health condition exists. Continuing treatment by a health care provider may include one or more of the following—

(A) A period of incapacity of more than 3 consecutive calendar days, including any subsequent treatment or period of incapacity relating to the same condition, that also involves—

(1) Treatment two or more times by a health care provider, by a health care provider under the direct supervision of the affected individual’s health care provider, or by a provider of health care services under orders of, or on referral by, a health care provider; or

(2) Treatment by a health care provider on at least one occasion which results in a regimen of continuing treatment under the supervision of the health care provider (e.g., a course of prescription medication or therapy requiring special equipment to resolve or alleviate the health condition).

(B) Any period of incapacity due to pregnancy or childbirth, or for prenatal care, even if the affected individual

does not receive active treatment from a health care provider during the period of incapacity or the period of incapacity does not last more than 3 consecutive calendar days.

(C) Any period of incapacity or treatment for such incapacity due to a chronic serious health condition that—

(1) Requires periodic visits for treatment by a health care provider or by a health care provider under the direct supervision of the affected individual’s health care provider,

(2) Continues over an extended period of time (including recurring episodes of a single underlying condition); and

(3) May cause episodic rather than a continuing period of incapacity (e.g., asthma, diabetes, epilepsy, etc.). The condition is covered even if the affected individual does not receive active treatment from a health care provider during the period of incapacity or the period of incapacity does not last more than 3 consecutive calendar days.

(D) A period of incapacity which is permanent or long-term due to a condition for which treatment may not be effective. The affected individual must be under the continuing supervision of, but need not be receiving active treatment by, a health care provider (e.g., Alzheimer’s, severe stroke, or terminal stages of a disease).

(E) Any period of absence to receive multiple treatments (including any period of recovery) by a health care provider or by a provider of health care services under orders of, or on referral by, a health care provider, either for restorative surgery after an accident or other injury or for a condition that would likely result in a period of incapacity or more than 3 consecutive calendar days in the absence of medical intervention or treatment (e.g., chemotherapy/radiation for cancer, physical therapy for severe arthritis, dialysis for kidney disease).

(2) (Serious health condition does not include routine physical, eye, or dental examinations; a regimen of continuing treatment that includes the taking of over-the-counter medications, bed-rest, exercise, and other similar activities that can be initiated without a visit to the health care provider; a condition for which cosmetic treatments are administered, unless inpatient hospital

care is required or unless complications develop; or an absence because of an employee's use of an illegal substance, unless the employee is receiving treatment for substance abuse by a health care provider or by a provider of health care services on referral by a health care provider. Ordinarily, unless complications arise, the common cold, the flu, earaches, upset stomach, minor ulcers, headaches (other than migraines), routine dental or orthodontia problems, and periodontal disease are not serious health conditions. Allergies, restorative dental or plastic surgery after an injury, removal of cancerous growth, or mental illness resulting from stress may be serious health conditions only if such conditions require inpatient care or continuing treatment by a health care provider.)

Son or daughter means a biological, adopted, or foster child; a step child; a legal ward; or a child of a person standing *in loco parentis* who is—

(1) Under 18 years of age; or

(2) 18 years of age or older and incapable of self-care because of a mental or physical disability. A son or daughter incapable of self-care requires active assistance or supervision to provide daily self-care in three or more of the "activities of daily living" (ADL's) or "instrumental activities of daily living" (IADL's). Activities of daily living include adaptive activities such as caring appropriately for one's grooming and hygiene, bathing, dressing, and eating. Instrumental activities of daily living include cooking, cleaning, shopping, taking public transportation, paying bills, maintaining a residence, using the telephones and directories, using a post office, etc. A "physical or mental disability" refers to a physical or mental impairment that substantially limits one or more of the major life activities of an individual as defined in 29 CFR 1630.2 (h), (i) and (j).

Spouse means an individual who is a husband or wife pursuant to a marriage that is a legal union between one man and one woman, including common law marriage between one man and one woman in States where it is recognized.

Tour of duty has the meaning given that term in § 610.102 of this chapter.

[58 FR 39602, July 23, 1993, as amended at 60 FR 67287-67288, Dec. 29, 1995; 61 FR 64451, Dec. 5, 1996; 65 FR 37240, June 13, 2000]

§ 630.1203 Leave entitlement.

(a) An employee shall be entitled to a total of 12 administrative workweeks of unpaid leave during any 12-month period for one or more of the following reasons:

(1) The birth of a son or daughter of the employee and the care of such son or daughter;

(2) The placement of a son or daughter with the employee for adoption or foster care;

(3) The care of a spouse, son, daughter, or parent of the employee, if such spouse, son, daughter, or parent has a serious health condition; or

(4) A serious health condition of the employee that makes the employee unable to perform any one or more of the essential functions of his or her position.

(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 §§ 630.1206 and 630.1207. An employee may not retroactively invoke his or her entitlement to family and medical leave. However, if an employee and his or her personal representative are physically or mentally incapable of invoking the employee's entitlement to FMLA leave *during the entire period* in which the employee is absent from work for an FMLA-qualifying purpose under paragraph (a) of this section, the employee may retroactively invoke his or her entitlement to FMLA leave within 2 workdays after returning to work. In such cases, the incapacity of the employee must be documented by a written medical certification from a health care provider. In addition, the employee must provide documentation acceptable to the agency explaining the inability of his or her personal representative to contact the agency and invoke the employee's entitlement to FMLA leave during the entire period in which the employee was absent from work for an FMLA-qualifying purpose. An employee may take only the

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amount of family and medical leave that is necessary to manage the circumstances that prompted the need for leave under paragraph (a) of this section.

(c) The 12-month period referred to in paragraph (a) of this section begins on the date an employee first takes leave for a family or medical need specified in paragraph (a) of this section and continues for 12 months. An employee is not entitled to 12 additional workweeks of leave until the previous 12-month period ends and an event or situation occurs that entitles the employee to another period of family or medical leave. (This may include a continuation of a previous situation or circumstance.)

(d) The entitlement to leave under paragraphs (a)(1) and (2) of this section shall expire at the end of the 12-month period beginning on the date of birth or placement. Leave for a birth or placement must be concluded within this 12-month period. Leave taken under paragraphs (a)(1) and (2) of this section, may begin prior to or on the actual date of birth or placement for adoption or foster care, and the 12-month period, referred to in paragraph (a) of this section begins on that date.

(e) Leave under paragraph (a) of this section is available to full-time and part-time employees. A total of 12 administrative workweeks will be made available equally for a full-time or part-time employee in direct proportion to the number of hours in the employee's regularly scheduled administrative workweek. The 12 administrative workweeks of leave will be calculated on an hourly basis and will equal 12 times the average number of hours in the employee's regularly scheduled administrative workweek. If the number of hours in an employee's workweek varies from week to week, a weekly average of the hours scheduled over the 12 weeks prior to the date leave commences shall be used as the basis for this calculation. Any holidays authorized under 5 U.S.C. 6103 or by Executive order and nonworkdays established by Federal statute, Executive order, or administrative order that occur during the period in which the employee is on family and medical leave may not be counted toward the

12-week entitlement to family and medical leave.

(f) If the number of hours in an employee's regularly scheduled administrative workweek is changed during the 12-month period of family and medical leave, the employee's entitlement to any remaining family and medical leave will be recalculated based on the number of hours in the employee's current regularly scheduled administrative workweek.

(g) Each agency shall inform its employees of their entitlements and responsibilities under this subpart, including the requirements and obligations of employees.

(h) An agency may not put an employee on family and medical leave and may not subtract leave from an employee's entitlement to leave under paragraph (a) of this section unless the agency has obtained confirmation from the employee of his or her intent to invoke entitlement to leave under paragraph (b) of this section. An employee's notice of his or her intent to take leave under § 630.1206 may suffice as the employee's confirmation.

[58 FR 39602, July 23, 1993, as amended at 61 FR 64452, Dec. 5, 1996; 65 FR 26486, May 8, 2000]

§ 630.1204 Intermittent leave or reduced leave schedule.

(a) Leave under § 630.1203(a) (1) or (2) of this part shall not be taken intermittently or on a reduced leave schedule unless the employee and the agency agree to do so.

(b) Leave under § 630.1203(a) (3) or (4) of this part may be taken intermittently or on a reduced leave schedule when medically necessary, subject to §§ 630.1206 and 630.1207(b)(6) of this part.

(c) If an employee takes leave under § 630.1203(a) (3) or (4) of this part intermittently or on a reduced leave schedule that is foreseeable based on planned medical treatment or recovery from a serious health condition, the agency may place the employee temporarily in an available alternative position for which the employee is qualified and that can better accommodate recurring periods of leave. 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 § 630.1208(a) of this part.

(d) For the purpose of applying paragraph (c) of this section, an alternative position need not consist of equivalent duties, but must be in the same commuting area and must provide—

(1) An equivalent grade or pay level, including any applicable locality-based comparability payment under 5 U.S.C. 5304; special rate of pay for law enforcement officers or special pay adjustment for law enforcement officers under section 403 or 404 of the Federal Employees Pay Comparability Act of 1990 (Pub. L. 101-509), respectively; continued rate of pay under subpart G of part 531 of this chapter; or special salary rate under 5 U.S.C. 5305 or similar provision of law;

(2) The same type of appointment, work schedule, status, and tenure; and

(3) The same employment benefits made available to the employee in his or her previous position (e.g., life insurance, health benefits, retirement coverage, and leave accrual).

(e) The agency shall determine the available alternative position that has equivalent pay and benefits consistent with Federal laws, including the Rehabilitation Act of 1973 (29 U.S.C. 701) and the Pregnancy Discrimination Act of 1978 (42 U.S.C. 2000e).

(f) Only the amount of leave taken intermittently or on a reduced leave schedule, as these terms are defined in § 630.1202, shall be subtracted from the total amount of leave available to the employee under § 630.1203 (e) and (f).

[58 FR 39602, July 23, 1993, as amended at 61 FR 3544, Feb. 1, 1996; 61 FR 64453, Dec. 5, 1996]

§ 630.1205 Substitution of paid leave.

(a) Except as provided in paragraph (b) of this section, leave taken under § 630.1203(a) of this part shall be leave without pay.

(b) An employee may elect to substitute the following paid leave for any or all of the period of leave without pay to be taken under § 630.1203(a)—

(1) Accrued or accumulated annual or sick leave under subchapter I of chapter 63 of title 5, United States Code, consistent with current law and regulations governing the granting and use of annual or sick leave;

(2) Advanced annual or sick leave approved under the same terms and conditions that apply to any other agency employee who requests advanced annual or sick leave; and

(3) Leave made available to an employee under the Voluntary Leave Transfer Program or the Voluntary Leave Bank Program consistent with subparts I and J of part 630 of this chapter.

(c) An agency may not deny an employee's right to substitute paid leave under paragraph (b) of this section for any or all of the period of leave without pay to be taken under § 630.1203(a), consistent with current law and regulations.

(d) An agency may not require an employee to substitute paid leave under paragraph (b) of this section for any or all of the period of leave without pay to be taken under § 630.1203(a).

(e) An employee shall notify the agency of his or her intent to substitute paid leave under paragraph (b) of this section for the period of leave without pay to be taken under § 630.1203(a) prior to the date such paid leave commences. An employee may not retroactively substitute paid leave for leave without pay previously taken under § 630.1203(a)

[58 FR 39602, July 23, 1993, as amended at 61 FR 64453, Dec. 5, 1996]

§ 630.1206 Notice of leave.

(a) If leave taken under § 630.1203(a) of this part is foreseeable based on an expected birth, placement for adoption or foster care, or planned medical treatment, the employee shall provide notice to the agency of his or her intention to take leave not less than 30 calendar days before the date the leave is to begin. If the date of birth or placement or planned medical treatment requires leave to begin within 30 calendar days, the employee shall provide such notice as is practicable.

(b) If leave taken under § 630.1203(a) (3) or (4) of this part is foreseeable based on planned medical treatment, the employee shall consult with the agency and make a reasonable effort to schedule medical treatment so as not to disrupt unduly the operations of the agency, subject to the approval of the health care provider. The agency may,

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for justifiable cause, request that an employee reschedule medical treatment, subject to the approval of the health care provider.

(c) If the need for leave is not foreseeable—e.g., a medical emergency or the unexpected availability of a child for adoption or foster care, and the employee cannot provide 30 calendar days' notice of his or her need for leave, the employee shall provide notice within a reasonable period of time appropriate to the circumstances involved. If necessary, notice may be given by an employee's personal representative (e.g., a family member or other responsible party). If the need for leave is not foreseeable and the employee is unable, due to circumstances beyond his or her control, to provide notice of his or her need for leave, the leave may not be delayed or denied.

(d) If the need for leave is foreseeable, and the employee fails to give 30 calendar days' notice with no reasonable excuse for the delay of notification, the agency may delay the taking of leave under § 630.1203(a) of this part until at least 30 calendar days after the date the employee provides notice of his or her need for family and medical leave.

(e) An agency may waive the notice requirements under paragraph (a) of this section and instead impose the agency's usual and customary policies or procedures for providing notification of leave. The agency's policies or procedures for providing notification of leave must not be more stringent than the requirements in this section. However, an agency may not deny an employee's entitlement to leave under § 630.1203(a) of this part if the employee fails to follow such agency policies or procedures.

(f) An agency may require that a request for leave under § 630.1203(a) (1) and (2) be supported by evidence that is administratively acceptable to the agency.

[58 FR 39602, July 23, 1993, as amended at 59 FR 62274, Dec. 2, 1994; 61 FR 64453, Dec. 5, 1996; 65 FR 26487, May 8, 2000]

§ 630.1207 Medical certification.

(a) An agency may require that a request for leave under § 630.1203(a) (3) or (4) be supported by written medical

certification issued by the health care provider of the employee or the health care provider of the spouse, son, daughter, or parent of the employee, as appropriate. An agency may waive the requirement for an initial medical certificate in a subsequent 12-month period if the leave under § 630.1203(a) (3) or (4) is for the same chronic or continuing condition.

(b) The written medical certification shall include—

(1) The date the serious health condition commenced;

(2) The probable duration of the serious health condition or specify that the serious health condition is a chronic or continuing condition with an unknown duration and whether the patient is presently incapacitated and the likely duration and frequency of episodes of incapacity;

(3) The appropriate medical facts within the knowledge of the health care provider regarding the serious health condition, including a general statement as to the incapacitation, examination, or treatment that may be required by a health care provider;

(4) For the purpose of leave taken under § 630.1203(a)(3) of this part—

(i) A statement from the health care provider that the spouse, son, daughter, or parent of the employee requires psychological comfort and/or physical care; needs assistance for basic medical, hygienic, nutritional, safety, or transportation needs or in making arrangements to meet such needs; and would benefit from the employee's care or presence; and

(ii) A statement from the employee on the care he or she will provide and an estimate of the amount of time needed to care for his or her spouse, son, daughter, or parent;

(5) For the purpose of leave taken under § 630.1203(a)(4), a statement that the employee is unable to perform one or more of the essential functions of his or her position or requires medical treatment for a serious health condition, based on written information provided by the agency on the essential functions of the employee's position or, if not provided, discussion with the employee about the essential functions of his or her position; and

(6) In the case of certification for intermittent leave or leave on a reduced leave schedule under § 630.1203(a) (3) or (4) for planned medical treatment, the dates (actual or estimates) on which such treatment is expected to be given, the duration of such treatment, and the period of recovery, if any, or specify that the serious health condition is a chronic or continuing condition with an unknown duration and whether the patient is presently incapacitated and the likely duration and frequency of episodes of incapacity.

(c) The information on the medical certification shall relate only to the serious health condition for which the current need for family and medical leave exists. The agency may not require any personal or confidential information in the written medical certification other than that required by paragraph (b) of this section. If an employee submits a completed medical certification signed by the health care provider, the agency may not request new information from the health care provider. However, a health care provider representing the agency, including a health care provider employed by the agency or under administrative oversight of the agency, may contact the health care provider who completed the medical certification, with the employee's permission, for purposes of clarifying the medical certification.

(d) If the agency doubts the validity of the original certification provided under paragraph (a) of this section, the agency may require, at the agency's expense, that the employee obtain the opinion of a second health care provider designated or approved by the agency concerning the information certified under paragraph (b) of this section. Any health care provider designated or approved by the agency shall not be employed by the agency or be under the administrative oversight of the agency on a regular basis unless the agency is located in an area where access to health care is extremely limited—e.g., a rural area or an overseas location where no more than one or two health care providers practice in the relevant specialty, or the only health care providers available are employed by the agency.

(e) If the opinion of the second health care provider differs from the original certification provided under paragraph (a) of this section, the agency may require, at the agency's expense, that the employee obtain the opinion of a third health care provider designated or approved jointly by the agency and the employee concerning the information certified under paragraph (b) of this section. The opinion of the third health care provider shall be binding on the agency and the employee.

(f) To remain entitled to family and medical leave under § 630.1203(a) (3) or (4) of this part, an employee or the employee's spouse, son, daughter, or parent must comply with any requirement from an agency that he or she submit to examination (though not treatment) to obtain a second or third medical certification from a health care provider other than the individual's health care provider.

(g) If the employee is unable to provide the requested medical certification before leave begins, or if the agency questions the validity of the original certification provided by the employee and the medical treatment requires the leave to begin, the agency shall grant provisional leave pending final written medical certification.

(h) An employee must provide the written medical certification required by paragraphs (a), (d), (e), and (g) of this section, signed by the health care provider, no later than 15 calendar days after the date the agency requests such medical certification. If it is not practicable under the particular circumstances to provide the requested medical certification no later than 15 calendar days after the date requested by the agency despite the employee's diligent, good faith efforts, the employee must provide the medical certification within a reasonable period of time under the circumstances involved, but no later than 30 calendar days after the date the agency requests such medical certification.

(i) If, after the leave has commenced, the employee fails to provide the requested medical certification, the agency may—

(1) Charge the employee as absent without leave (AWOL); or

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(2) Allow the employee to request that the provisional leave be charged as leave without pay or charged to the employee's annual and/or sick leave account, as appropriate.

(j) At its own expense, an agency may require subsequent medical recertification on a periodic basis, but not more than once every 30 calendar days, for leave taken for purposes relating to pregnancy, chronic conditions, or long-term conditions, as these terms are used in the definition of *serious health condition* in § 630.1202. For leave taken for all other serious health conditions and including leave taken on an intermittent or reduced leave schedule, if the health care provider has specified on the medical certification a minimum duration of the period of incapacity, the agency may not request recertification until that period has passed. An agency may require subsequent medical recertification more frequently than every 30 calendar days, or more frequently than the minimum duration of the period of incapacity specified on the medical certification, if the employee requests that the original leave period be extended, the circumstances described in the original medical certification have changed significantly, or the agency receives information that casts doubt upon the continuing validity of the medical certification.

(k) To ensure the security and confidentiality of any written medical certification under §§ 630.1207 or 630.1208(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.

[58 FR 39602, July 23, 1993, as amended at 61 FR 64453, Dec. 5, 1996; 65 FR 26487, May 8, 2000; 65 FR 38409, June 21, 2000]

§ 630.1208 Protection of employment and benefits.

(a) Any employee who takes leave under § 630.1203(a) of this part shall be entitled, upon return to the agency, to be returned to—

(1) The same position held by the employee when the leave commenced; or

(2) An equivalent position with equivalent benefits, pay, status, and other terms and conditions of employment.

(b) For the purpose of applying paragraph (a)(2) of this section, an equivalent position must be in the same commuting area and must carry or provide at a minimum—

(1) The same or substantially similar duties and responsibilities, which must entail substantially equivalent skill, effort, responsibility, and authority;

(2) An equivalent grade or pay level, including any applicable locality-based comparability payment under 5 U.S.C. 5304; special rate of pay for law enforcement officers or special pay adjustment for law enforcement officers under section 403 or 404 of the Federal Employees Pay Comparability Act of 1990 (Pub. L. 101-509), respectively; continued rate of pay under subpart G of part 531 of this chapter; or special salary rate under 5 U.S.C. 5305 or similar provision of law;

(3) The same type of appointment, work schedule, status, and tenure;

(4) The same employment benefits made available to the employee in his or her previous position (e.g., life insurance, health benefits, retirement coverage, and leave accrual);

(5) The same or equivalent opportunity for a within-grade increase, performance award, incentive award, or other similar discretionary and non-discretionary payments, consistent with applicable laws and regulations; however, the entitlement to be returned to an equivalent position does not extend to intangible or unmeasurable aspects of the job;

(6) The same or equivalent opportunity for premium pay consistent with applicable law and regulations under 5 CFR part 550, subpart A, or 5 CFR part 551, subpart E; and

(7) The same or equivalent opportunity for training or education benefits consistent with applicable laws and regulations, including any training that an employee may be required to complete to qualify for his or her previous position.

(c) As a result of taking leave under § 630.1203(a) of this part, an employee shall not suffer the loss of any employment benefit accrued prior to the date on which the leave commenced.

(d) Except as otherwise provided by or under law, a restored employee shall not be entitled to—

(1) The accrual of any employment benefits during any period of leave; or

(2) Any right, benefit, or position of employment other than any right, benefit, or position to which the employee would have been entitled had the employee not taken the leave.

(e) For the purpose of applying paragraph (d) of this section, the same entitlements and limitations in law and regulations that apply to the position, pay, benefits, status, and other terms and conditions of employment of an employee in a leave without pay status shall apply to any employee taking leave without pay under this part, except where different entitlements and limitations are specifically provided in this subpart.

(f) An employee is not entitled to be returned to the same or equivalent position under paragraph (a) of this section if the employee would not otherwise have been employed in that position at the time the employee returns from leave.

(g) An agency may not return an employee to an equivalent position where written notification has been provided that the equivalent position will be affected by a reduction in force if the employee's previous position is not affected by a reduction in force.

(h) As a condition to returning an employee who takes leave under § 630.1203(a)(4), an agency may establish a uniformly applied practice or policy that requires all similarly-situated employees (i.e., same occupation, same serious health condition) to obtain written medical certification from the health care provider of the employee that the employee is able to perform the essential functions of his or her position. An agency may delay the return of an employee until the medical certification is provided. The same conditions for verifying the adequacy of a medical certification in § 630.1207(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 § 630.1204.

(i) If an agency requires an employee to obtain written medical certification under paragraph (h) of this section before he or she returns to work, the agency shall notify the employee of this requirement before leave commences, or to the extent practicable in emergency medical situations, and pay the expenses for obtaining the written medical certification. An employee's refusal or failure to provide written medical certification under paragraph (h) of this section may be grounds for appropriate disciplinary or adverse action, as provided in part 752 of this chapter.

(j) An agency may require an employee to report periodically to the agency on his or her status and intention to return to work. An agency's policy requiring such reports must take into account all of the relevant facts and circumstances of the employee's situation.

(k) An employee's decision to invoke FMLA leave under § 630.1203(a) does not prohibit an agency from proceeding with appropriate actions under part 432 or part 752 of this chapter.

(l) An employee who does not comply with the notification requirements in § 630.1206 and does not provide medical certification signed by the health care provider that includes all of the information required in § 630.1207(b) is not entitled to family and medical leave.

[58 FR 39602, July 23, 1993, as amended at 61 FR 3544, Feb. 1, 1996; 61 FR 64453, Dec. 5, 1996; 65 FR 26487, May 8, 2000]

§ 630.1209 Health benefits.

An employee enrolled in a health benefits plan under the Federal Employees Health Benefits Program (established under chapter 89 of title 5, United States Code) who is placed in a leave without pay status as a result of entitlement to leave under § 630.1203(a) of this part may continue his or her health benefits enrollment while in the leave without pay status and arrange to pay the appropriate employee contributions into the Employees Health Benefits Fund (established under section 8909 of title 5, United States Code). The employee shall make such contributions consistent with 5 CFR 890.502.

§ 630.1210

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§ 630.1210 Greater leave entitlements.

(a) An agency shall comply with any collective bargaining agreement or any agency employment benefit program or plan that provides greater family or medical leave entitlements to employees than those provided under this subpart. Nothing in this subpart prevents an agency from amending such policies, provided the policies comply with the requirements of this subpart.

(b) The entitlements established for employees under this subpart may not be diminished by any collective bargaining agreement or any employment benefit program or plan.

(c) An agency may adopt leave policies more generous than those provided in this subpart, except that such policies may not provide entitlement to paid time off in an amount greater than that otherwise authorized by law or provide sick leave in any situation in which sick leave would not normally be allowed by law or regulation.

(d) The entitlements under sections 6381 through 6387 of title 5, United States Code, and this subpart do not modify or affect any Federal law prohibiting discrimination. If the entitlements under sections 6381 through 6387 of title 5, United States Code, and this subpart conflict with any Federal law prohibiting discrimination, an agency must comply with whichever statute provides greater entitlements to employees.

[58 FR 39602, July 23, 1994, as amended at 61 FR 64454, Dec. 5, 1996]

§ 630.1211 Records and reports.

(a) So that OPM can evaluate the use of family and medical leave by Federal employees and provide the Congress and others with information about the use of this entitlement, each agency shall maintain records on employees who take leave under this subpart and submit to OPM such records and reports as OPM may require.

(b) At a minimum, each agency shall maintain the following information concerning each employee who takes leave under this subpart:

(1) The employee's rate of basic pay, as defined in 5 CFR 550.103;

(2) The occupational series for the employee's position;

(3) The number of hours of leave taken under § 630.1203(a), including any paid leave substituted for leave without pay under § 630.1205(b); and

(4) Whether leave was taken—

(i) Under § 630.1203(a) (1), (2) or (3) of this part; or

(ii) Under § 630.1203(a)(4) of this part.

(c) When an employee transfers to a different agency, the losing agency shall provide the gaining agency with information on leave taken under § 630.1203(a) of this part by the employee during the 12 months prior to the date of transfer. The losing agency shall provide the following information:

(1) The beginning and ending dates of the employee's 12-month period, as determined under § 630.1203(c) of this part; and

(2) The number of hours of leave taken under § 630.1203(a) of the part during the employee's 12-month period, as determined under § 630.1203(c) of this part.

[58 FR 39602, July 23, 1993, as amended at 60 FR 67288, Dec. 29, 1995; 61 FR 64454, Dec. 5, 1996]

Subpart M—Reservist Leave Bank Program

SOURCE: 56 FR 20518, May 6, 1991, unless otherwise noted. Redesignated at 64 FR 72253, Dec. 27, 1999.

§ 630.1301 Purpose and applicability.

(a) *Purpose.* The purpose of this subpart is to establish procedures and requirements for a reservist leave bank program in Executive agencies under which an employee may contribute unused accrued annual leave to a leave bank established by the Office of Personnel Management (OPM) for use by eligible returnees who have been members of the Armed Forces of the United States serving on active duty during the Persian Gulf War and who return to civilian employment with their agencies.

(b) *Applicability.* This subject applies to officers and employees—

(1) To whom subchapter IV of chapter 63 of title 5, United States Code, applies; and

(2) Who are employed in Executive agencies.

§ 630.1302 Definitions.

In this subpart:

Agency means an “Executive agency,” as defined in 5 U.S.C. 105.

Contribution period means a period of at least 6 weeks beginning on a date to be established by OPM. The Director of OPM may extend the contribution period, if necessary, to meet the requirements of the legislation.

Eligible returnee means an employee who has been a member of the U.S. Armed Forces serving on orders issued under 10 U.S.C. 672(a), 672(g), 673, 673b, 674, 675, or 688 during the Persian Gulf War, and who has returned to, or will return to Federal employment with his or her agency. An employee who, after completing his or her active duty military service, does not return to Federal employment for any reason is not eligible to receive leave contributed to the reservist leave bank.

Employee has the meaning given that term in 5 U.S.C. 6361(1).

Leave contributor means an employee who contributes annual leave to the reservist leave bank established under section 361 of Public Law 102-25; 105 Stat. 92 (5 U.S.C. 6361 note).

Persian Gulf War means the period beginning on August 2, 1990, and ending on a date thereafter prescribed by Presidential proclamation or by law. OPM will advise agencies of the ending date for eligibility to receive leave under this program.

Reservist leave bank means the leave bank established by OPM for the purpose of this subpart.

§ 630.1303 Identifying eligible returnees.

(a) Each agency shall identify and list all eligible returnees within the agency.

(b) Each agency shall report the number of eligible returnees identified to OPM. Negative reports are required.

§ 630.1304 Receipt, processing, and transfer of leave.

(a) Each agency shall accept annual leave contributed to the reservist leave bank by leave contributors during the contribution period (open season).

(b) Each agency shall determine the procedures under which to collect, process, and transfer leave contributed

under this subpart. Leave contributed to the reservist leave bank must be debited from the contributor’s annual leave account during the pay period in which it is contributed.

(c) Each agency shall report the aggregate amount of annual leave contributed to the reservist leave bank to OPM. (See § 630.1309(b)(1) of this subpart.)

[56 FR 20518, May 6, 1991. Redesignated and amended at 64 FR 72253, 72256, Dec. 27, 1999]

§ 630.1305 Limitations on contribution of annual leave.

(a) A leave contributor may not contribute leave for the use of a specific eligible returnee.

(b) A leave contributor may contribute only accrued unused annual leave to the reservist leave bank.

(c) A leave contributor may not contribute less than 1 hour of annual leave, nor more than the lesser of—

(1) One-half the amount of annual leave he or she would be entitled to accrue during the leave year in which the contribution is made; or

(2) One-half his or her annual leave balance at the time the contribution is made.

(d) Annual leave contributed to the reservist leave bank shall not be applied against the limitations on annual leave that may be donated under the voluntary leave transfer and leave bank programs established under 5 U.S.C. 6332 and 6362, respectively.

§ 630.1306 Prohibition of coercion.

(a) An employee may not directly or indirectly intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce, any other employee for the purpose of interfering with any rights such employee may have with respect to contributing, or not contributing, annual leave under this subpart.

(b) For the purpose of paragraph (a) of this section, the term “intimidate, threaten, or coerce” includes promising to confer or conferring any benefit (such as an appointment or promotion or compensation) or effecting or threatening to effect any reprisal (such as deprivation of appointment, promotion, or compensation).

§ 630.1307

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§ 630.1307 Crediting annual leave accounts of eligible returnees.

(a) OPM shall divide the contributed annual leave equally among eligible returnees without regard to any factor (e.g., full- or part-time status, duty station during the Persian Gulf War, or time spent on active duty) other than each employee's status as an eligible returnee.

(b) The amount of annual leave each eligible returnee receives shall be rounded to the next higher quarter-hour. An employing agency may not reduce the amount of leave credited to an eligible returnee by any fraction of an hour, but may grant leave recipients excused absence for the remainder of the hour or charge leave by the quarter-hour for the purpose of this program.

(c) OPM shall notify each agency of the amount of annual leave that shall be credited to each eligible returnee.

(d) Each agency shall credit the annual leave accounts of eligible returnees who have returned to Federal employment as soon as possible, but not later than the end of the second pay period beginning on or after the date the agency is notified of the amount of leave each eligible returnee is to receive.

§ 630.1308 Use of annual leave contributed under this program.

(a) The annual leave credited to the account of an eligible returnee may be used in the same manner and for the purposes as if the leave had accrued under 5 U.S.C. 6303.

(b) An eligible returnee who has returned to Federal employment may use the leave credited under § 630.1307 of this subpart immediately, subject to supervisory approval.

(c) Annual leave creditable to an eligible returnee who has not yet returned to Federal employment shall be

held in abeyance by the employing agency that identified such employee until his or her return.

(d) Annual leave held in abeyance for an eligible returnee who does not return to Federal employment shall be forfeited.

[56 FR 20518, May 6, 1991. Redesignated and amended at 64 FR 7225, 72256, Dec. 27, 1999]

§ 630.1309 Records and reports.

(a) Each agency shall maintain records and report pertinent information concerning the administration of the reservist leave bank program.

(b) Each agency shall maintain the following information:

(1) The grade or pay level of each leave contributor and the amount of leave contributed by leave contributors at each grade or pay level (Each agency is required to report to OPM the aggregate amount of annual leave contributed to the reservist leave bank under § 630.1304(c) of this subpart.);

(2) The grade or pay level of each eligible returnee;

(3) The number of eligible returnees to whom the contributed annual leave was credited immediately;

(4) The number of eligible returnees for whom the contributed annual leave was held in abeyance;

(5) The estimated direct and indirect costs of administering the reservist leave bank program; and

(6) Any additional information OPM may require.

(c) Each agency shall report the information specified in paragraph (b) of this section to OPM.

(d) OPM shall identify the dates by which each agency shall report the information gathered pursuant to §§ 630.1303(b) and 630.1304(c) of this subpart and paragraph (b) of this section.

[56 FR 20518, May 6, 1991. Redesignated and amended at 64 FR 7225, 72256, Dec. 27, 1999]