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

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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 335

Merit Promotion Program

AGENCY: Office of Personnel Management.

ACTION: Interim rulemaking with request for comments.

SUMMARY: The Office of Personnel Management (OPM) is issuing interim regulations to continue existing requirements under which agencies conduct merit promotion and internal placement programs in the competitive service. At present, these requirements are in provisionally retained chapter 335 of the former Federal Personnel Manual and related issuances. Adoption of this interim rule will prevent a lapse in Governmentwide requirements when chapter 335 expires on December 31, 1994.

DATES: Interim rules effective on January 1, 1995. Comments must be submitted on or before February 27, 1995.

ADDRESSES: Send or deliver written comments to Leonard R. Klein, Associate Director for Career Entry, Office of Personnel Management, Room 6F08, 1900 E Street, NW., Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Lee Edwards on 202-606-0830, TDD 202-606-0023, or FAX 202-606-2329.

SUPPLEMENTARY INFORMATION: Agencies are authorized by 5 CFR § 335.103 to promote competitive service employees to positions for which the agency has adopted and is administering a program designed to insure a systematic means of selection for promotion according to merit. The promotion program must conform with the standards and requirements of the Office of Personnel Management (OPM), which currently are in provisionally retained chapter

335 of the former Federal Personnel Manual (FPM).

OPM abolished the FPM in December 1993 as recommended by the National Performance Review. FPM chapter 335 was kept temporarily through December 31, 1994, to enable OPM to incorporate promotion and internal placement requirements in the CFR.

OPM is adopting in 5 CFR § 335.103 the existing promotion program requirements in FPM chapter 335, sections 1-4, 1-5, and 1-6, amended by FPM Letter 335-16 dated November 18, 1991, and FPM Provisional Notice 335-1 dated July 20, 1994. We made conforming changes to reflect final rules on time-limited promotions that replaced authority for temporary and term promotions (58 FR 59345, November 9, 1993). We also made editorial clarifications, such as recognizing the longstanding practice of allowing career ladder promotions of individuals appointed under direct hire and noncompetitive appointments or conversions.

Incorporating these existing requirements in part 335 will provide continued authority for agency merit promotion and internal placement programs and insure that agency programs continue to operate under the same set of Governmentwide requirements. However, OPM is continuing to review these requirements for possible revisions that would enable agencies to conduct programs more efficiently and fairly.

Waiver of Notice of Proposed Rulemaking and Delay in Effective Date

Pursuant to 5 U.S.C. 553(b)(3)(B), I find that good cause exists for waiving the general notice of proposed rulemaking. Also, pursuant to 5 U.S.C. 553(d)(3), I find that good cause exists to make this amendment effective in less than 30 days. This regulation is effective immediately to continue existing longstanding rules from the Federal Personnel Manual under which agencies are authorized to administer internal selection programs based on merit. It would be contrary to the public interest to allow these Governmentwide rules to expire when the Manual expires on December 31, 1994. The delay in the effective date is being waived to prevent any lapse in coverage of these rules.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it pertains only to Federal employees and agencies.

List of Subjects in 5 CFR Part 335

Government employees.

U.S. Office of Personnel Management.

James B. King,

Director.

Accordingly, OPM is amending part 335 of title 5, Code of Federal Regulations, as follows:

PART 335—PROMOTION AND INTERNAL PLACEMENT

1. The authority citation for part 335 is revised to read as follows:

Authority: 5 U.S.C. 3301, 3302, 3329, and E.O. 10577 (3 CFR 1954-58 Comp., p. 218).

2. Section 335.103 is revised to read as follows:

§ 335.103 Agency promotion programs.

(a) *Merit promotion plans.* Except as otherwise specifically authorized by OPM, an agency may make promotions under § 335.102 of this part only to positions for which the agency has adopted and is administering a program designed to insure a systematic means of selection for promotion according to merit. These programs shall conform to the requirements of this section.

(b) *Merit promotion requirements.* (1) *Requirement 1.* Each agency must establish procedures for promoting employees which are based on merit and are available in writing to candidates. Agencies must list appropriate exceptions, including those required by law or regulation, as specified in paragraph (c) of this section. Actions under a promotion plan—whether identification, qualification, evaluation, or selection of candidates—shall be made without regard to political, religious, or labor organization affiliation or nonaffiliation, marital status, race, color, sex, national origin, nondisqualifying physical handicap, or age, and shall be based solely on job-related criteria.

(2) *Requirement 2.* Areas of consideration must be sufficiently broad to ensure the availability of high quality candidates, taking into account the nature and level of the positions covered. Agencies must also ensure that

employees within the area of consideration who are absent for legitimate reason, e.g., on detail, on leave, at training courses, in the military service, or serving in public international organizations or on Intergovernmental Personnel Act assignments, receive appropriate consideration for promotion.

(3) *Requirement 3.* To be eligible for promotion or placement, candidates must meet the minimum qualification standards prescribed by the Office of Personnel Management (OPM). Methods of evaluation for promotion and placement, and selection for training which leads to promotion, must be consistent with instructions in part 300, subpart A, of this chapter. Due weight shall be given to performance appraisals and incentive awards.

(4) *Requirement 4.* Selection procedures will provide for management's right to select or not select from among a group of best qualified candidates. They will also provide for management's right to select from other appropriate sources, such as reemployment priority lists, reinstatement, transfer, handicapped, or Veteran Readjustment Act eligibles or those within reach on an appropriate OPM certificate. In deciding which source or sources to use, agencies have an obligation to determine which is most likely to best meet the agency mission objectives, contribute fresh ideas and new viewpoints, and meet the agency's affirmative action goals.

(5) *Requirement 5.* Administration of the promotion system will include recordkeeping and the provision of necessary information to employees and the public, ensuring that individuals' rights to privacy are protected. Each agency must maintain a temporary record of each promotion sufficient to allow reconstruction of the promotion action, including documentation on how candidates were rated and ranked. These records may be destroyed after 2 years or after the program has been formally evaluated by OPM (whichever comes first) if the time limit for grievance has lapsed before the anniversary date.

(c) *Covered personnel actions.*

(1) *Competitive actions.* Except as provided in paragraphs (c)(2) and (3) of this section, competitive procedures in agency promotion plans apply to all promotions under § 335.102 of this part and to the following actions:

(i) Time-limited promotions under § 335.102(f)—of this part for more than 120 days to higher graded positions (prior service during the preceding 12 months under noncompetitive time-limited promotions and noncompetitive

details to higher graded positions counts toward the 120-day total). A temporary promotion may be made permanent without further competition provided the temporary promotion was originally made under competitive procedures and the fact that might lead to a permanent promotion was made known to all potential candidates;

(ii) Details for more than 120 days to a higher grade position or to a position with higher promotion potential (prior service during the preceding 12 months under noncompetitive details to higher graded positions and noncompetitive time-limited promotions counts toward the 120-day total);

(iii) Selection for training which is part of an authorized training agreement, part of a promotion program, or required before an employee may be considered for a promotion as specified in § 410.302 of this chapter;

(iv) Reassignment or demotion to a position with more promotion potential than a position previously held on a permanent basis in the competitive service (except as permitted by reduction-in-force regulations);

(v) Transfer to a position at a higher grade or with more promotion potential than a position previously held on a permanent basis in the competitive service; and

(vi) Reinstatement to a permanent or temporary position at a higher grade or with more promotion potential than a position previously held on a permanent basis in the competitive service.

(2) *Noncompetitive actions.*

Competitive procedures do not apply to:

(i) A promotion resulting from the upgrading of a position without significant change in the duties and responsibilities due to issuance of a new classification standard or the correction of an initial classification error; and

(ii) A position change permitted by reduction-in-force procedures in part 351 of this chapter.

(3) *Discretionary actions.* Agencies may at their discretion except the following actions from competitive procedures of this section:

(i) A promotion without current competition of an employee who was appointed in the competitive from a civil service register, by direct hire, by noncompetitive appointment or noncompetitive conversion, or under competitive promotion procedures for an assignment intended to prepare the employee for the position being filled (the intent must be made a matter of record and career ladders must be documented in the promotion plan);

(ii) A promotion resulting from an employee's position being classified at a

higher grade because of additional duties and responsibilities;

(iii) A temporary promotion, or detail to a higher grade position or a position with known promotion potential, of 120 days or less;

(iv) Promotion to a grade previously held on a permanent basis in the competitive service (or in another merit system with which OPM has an interchange agreement approved under § 6.7 of this chapter) from which an employee was separated or demoted for other than performance or conduct reasons;

(v) Promotion, reassignment, demotion, transfer, reinstatement, or detail to a position having promotion potential no greater than the potential of a position an employee currently holds or previously held on a permanent basis in the competitive service (or in another merit system with which OPM has an interchange agreement approved under § 6.7 of this chapter) and did not lose because of performance or conduct reasons; and

(vi) Consideration of a candidate not given proper consideration in a competitive promotion action.

(d) *Grievances.* Employees have the right to file a complaint relating to a promotion action. Such complaints shall be resolved under appropriate grievance procedures. The standards for adjudicating complaints are set forth in part 300, subpart A, of this chapter. While the procedures used by an agency to identify and rank qualified candidates may be proper subjects for formal complaints or grievances, nonselection from among a group of properly ranked and certified candidates is not an appropriate basis for a formal complaint or grievance. There is no right of appeal of OPM, but OPM may conduct investigations of substantial violations of OPM requirements.

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5 CFR Parts 591 and 630

RIN 3206-AF 75

Absence and Leave; Voluntary Leave Transfer and Voluntary Leave Bank Programs

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management is issuing final rules to enable agencies to administer permanent voluntary leave transfer and

leave bank programs and to make certain other changes required by the Federal Employees Leave Sharing Amendments Act of 1993.

EFFECTIVE DATE: January 30, 1995.

FOR FURTHER INFORMATION CONTACT: Bruce W. Valoris, (202) 606-2858.

SUPPLEMENTARY INFORMATION: On January 31, 1994, the Office of Personnel Management (OPM) issued interim rules implementing the Federal Employees Leave Sharing Amendments Act of 1993 (Public Law 103-103, October 8, 1993) (the Act). Agencies were required to implement the interim rules no later than February 5, 1994. The 60-day comment period ended on April 1, 1994. OPM received comments from 11 agencies. One agency supported the interim regulations as written. A summary of the other comments and a description of the revisions in the interim regulations follow.

Requirement to Permit Leave Transfer

The interim regulations require each agency, including leave bank agencies, to permit employees to donate annual leave directly to other employees experiencing medical emergencies through leave transfer. OPM made this change based on the statutory requirements of the Federal Employees Leave Sharing Amendments Act of 1993. Previously, the law allowed an agency to have either one or more leave banks or a leave transfer program, but not both. One agency questioned whether OPM interpreted the Act correctly by requiring agencies with leave banks to operate separate leave transfer programs. The agency requested that OPM review the new law to determine if there is agency discretion in this matter.

OPM has determined that agencies with leave banks do not have such discretion. Section 5(a)(1) of the Act amended 5 U.S.C. 6373 to require that OPM prescribe regulations under which an employee participating in a leave bank program may make or receive donations of leave under the leave transfer program. To comply with this statutory provision, each agency is required to establish leave transfer procedures that meet the requirements established by law and OPM regulations.

Qualifying to Become a Leave Recipient

To make it easier to qualify as a leave recipient, the Act provided that an agency may not consider any leave advanced to an employee when determining whether a medical emergency is likely to result in a substantial loss of income. The interim

regulations reflected this change by requiring that advanced leave be disregarded as "available paid leave." Two agencies expressed strong support for this statutory change.

The interim regulations also reduced from 80 to 24 the number of hours of unpaid absence that constitutes a "substantial loss of income" for a full-time employee. Before approving an application for a full-time employee to become a leave recipient, an agency must determine that the absence from duty without paid leave (excluding advanced leave) is, or is expected to be, at least 24 hours. Prior to the interim regulations, a full-time employee's absence from duty without available paid leave must have been, or have been expected to be, at least 80 hours. Eight agencies did not support this change, and one agency supported it. Two of the eight agencies that opposed the change to 24 hours suggested a compromise of 40 hours.

The eight agencies generally expressed concern that lowering the threshold for determining "substantial loss of income" would make it too easy to qualify as a leave recipient. They believed the change was unnecessary and would promote increased leave use and abuse because employees would no longer have an incentive to conserve their accrued leave. In addition, the agencies feared that lowering the threshold would discourage donations of leave, change the character of the already successful leave sharing program, and generally be detrimental to preserving the viability of the leave sharing and leave bank programs.

One agency noted that lowering the threshold from 80 to 24 hours would result in additional demands for leave from the leave banks. The agency asserted that a major decline in a leave bank's balanced would cause a deterioration in benefits for all members. Another agency was concerned that the change to 24 hours would undermine a program designed to deal with catastrophic situations, which now may be turned into a leave supplement program for routine short-term illnesses. An agency maintained that the leave sharing program was enacted to assist employees in dealing with significant hardships rather than minor inconveniences.

One agency commented that the change to 24 hours was not mandated by any legislative language, congressional finding, or evidence of a need to reduce the original 80-hour requirement. Another agency pointed out that OPM had not mentioned a need to make this change in its April 30, 1993, final report to Congress on the

leave sharing program. The agency requested OPM to provide insight as to why the reduction from 80 hours was made as well as the rationale for the selection of 24 hours. Agencies also raised concerns about increased costs to administer the program. Since many more employees could potentially meet the new "substantial loss of income" threshold for short-term illnesses throughout the leave year, there would be frequent movements in and out of the leave sharing program.

As a result of these comments, OPM recently contacted several of the agencies that commented on the interim regulations. We informally surveyed the agencies to learn about their experiences in applying the 24-hour threshold. (The interim regulations have been in effect since January 31, 1994.) While several of the agencies contacted continue to oppose the change, in no case has a leave transfer or leave bank program been adversely affected. OPM continues to believe the 24-hour threshold constitutes a substantial loss of income. Further, we do not believe that the agencies' fears of increased administrative costs and increased use of the leave sharing program are good justifications for changing the required time period for unpaid absence back to 80 hours. In addition, on July 11, 1994, the President issued a directive to heads of agencies to encourage and support the expansion of family-friendly work arrangements and to identify barriers to implementing family-friendly work arrangements. We believe that changing the threshold back to 80 hours would indeed create a barrier to family-friendly work arrangements. Such an action is clearly not consistent with the President's directive.

Two agencies suggested that any change in the "substantial loss of income" threshold for full-time employees should result in a corresponding change for part-time employees. Under the interim rule, before a part-time employee can be qualified to become a leave recipient, he or she is expected to experience an unpaid absence from duty that is (or is expected to be) equal to the average number of hours of work in the employee's biweekly scheduled tour of duty. In many cases, this resulted in more hours of unpaid absence than the 24-hour requirement for a full-time employee. OPM agrees with this suggestion. In the final rule, a "substantial loss of income" for a part-time employee or an employee with an uncommon tour of duty, requires that the number of hours without available paid leave must be equal to at least 30 percent of the average number of hours

of work in the employee's biweekly scheduled tour of duty. (See 5 CFR 630.903 and 630.1002.)

Prorating Contributions of Donated Leave for Part-time Employees

One agency commented that it did not believe a part-time employee should have to contribute as much annual leave as a full-time employee to join a leave bank. However, the statute makes no distinction between full-time and part-time employees for this purpose, and the statutory requirement cannot be modified by regulation. (See 5 U.S.C. 6366(b)(1).)

Agency's Waiver Authority to Accept Donations of Leave

One agency expressed concern about the possible consequences of eliminating the phrase "in unusual circumstances" in 5 CFR 630.908(c) and 630.105(c), since it provides agencies unrestricted authority to waive the limitations on the amount of annual leave a leave donor may donate in a leave year. The agency was concerned that this change might result in donations of leave that would otherwise be subject to forfeiture and thereby increase the cost of the program in a manner inconsistent with the intent of Congress. OPM believes the elimination of the phrase "in unusual circumstances" is consistent with the original statutory language that was unchanged by the Act. (See 5 U.S.C. 6334(b)(3) and 6335(c).) It is not OPM's intent to encourage agencies to accept donations of leave that would otherwise be subject to forfeiture. Waivers should continue to be granted on a case-by-case basis. The statutory and regulatory requirements to document all such waivers (in writing) should provide adequate protection against abuse.

"Set-Aside" Leave Accounts

Two agencies expressed disappointment that the new law retained the separate ("set-aside") leave account provision for leave earned while an employee is using shared leave. OPM supported abolishing the requirement for separate accounts in its April 30, 1993, report to Congress. However, the change was not enacted. Both of these agencies requested OPM to consider seeking future legislative action that would eliminate these accounts.

One agency asked if leave in an employee's "set aside" sick leave and "set aside" annual leave account transfers automatically to the employee's regular sick leave and regular annual leave account or whether the employee has to elect to have it

transferred. When the conditions set forth in 5 CFR 630.907(c) or 630.1008(c) exist, the leave is transferred automatically to the employee's regular leave accounts. The regulations do not require that the employee make an election or request the transfer.

The same agency asked whether leave transferred from the employee's "set aside" account to his or her regular account could be used for purposes other than an employee's ongoing medical emergency. Another agency questioned whether sick or annual leave in an approved leave recipient's "set aside" account may be used in connection with a family member's medical emergency if that employee had exhausted shared leave. The same agency asked whether an employee could use "set aside" sick leave for personal medical reasons. Under 5 CFR 630.908(c) and 630.1008(c), leave in an employee's "set-aside" leave accounts may not be transferred for use until the medical emergency terminates or the employee has exhausted all donated leave. However, once the leave is transferred into the employee's regular leave accounts, it is the employee's accrued leave (not shared leave) and can be used as any other annual or sick leave.

An agency asked whether leave transferred from a leave recipient's "set-aside" accounts to his or her "regular" leave accounts must be completely exhausted before the employee is permitted to use additional shared leave that becomes available. Since this leave is available to the employee as accrued leave in the employee's regular leave account(s), the leave must be exhausted before shared leave may continue to be used. (See 5 CFR 630.909(b) and 630.1009(b)).

An agency asked whether an employee's "set-aside" leave account should be replenished when the employee returns to shared leave status after he or she uses a portion of the "set-aside" leave. Under 5 CFR 630.907(a) (1) and (2) and 630.1008(a) (1) and (2), "set-aside" leave accrual is limited to 40 hours per medical emergency. Once the "set-aside" leave accounts reach the maximum of 40 hours, they may not be replenished even if the employee uses a portion of the leave in the "set-aside" accounts and then returns to a shared leave status for the same medical emergency.

Agency Administrative Matters

Two agencies requested more regulatory guidance regarding the procedure an agency should follow to terminate an employee's participation in the voluntary leave sharing program,

particularly when the employee has been absent for so long a period as to adversely affect the agency or work unit mission. OPM believes the current regulations provide sufficient authority and discretion for agencies to terminate an employee's participation as a leave recipient. Sections 630.910(a)(3) and 630.1010(a)(4) vest agencies with the authority to terminate the medical emergency of a leave recipient unilaterally when it determines a leave recipient is no longer affected by the medical emergency. Before terminating the medical emergency, the agency must give the leave recipient written notice and an opportunity to answer the notice.

In all cases, the agency has a responsibility to monitor the status of the medical emergency affecting the leave recipient continually to ensure that the leave recipient continues to be affected by the medical emergency. (See 5 CFR 630.910(b)). When an agency is uncertain whether an employee is experiencing (or continuing to experience) a legitimate medical emergency, the agency may require the recipient to provide appropriate medical documentation to ascertain the correct medical status of the affected individual. If necessary, the agency may require the employee or family member to be examined by one or more qualified physicians of the agency's choosing. (The employee cannot be required to pay the expenses associated with obtaining medical documentation from more than one source.)

An agency has the authority to deny an employee's request to use shared annual leave just as it may deny an employee's request to use other annual leave. Each agency must use the existing regulatory authorities at its disposal to prevent abuse of the voluntary leave sharing and leave bank programs. OPM believes these are matters that are best handled on a case-by-case basis within the flexibility of policies developed by each agency rather than through additional regulation.

Miscellaneous Technical and Editorial Comments

Under 5 U.S.C. 6369, procedures must be established for restoring to the leave bank any transferred leave remaining to the credit of a leave recipient after the medical emergency terminates. One agency questioned whether leave banks are required under 5 CFR 630.1013 to restore unused donated leave to individual leave donors if that leave had been donated by employees under a leave transfer program. The same agency asked whether procedures could be established that would permit the leave

bank to keep all such remaining unused leave. If not, the agency questioned whether procedures could be established to permit leave banks to keep donated leave that cannot be restored under 5 CFR 630.911.

Section 6369 of title 5, United States Code, is included in subchapter IV (Voluntary Leave Bank Program) of chapter 63 and relates to *leave transferred from a leave bank*. Leave that is donated by an individual donor via the voluntary leave transfer program and not used must, to the extent possible, be restored to the leave donor's account (or, at the election of the leave donor, to another leave recipient). Unused leave donated under subchapter III (Voluntary Transfers of Leave) may not be credited to or appropriated by a leave bank. (See 5 U.S.C. 6336.) Only unused leave drawn from a leave bank is to be restored to that leave bank.

An agency asked whether it could permit an employee to continue to use donated leave for the period of time needed to arrange and/or attend a funeral and settle other remaining matters in cases when a medical emergency results in a family member's death. A medical emergency terminates at the end of the biweekly pay period in which the leave recipient is no longer affected by a medical emergency. (See 5 CFR 630.910.) OPM believes an agency may permit leave recipients to use donated annual leave to arrange or attend the funeral of a family member because the employee is still "affected" by the emergency. The agency should ensure that the shared leave is being used by the employee solely for activities specifically related to the medical emergency and resultant death of the family member. The medical emergency should be terminated promptly once these activities are completed.

One agency asked whether the interim rule that was effective on January 31, 1994, applies to leave sharing cases that were approved prior to that date. The interim rule may not be applied retroactively prior to January 31, 1994. However, the interim rule must be applied to leave recipients participating in a leave sharing program on or after January 31, 1994. For example, effective on or after January 31, 1994, a leave recipient of a leave bank will also be eligible for leave donated under the agency's voluntary leave transfer program.

Finally, two agencies suggested technical or editorial changes to clarify or simplify language in 5 CFR 630.907(c)(1), 630.1002, and 630.1008(c)(1). OPM has modified the language in these sections of the final

regulations. In addition, the final regulations define "available paid leave" to assist agencies in determining an employee's eligibility for shared leave. (See 5 CFR 630.902 and 630.1002.) Also, we have reduced the recordkeeping requirements in §§ 630.913 and 630.1012.

For the convenience of the reader, OPM is publishing the complete text of the final voluntary leave transfer and leave bank program regulations.

Technical Corrections

This notice also contains two technical corrections. In the final regulations for uniform allowances, published in the **Federal Register** on August 25, 1994 (59 FR 43703), the authority citation for part 591 is removed and an authority citation for subpart A of part 591 is added. Also, in the final sick leave regulations published in the **Federal Register** on December 2, 1994 (59 FR 62266), the reference to paragraph (b) in § 630.401(d) is removed and replaced by a reference to paragraph (c).

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they will affect only Federal employees and agencies.

List of Subjects

5 CFR Part 591

Government employees, Travel and transportation expenses, Wages.

5 CFR Part 630

Government employees.

U.S. Office of Personnel Management.

James B. King,

Director.

Accordingly, OPM is amending parts 591 and 630 of title 5 of the Code of Federal Regulations as follows:

PART 591—ALLOWANCES AND DIFFERENTIALS

1. The authority citation for part 591 is removed.

2. A new authority citation for subpart A of part 591 is added to read as follows:

Subpart A—Uniform Allowances

Authority: 5 U.S.C. 5903; E.O. 12748, 3 CFR 1991 Comp., p. 316.

PART 630—ABSENCE AND LEAVE

3. The authority citation for part 630 is revised to read as follows:

Authority: (5 U.S.C. 6311; § 630.301 also issued under Public Law 103-356 (108 Stat.

3410); § 630.303 also issued under 5 U.S.C. 6133(a); §§ 630.306 and 630.308 also issued under 5 U.S.C. 6304(d)(3), Public Law 102-484 (106 Stat. 2722) and Public Law 103-337 (108 Stat. 2663); subpart D also issued under Public Law 103-329 (108 Stat. 2423); § 630.501 and subpart F also issued under E.O. 11228, 30 FR 7739, June 16, 1965, 3 CFR 1974 Comp., p. 163; subpart G also issued under 5 U.S.C. 6305; subpart H issued under 5 U.S.C. 6326; subpart I also issued under 5 U.S.C. 6332 and Public Laws 100-566 (102 Stat. 2834) and 103-103 (107 Stat. 1022); subpart J also issued under 5 U.S.C. 6362 and Public Laws 100-566 and 103-103; subpart K also issued under Public Law 102-25 (105 Stat. 92); and subpart L also issued under 5 U.S.C. 6387 and Public Law 103-3 (107 Stat. 23).

§ 630.401 Grant of sick leave.

4. In paragraph (d), the reference to paragraph "(b)" is removed and a reference to paragraph "(c)" is added in its place.

5. Subpart I is added to read as follows:

Subpart I—Voluntary Leave Transfer Program

Sec.

- 630.901 Purpose and applicability.
- 630.902 Definitions.
- 630.903 Administrative procedures.
- 630.904 Application to become a leave recipient.
- 630.905 Approval of application to become a leave recipient.
- 630.906 Transfer of annual leave.
- 630.907 Accrual of annual and sick leave.
- 630.908 Limitations on donation of annual leave.
- 630.909 Use of transferred annual leave.
- 630.910 Termination of medical emergency.
- 630.911 Restoration of transferred annual leave.
- 630.912 Prohibition of coercion.
- 630.913 Records and reports.

Subpart I—Voluntary Leave Transfer Program

§ 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 of work 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 of work 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 agency 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.

§ 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 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 of work 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 of work 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 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 of work 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 an indebtedness caused by the use of annual leave advanced by 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.

§ 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 accrue 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

(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.

§ 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.

(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;

(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.

§ 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 program 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.

5. Subpart J is added to read as follows:

Subpart J—Voluntary Leave Bank Program

- Sec.
- 630.1001 Purpose and applicability.
 - 630.1002 Definitions.
 - 630.1003 Establishing leave banks and leave bank boards.
 - 630.1004 Application to become a leave contributor and leave bank member.
 - 630.1005 Limitations on contribution of annual leave.
 - 630.1006 Application to become a leave recipient.
 - 630.1007 Approval of application to become a leave recipient.
 - 630.1008 Accrual of annual and sick leave.
 - 630.1009 Use of annual leave withdrawn from a leave bank.
 - 630.1010 Termination of medical emergency.
 - 630.1011 Prohibition of coercion.
 - 630.1012 Records and reports.
 - 630.1013 Participation in voluntary leave transfer and leave bank programs.
 - 630.1014 Movement between voluntary leave bank programs.
 - 630.1015 Movement between voluntary leave bank and leave transfer programs.
 - 630.1016 Termination of a voluntary leave bank program.

Subpart J—Voluntary Leave Bank Program

§ 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 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.

(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 of work 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 of work 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.

§ 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 of work 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 of work in the employee's weekly scheduled tour of duty).

(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 of work 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.

§ 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.

§ 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.

§ 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 affect any reprisal (such as deprivation of appointment, promotion, or compensation).

§ 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 recipient 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

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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Parts 301, 318, 319, and 322

9 CFR Parts 75, 78, 85, 91, 92, 93, 94, 95, 96, and 122

[Docket No. 94-127-1]

OMB Control Numbers Assigned Pursuant to the Paperwork Reduction Act

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: This document amends 7 CFR chapter III and 9 CFR chapter 1 by adding Office of Management and Budget (OMB) control numbers assigned to collections of information in regulations administered by the Animal and Plant Health Inspection Service. This action is taken to comply with the Paperwork Reduction Act and OMB regulations.

EFFECTIVE DATE: December 29, 1994.

FOR FURTHER INFORMATION CONTACT: Mrs. Kathy Holmes, Regulatory Coordination Specialist, Regulatory Analysis and Development, Program Planning and Development, APHIS, USDA, P.O. Drawer 810, Riverdale, MD 20738. The telephone number for the agency contact will change when agency offices in Hyattsville, MD, move to Riverdale, MD, during January. Telephone: (301) 436-8682 (Hyattsville); (301) 734-5957 (Riverdale).

SUPPLEMENTARY INFORMATION:

Background

The Paperwork Reduction Act (44 U.S.C. 3507(f)) and the Office of Management and Budget (OMB) regulations controlling paperwork burdens on the public (5 CFR 1320.7(f)(2)) require that agencies "display" currently effective OMB control numbers with the regulations as published in the Code of Federal Regulations (CFR). The Animal and Plant Health Inspection Service has a number of currently effective OMB control numbers that need to be displayed in the CFR. Therefore, we are amending those sections of Title 7 and Title 9 for which an OMB control