

survey county, Solano County, and six area of application counties: Alameda, Contra Costa, Marin, Napa, San Francisco, and Sonoma Counties. FWS employees remaining in the Santa Clara wage area will be transferred to the Monterey and Solano wage area schedules on the first day of the first applicable pay period beginning on or after November 15, 2008. The Federal Prevailing Rate Advisory Committee, the national labor-management committee responsible for advising OPM on matters concerning the pay of FWS employees, has reviewed and recommended these changes by consensus.

Waiver of Notice of Proposed Rulemaking and Delay in Effective Date

Pursuant to 5 U.S.C. 553(b)(3)(B) and (d)(3), I find that good cause exists to waive the general notice of proposed rulemaking. Also pursuant to 5 U.S.C. 553(d)(3), I find that good cause exists for making this rule effective in less than 30 days. This notice is being waived and the regulation is being made effective in less than 30 days because the closure of the Moffett Federal Airfield Navy Exchange will leave the Santa Clara wage area without an activity having the capability to conduct a local wage survey and the remaining NAF FWS employees in Santa Clara, Alameda, Contra Costa, and San Francisco Counties must be transferred to a continuing wage area as soon as possible.

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 agencies and employees.

List of Subjects in 5 CFR Part 532

Administrative practice and procedure, Freedom of information, Government employees, Reporting and recordkeeping requirements, Wages.
Office of Personnel Management.
Michael W. Hager,
Acting Director.

■ Accordingly, the U.S. Office of Personnel Management is amending 5 CFR part 532 as follows:

PART 532—PREVAILING RATE SYSTEMS

■ 1. The authority citation for part 532 continues to read as follows:

Authority: 5 U.S.C. 5343, 5346; § 532.707 also issued under 5 U.S.C. 552.

Appendix B to Subpart B of Part 532— Nationwide Schedule of Nonappropriated Fund Regular Wage Surveys

■ 2. Appendix B to subpart B is amended by removing, under the State of California, “Santa Clara.”

Appendix D to Subpart B of Part 532— Nonappropriated Fund Wage and Survey Areas

■ 3. Appendix D to subpart B is amended for the State of California by removing the wage area listing for Santa Clara, California, and revising the wage area listing for Monterey and Solano, California, to read as follows:

* * * * *

California

* * * * *

Monterey

Survey Area

California:

Monterey.

Area of application. Survey area plus:

California:

Santa Clara.

* * * * *

Solano

Survey Area

California:

Solano.

Area of application. Survey area plus:

California:

Alameda.

Contra Costa.

Marin.

Napa.

San Francisco.

Sonoma.

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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 630

RIN 3206-AL26

Emergency Leave Transfer Program

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The U.S. Office of Personnel Management is issuing final regulations on the Emergency Leave Transfer Program to provide alternative methods for agencies to assist their employees in the event of a pandemic health crisis or other major disaster or emergency as declared by the President. The final regulations allow donated annual leave

in a voluntary leave bank administered by one agency to be transferred to an emergency leave transfer program administered by another agency, revise the rules for returning unused donated annual leave to emergency leave donors (including leave banks), and incorporate the inclusion of Judicial branch employees as eligible participants in the emergency leave transfer program. In addition, the final regulations have been reorganized and renumbered to aid in accessibility and enhance reader understanding.

DATES: *Effective Date:* December 4, 2008.

FOR FURTHER INFORMATION CONTACT: Doris Rippey, by telephone at (202) 606-2858; by fax at (202) 606-0824; or by e-mail at *pay-performance-policy@opm.gov*.

SUPPLEMENTARY INFORMATION: On October 15, 2007, the U.S. Office of Personnel Management (OPM) published proposed regulations (72 FR 58263) to amend 5 CFR 630, subpart K, to allow donated annual leave in a voluntary leave bank administered by one agency to be transferred to an emergency leave transfer program administered by another agency, revise the rules for returning unused donated annual leave to emergency leave donors (including leave banks), and incorporate the inclusion of Judicial branch employees as eligible participants in the emergency leave transfer program, as provided by Public Law 109-229, now codified at 5 U.S.C. 6391(f).

The amendments made to OPM’s regulations are intended to support OPM’s continuing efforts to provide alternative methods for agencies to assist their employees in the event of a pandemic health crisis or other major disaster or emergency as declared by the President. In addition, the final regulations have been reorganized and renumbered to aid in accessibility and enhance reader understanding.

The 60-day comment period for the proposed regulations ended on December 14, 2007. During the comment period, we received comments from five agencies, three unions, one payroll provider, and two individuals. A summary of the comments received and the changes made in the regulations are presented below.

Transfer of Leave From Leave Bank to Emergency Leave Transfer Program at Another Agency

The proposed regulations added § 630.1104 to permit a leave bank at an agency to donate, with the concurrence of the leave bank board, donated annual leave to an emergency leave transfer program administered by another

agency during a Governmentwide transfer of emergency leave coordinated by OPM.

Most commenters expressed support for this change and believed that being able to transfer leave from a leave bank to an emergency leave transfer program at another agency would be helpful because the donated annual leave would already be available for quick distribution to approved emergency leave recipients. One agency expressed concern that donations from a leave bank to an emergency leave transfer program at another Federal agency might mean leave bank members would not have enough available donated annual leave for their own use, which could have a negative impact on future leave bank membership.

In the current regulations at § 630.1103(c), a leave bank, with the concurrence of its leave bank board, already has authority to donate annual leave to an emergency leave transfer program administered by the leave bank's agency. The change in the proposed regulation would extend that authority to make it possible for a leave bank to donate annual leave to an emergency leave transfer program administered by another agency. Under the current and proposed rules, the use of this authority is discretionary.

During the Governmentwide transfer of donated annual leave coordinated by OPM in the aftermath of Hurricane Katrina, we found that many leave banks had large annual leave balances available for immediate use. At that time, several agencies requested that we broaden our regulations to permit the transfer of donated annual leave from the leave banks to the emergency leave transfer programs of other agencies to expedite the transfer of annual leave to those in need. When leave bank boards are considering the possibility of donating annual leave from their leave bank to an emergency leave transfer program—whether the emergency leave transfer program is at the same or another agency—we believe that the leave bank boards will act in the best interests of their leave bank's members and make prudent decisions that will benefit both the emergency leave transfer recipients and their leave bank members who are faced with a medical emergency. We agree that establishing a broader authority would provide an immediate benefit to employees adversely affected by future major disasters or emergencies, and we are adopting this provision in the final regulations.

Since the proposed regulations would allow a leave bank board to transfer annual leave to an emergency leave

transfer program administered by another agency, a union asked if OPM would consider requiring that any such leave bank board include representatives of the unions and that these union representatives be consulted before transferring annual leave from the leave bank to another agency. We believe such a requirement is not necessary because § 630.1003(c) already requires that each leave bank board consist of three members, one of whom must represent a labor organization or employee group.

Procedures for Returning Unused Donated Annual Leave to Emergency Leave Donors

In the proposed regulations at § 630.1118(b), the following new procedure for returning unused donated annual leave was added: "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 will be restored." This proposal was written to be consistent with OPM's voluntary leave transfer program regulations at § 630.911, and the intent was to promote standardization and eliminate the requirement to return a minimal amount of leave to the leave donor (i.e., an amount of leave that would be less than the smallest increment of leave that may be processed under the payroll system covering the donor).

Returning Unused Donated Annual Leave to Donors

One agency supported the proposal, but a number of agencies and three unions expressed concerns with loss of unused annual leave. One agency and a union requested withdrawing this proposal. Several agencies requested clarification and questioned where the value of the unused donated annual leave would go if it were not restored. Some commenters asked whether donated annual leave not restored could be held over for the next emergency. Three unions disagreed with the proposal to not return unused annual leave if the total number of eligible donors exceeds the total number of hours of annual leave to be restored. To illustrate this concern, one union provided a hypothetical example of an emergency leave transfer program that had received annual leave donations from 50,000 leave donors. Upon termination of the emergency, 49,000 hours of donated annual leave remained unused, so under the proposed rule it would seem that all 49,000 hours of donated leave would be lost. Finally, one commenter suggested adding language to permit returning leave on a

proportional basis, similar to the language in the voluntary leave transfer program in § 630.911(b).

We appreciate the comments and concerns raised by the agencies and unions and understand the need for clarification. The requirement to forfeit unused donated annual leave when the total number of eligible leave donors exceeds the total number of hours of annual leave to be restored was intended to be applied only after the return of unused donated annual leave for each donor had been calculated on a proportional basis. In other words, unused donated annual leave must first be restored proportionally to each leave donor in the appropriate increments (i.e., the nearest increment of time the agency uses to account for annual leave, such as 15 minutes) before any leave is subject to forfeiture. Using the example from the union, the 49,000 hours of unused donated annual leave would be restored proportionally to the 50,000 donors based on the number of hours of annual leave donated by each donor to the emergency leave transfer program. Some donors might receive several hours of returned leave, while some others might receive only a fraction of an hour. However, even after the agency applies the formula on a proportional basis, as a result of rounding, there will still be a small amount of unused annual leave subject to forfeiture, as it would be too small to credit to each leave donor.

As a result of the comments, we are adding a reference to the formula for restoring unused donated annual leave on a proportional basis in the voluntary leave transfer program regulations at § 630.911 to make the leave restoration process more transparent. We are also revising § 630.1117(b) to better explain the process of restoring the unused donated leave. The revised language is as follows—"Each agency must determine the amount of annual leave to be restored to any leave bank and/or to each of the emergency leave donors who, on the date leave restoration is made, is employed in the Federal service. The amount of unused annual leave to be returned to each emergency leave donor and/or leave bank must be proportional to the amount of annual leave donated by the employee or the leave bank to the emergency leave transfer program for such disaster or emergency, and must be returned according to the procedures outlined in § 630.911(b). Any unused annual leave remaining after the distribution will be subject to forfeiture."

Restoring Unused Donated Annual Leave to an Emergency Leave Bank or Voluntary Leave Bank

A number of agencies and unions recommended restoring unused donated annual leave to either an emergency leave bank or voluntary leave bank. The primary concern was the loss of the unused annual leave after the application of the procedures for restoring unused donated annual leave. One suggestion was to establish a special, permanent emergency leave bank that would retain any unused donated annual leave for future emergencies as declared by the President. While we agree that the establishment of a permanent emergency leave bank could potentially expedite the distribution of annual leave for future major disasters or emergencies, there is no legal authority to establish such a program. Other commenters recommended that unused donated annual leave be transferred to a leave bank at the employing agency. A similar suggestion was previously addressed in the supplemental portion of the final regulations that established the voluntary leave transfer program (see 50 FR 67125) in response to a recommendation that unused donated annual leave that could not be returned to voluntary leave transfer program donors after applying the leave restoration formula be transferred to a leave bank at the employing agency. OPM's response to this suggestion was that "unused annual leave donated under subchapter III (voluntary leave transfer program) may not be credited to or appropriated by a leave bank * * *. Only unused leave drawn from a leave bank is to be restored to that leave bank." We restate our previous response: it is OPM's policy that unused leave drawn from a leave bank can be restored only to that same leave bank, i.e., leave can only be restored to its point of origin. Therefore, any unused donated annual leave remaining after the emergency leave program restoration procedures are applied will be forfeited. We believe that this approach is consistent with that used for the voluntary leave transfer program and is an equitable method for returning the unused leave within the confines of law.

Timing of the Restoration of Annual Leave

One agency felt that the requirement at proposed § 630.1118(c) that unused donated annual leave that a leave donor elects to have restored in the next leave year be returned to the leave donor's account in the first pay period of the following leave year is impractical and

suggested that § 630.1118(c) be reworded to allow the annual leave to be returned either in the current or the following leave year.

Both § 630.1108 of the current regulations and § 630.1118(c) of the proposed regulations provide the employee the choice of having unused donated annual leave restored in either the current leave year or the first pay period of the following year. Restoring the unused annual leave in the first pay period provides a greater benefit to the leave donor by providing use of the restored annual leave for the entire subsequent leave year. Therefore, the proposed language is being adopted as final and can be found at § 630.1117(d).

Participation of Judicial Branch Employees in an Emergency Leave Transfer Program

Section 6391(f) of title 5, United States Code, authorizes OPM to provide for the participation of Judicial branch employees in any emergency leave transfer program after consultation with the Administrative Office of the United States Courts. After such consultation, OPM amended part 630, subpart K, in the proposed regulations to clarify that a court or other Judicial branch agency can participate in any emergency leave transfer program established by OPM under 5 U.S.C. 6391. No comments were received regarding the inclusion of the new legislative provisions allowing Judicial branch agencies to participate in any emergency leave transfer program established by OPM under 5 U.S.C. 6391. OPM is using this opportunity to revise the definition of *employee* at § 630.1102 to make it clear that Judicial branch employees are covered by the definition of *employee*.

Miscellaneous Comments

We received several comments and requests for clarification which were general in nature or which related to our reorganization and rewriting of the regulations to enhance reader understanding.

Definition of Emergency Leave Donor

An agency suggested that, under proposed § 630.1102, the definition of *emergency leave donor* be revised to specify that only *accrued* annual leave may be transferred because a donor cannot offer advanced annual leave or annual leave that is not already available to the donor. While we agree that only accrued annual leave may be transferred, we don't believe this change is necessary because the proposed language in § 630.1110 (§ 630.1109 in the final regulations) already states that an employee may request to transfer a

certain number of hours of his or her accrued annual leave.

Definition of Paid Leave Status

OPM removed the definition of paid leave status from § 630.1102 in the final regulations. The definition is not applicable and does not contribute to the enhancement of the reader's understanding. We added language in § 630.1108 to clarify that 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 and that the recipient is eligible to be placed in a paid leave status using transferred annual leave.

Allow Leave Recipient To Keep an Extra 40 Hours of Donated Annual Leave

One agency suggested that OPM allow a leave recipient to keep up to 40 hours of unused donated annual leave after the disaster or medical emergency has terminated. The agency believes that, although the initial disaster or medical emergency may be over, the employee would still need the donated annual leave until he or she can build up his or her annual and sick leave balances again. We do not agree. An employee may qualify to be a leave recipient under the emergency leave transfer program until the employee is no longer affected by the disaster or emergency. Since the employee does not have to exhaust his or her available paid leave (annual or sick leave) before becoming a leave recipient under the emergency leave transfer program and the leave recipient accrues both sick and annual leave while receiving donated annual leave, the leave recipient would most likely have an available leave balance for use once the disaster or emergency is terminated.

OPM Delegation of Authority

An agency noted that the language at proposed § 630.1103(a) states that under certain situations, OPM may delegate to an agency the authority to establish an emergency leave transfer program. The agency noted that the language is new and wanted to know how this enhances the emergency leave transfer program. We have made this change as part of OPM's continuing efforts to provide alternative methods for agencies to assist their employees in the event of a pandemic health crisis or other major disaster or emergency as declared by the President. This new language allows OPM to exercise its delegation authority to expedite the distribution of annual leave under the emergency leave transfer program when circumstances

warrant this type of action. For example, an emergency may occur in a remote location and affect only one agency, which may have sufficient annual leave donations to cover all affected employees.

Renumbering the Regulations

An agency recommended changing the order of the items in proposed § 630.1103(b) to show the close of the donation period before the distribution of annual leave to approved recipients. However, we note that an agency may not know how long its employees will be affected by a particular disaster or emergency, and it may begin to transfer annual leave to emergency leave recipients long before it can determine the period of time for which donated annual leave may be accepted for distribution to emergency leave recipients. Based upon our program experience, we believe our language more accurately reflects the actual process. Therefore, we have not adopted this suggestion.

Maintaining Records on the Amount of Annual Leave Donated by Employees

An agency noted that the requirement under current regulations at § 630.1107(b)(2), that agencies must maintain records on the amount of annual leave donated by each emergency leave donor for the purpose of restoring unused transferred annual leave, is missing from the proposed rule. The agency recommended that the language in the current § 630.1107(b)(2) be retained, since under § 630.1118(a) of the proposed rule (§ 630.1117(b) of the final regulations), when unused annual leave is returned to the donors, agencies must still return the amount of annual leave that is proportional to that donated by each employee. Although we believe that each agency will maintain records of its employees' annual leave donations based upon the requirements listed in final § 630.1117(b) to restore leave proportionally to its leave donors and leave banks, we agree to add the language back into the regulations in order to make the process more transparent. Therefore, OPM is revising § 630.1112 to add a new (b)(2) to require an agency to "maintain records on the amount of annual leave donated by each emergency leave donor to the emergency leave transfer program (for the purpose of restoring unused transferred annual leave under 630.1117(b))." Current (b)(2) and (b)(3) are renumbered as (b)(3) and (b)(4), respectively.

Time Period for Employee Notification

Two agencies commented on the language in proposed §§ 630.1107 and 630.1108 regarding the time period during which the employing agency must notify an employee of the approval or disapproval of his or her application to be an emergency leave recipient. The first agency commented that both sections specify a 10 calendar-day period for notifying employees, but Saturdays, Sundays, and legal public holidays are excluded. The agency suggested it would be simpler to change the notification period to either 14 calendar days or 10 work days, with no exclusions. We disagree. We believe the language in the proposed regulation provides consistency with § 630.905(d) under the voluntary leave transfer program, and we are therefore not adopting this suggestion. The second agency believed the parenthetical language in these two sections is unclear and pointed out that the parenthetical language at current § 630.1105(b) and (c) "(or the date the employing agency established its administrative procedures, if that date is later)" refers to a situation where the agency does not yet have emergency leave transfer procedures in place. The agency suggested that, if the proposed rule intends to continue to take that situation into account, the language in current § 630.1105(b) and (c) should be retained. However, if the proposed rule assumes that all agencies already have established emergency leave transfer procedures in place, the time period should be clarified by revising the language to read, "* * * within 10 calendar days (excluding Saturdays, Sundays, and legal public holidays) after the date the application was received, unless the agency establishes an extended time period." We disagree. The new language reorganized and renumbered §§ 630.1106 and 630.1107 to enhance the reader's understanding of the program. The language was broadened not only to permit time to establish administrative procedures, but to provide the greatest flexibility possible for unpredictable situations that would require additional time to make the necessary determinations. For example, if an agency has many employees affected by a major disaster or emergency, it may not be possible to make determinations for all affected employees within the 10 calendar-day period. Therefore, the language in our proposed regulations at §§ 630.1106 and 630.1107 is being adopted, but with one technical change. Section 630.1106 now solely addresses the agency review of an application to become an emergency

leave recipient, and the language about the notification of the approval or disapproval of an emergency leave recipient's application has been combined into § 630.1107.

OPM's Contacts With Agencies

In the section on transferring donated annual leave between agencies at proposed § 630.1113(b) (§ 630.1112(b) in the final regulations), an agency suggested modifying the language to read, "Each Federal agency OPM contacts to solicit annual leave donations for transfer to another agency in need must * * *," saying that this modification would clarify the reason OPM is contacting the agency. We believe the context makes it clear why OPM is contacting agencies and do not feel it is necessary to revise this section.

240-Hour Limitation on Donated Annual Leave

Two agencies shared comments on the limitation on the amount of donated annual leave received by an emergency leave recipient at proposed § 630.1112 (§ 630.1111 in the final regulations). One agency mentioned that the language in the proposed regulations (which is identical to current § 630.1106(d)), regarding the 240-hour limitation on the amount of donated annual leave an emergency leave recipient may receive, was unclear. The agency said that during Hurricane Katrina, OPM had advised them that this section meant that an emergency leave transfer program recipient could receive more than one disbursement of 240 hours of annual leave for each disaster. Since this had not been clear to them previously, they recommended this be set out more clearly in the final regulations. We agree and have added the following language at the end of § 630.1111: "After taking into consideration the amount of donated annual leave available to all approved emergency leave recipients and the needs of individual emergency leave recipients, an employing agency may allow an employee to receive additional disbursements of donated annual leave based on the employee's continuing need. Each disbursement of transferred annual leave may not exceed 240 hours."

The second agency suggested that agencies be given more flexibility to set higher limits than the 240 hours on a case-by-case basis and suggested that this section be rewritten to include the following statement: "Agencies may consider any request beyond 240 hours on a case-by-case basis. The decision should be based on documented need, the amount of donated leave left in the

bank, and the total number of requests.” The agency provided the example of an employee injured at home during a disaster who would not be eligible for worker’s compensation payments and whose serious injury could require the employee to be away from work for a period substantially longer than 240 hours (6 weeks). The agency argued that the employee might not have enough leave to cover an extended period of absence beyond 6 weeks, and there would be no other forms of assistance available to the employee at that point. The agency would prefer the flexibility of higher donation limits to deal with such situations. We believe the regulations already provide sufficient flexibility, and we have not adopted this suggestion. Although we agree that an employee may well have a need for more leave than 240 hours of donated annual leave, the regulations as currently written allow an employee to receive multiple disbursements of up to 240 hours of donated annual leave each time.

Emergency Leave Recipients Subject to Annual Leave Forfeiture

An agency asked for clarification as to why, under the proposed regulations at § 630.1115 (§ 630.1114 in the final regulations), emergency leave recipients are subject to the annual leave carryover caps in 5 U.S.C. 6304(a), (b), (c), and (f). The agency said it realizes this is not new language, but it would like to understand the rationale behind this requirement. Since emergency leave recipients are not required to exhaust their available paid leave before receiving donated annual leave, it is possible that emergency leave recipients may have annual leave balances at the end of the leave year that would exceed the applicable annual leave carryover caps. Since nothing in 5 U.S.C. 6391 exempts emergency leave recipients from the requirements of 5 U.S.C. 6304(a), (b), (c), and (f), the regulations mention these requirements as a point of clarification.

Decision To Terminate the Disaster or Emergency

An agency pointed out that proposed § 630.1117(a) (§ 630.1116(a) in the final regulations) allows the employing agency to determine when a disaster or emergency has terminated, whereas in the current regulations at § 630.1108(a)(1), the employing agency or OPM may determine when the disaster or emergency has terminated. The agency asked why the decision to terminate the emergency is delegated to the agency. Our answer is that OPM would determine when a disaster or

emergency affecting an agency’s employees has terminated only after consulting with the affected agency. We believe that the agency is in the best position to determine when the disaster or emergency has ended.

We have also added language to § 630.1116 to clarify that the disaster or emergency affecting the employee terminates at the earliest occurrence of one of the conditions listed in § 630.1116(a)–(e) so that the clause introducing paragraphs (a) through (e) now reads, “The disaster or emergency affecting the employee as an emergency leave recipient terminates under the following conditions, whichever occurs earliest”.

Comments Outside the Scope of the Regulations

There were a number of comments and recommendations from agencies and individuals that we are not able to address in our final regulation because they are outside the scope of the changes outlined in the proposed regulations. Many of the recommendations would require statutory changes in the program area. For example, one agency recommended that employees be permitted to donate sick leave to an emergency leave transfer program, and two agencies recommended that we require employees to exhaust available paid leave before they can apply to be an emergency leave recipient. In order to take action on the other comments we received, OPM would have to develop and issue a new proposed rule and allow for a public comment period. Finally, we received a number of questions from an individual regarding the administration of the emergency leave transfer program at the agency level. These questions are best answered by the employee’s servicing human resources office.

Technical Amendment—Returning Unused Donated Annual Leave to Leave Banks

In addition to the changes made to the proposed regulations based on the comments we received, we are clarifying that unused donated annual leave must be restored to both the emergency leave donors and the agency leave banks that donated to the emergency. Therefore, we are adding language in §§ 630.1104, 630.1109, and 630.1117 to make clear that unused donated annual leave must be returned to the applicable emergency leave donors and voluntary leave banks.

E.O. 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with E.O. 12866.

Regulatory Flexibility Act

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

List of Subjects in 5 CFR Part 630

Government employees.

Office of Personnel Management.

Michael W. Hager,

Acting Director.

■ Accordingly, OPM is amending part 630 of title 5 of the Code of Federal Regulations as follows:

PART 630—ABSENCE AND LEAVE

■ 1. The authority citation for part 630 continues to read as follows:

Authority: 5 U.S.C. 6311; § 630.205 also issued under Pub. L. 108–411, 118 Stat. 2312; § 630.301 also issued under Pub. L. 103–356, 108 Stat. 3410 and Pub. L. 108–411, 118 Stat. 2312; § 630.303 also issued under 5 U.S.C. 6133(a); §§ 630.306 and 630.308 also issued under 5 U.S.C. 6304(d)(3), Pub. L. 102–484, 106 Stat. 2722, and Pub. L. 103–337, 108 Stat. 2663; subpart D also issued under Pub. L. 103–329, 108 Stat. 2423; § 630.501 and subpart F also issued under E.O. 11228, 30 FR 7739, 3 CFR, 1974 Comp., p. 163; subpart G also issued under 5 U.S.C. 6305; subpart H also issued under 5 U.S.C. 6326; subpart I also issued under 5 U.S.C. 6332, Pub. L. 100–566, 102 Stat. 2834, and Pub. L. 103–103, 107 Stat. 1022; subpart J also issued under 5 U.S.C. 6362, Pub. L. 100–566, and Pub. L. 103–103; subpart K also issued under Pub. L. 105–18, 111 Stat. 158; subpart L also issued under 5 U.S.C. 6387 and Pub. L. 103–3, 107 Stat. 23; and subpart M also issued under 5 U.S.C. 6391 and Pub. L. 102–25, 105 Stat. 92.

■ 2. Subpart K is revised to read as follows:

Subpart K—Emergency Leave Transfer Program

Sec.

- 630.1101 Purpose, applicability, and administration.
- 630.1102 Definitions.
- 630.1103 Establishment of an emergency leave transfer program.
- 630.1104 Donations from a leave bank to an emergency leave transfer program.
- 630.1105 Application to become an emergency leave recipient.
- 630.1106 Agency review of an application to become an emergency leave recipient.
- 630.1107 Notification of approval or disapproval of an application to become an emergency leave recipient.
- 630.1108 Use of available paid leave.
- 630.1109 Donating annual leave.

- 630.1110 Limitation on the amount of annual leave donated by an emergency leave donor.
- 630.1111 Limitation on the amount of donated annual leave received by an emergency leave recipient.
- 630.1112 Transferring donated annual leave between agencies.
- 630.1113 Using donated annual leave.
- 630.1114 Accrual of leave while using donated annual leave.
- 630.1115 Limitations on the use of donated annual leave.
- 630.1116 Termination of a disaster or emergency.
- 630.1117 Procedures for returning unused donated annual leave to emergency leave donors and leave banks.
- 630.1118 Protection against coercion.

§ 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 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—

- (1) An Executive agency; or
- (2) The Judicial branch.

(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—

- (1) An "Executive agency," as defined in 5 U.S.C. 105; or
- (2) A Judicial branch entity.

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

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.

Employee means—

- (1) An employee as defined in 5 U.S.C. 6331(1); or
- (2) An employee of a Judicial branch entity.

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

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

Transferred annual leave means donated annual leave credited to an approved emergency leave recipient's annual leave account.

§ 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 agencies who are adversely affected by a disaster or emergency as defined in § 630.1102. In certain situations, OPM may delegate to an agency the authority to establish an emergency leave transfer program.

(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 emergency leave donors and/or emergency leave recipients within the agency, as appropriate;
- (3) Facilitate the distribution of donated annual leave from approved emergency leave donors to approved emergency leave recipients within the agency; and
- (4) Determine the period of time for which donated annual leave may be accepted for distribution to approved emergency leave recipients.

§ 630.1104 Donations from a leave bank to an emergency leave transfer program.

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 the leave bank board established under § 630.1003, donate annual leave to an emergency leave transfer program administered by the employing agency during a Governmentwide transfer of emergency leave coordinated by OPM. Donated annual leave not used by an emergency leave recipient must be returned to the leave bank as provided in § 630.1117.

§ 630.1105 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 may make written application on behalf of the employee.

(b) An employee who has a family member who has been adversely affected by a disaster or emergency also may 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 is considered to be adversely affected by a major disaster or emergency if the disaster or emergency has caused the employee, or a family member of the employee, severe hardship to such a degree that his or her absence from work is required.

(d) The employee's application must be accompanied by the following information:

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

(e) An agency may determine a time period by which an employee must apply to become an emergency leave recipient after the occurrence of a disaster or emergency, as defined in § 630.1102.

§ 630.1106 Agency review of an application to become an emergency leave recipient.

An agency must review an application to become an emergency leave recipient under procedures the agency has established for the purpose of determining that a potential leave recipient is or has been affected by a disaster or emergency, as defined in § 630.1102.

§ 630.1107 Notification of approval or disapproval of an application to become an emergency leave recipient.

Once the employee's application to become an emergency leave recipient is either approved or disapproved, the agency must notify the employee (or his or her personal representative who made application on the employee's behalf) within 10 calendar days (excluding Saturdays, Sundays, and legal public holidays) after the date the application was received (or the date established by the agency, if that date is later). If disapproved, the agency must give the reason for its disapproval.

§ 630.1108 Use of available paid leave.

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 and the recipient is eligible to be placed in a paid leave status using transferred annual leave.

§ 630.1109 Donating annual leave.

An employee may voluntarily submit a written request to his or her agency that a specified number of hours of his or her accrued annual leave, consistent with the limitations in § 630.1110, be transferred from his or her annual leave account to an emergency leave transfer program established under § 630.1103. An emergency leave donor may not donate annual leave for transfer to a specific emergency leave recipient under this subpart. Donated annual leave not used by an emergency leave recipient must be returned to the emergency leave donor(s) and/or leave banks as provided in § 630.1117.

§ 630.1110 Limitation on the amount of annual leave donated by an emergency leave donor.

(a) An emergency leave donor may not contribute less than 1 hour or more than 104 hours of annual leave in a leave year to an emergency leave transfer program. Each agency may establish written criteria for waiving the 104-hour limitation on donating annual leave in a leave year.

(b) Annual leave donated to an emergency leave transfer program 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.

§ 630.1111 Limitation on the amount of donated annual leave received by an emergency leave recipient.

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. After taking into consideration the amount of donated annual leave available to all approved emergency leave recipients and the needs of individual emergency leave recipients, an employing agency may allow an employee to receive additional disbursements of donated annual leave based on the employee's continuing need. Each disbursement of transferred annual leave may not exceed 240 hours.

§ 630.1112 Transferring donated annual leave between agencies.

(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 to obtain assistance in receiving donated annual leave from other agencies. The agency must notify OPM of the total amount of donated annual leave needed for transfer to the agency's 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 OPM contacts for the purpose of providing donated annual leave to an agency in need must—

(1) Approve emergency leave donors under the conditions specified in §§ 630.1109 and 630.1110 and determine how much donated annual leave is available for transfer to an affected agency;

(2) Maintain records on the amount of annual leave donated by each emergency leave donor to the emergency leave transfer program (for the purpose of restoring unused transferred annual leave under § 630.1117(b)).

(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 it for transfer 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 (c) of this section.

§ 630.1113 Using donated annual leave.

(a) Any donated annual leave an emergency leave recipient receives from an emergency leave transfer program may be used only for purposes related to the disaster or emergency for which the emergency leave recipient was approved. Each agency is responsible for ensuring that annual leave donated under the emergency leave transfer program is used appropriately.

(b) 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 advanced annual or sick leave used because of the adverse effects of the disaster or emergency. The agency may advance 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.

§ 630.1114 Accrual of leave while using donated annual leave.

While an emergency leave recipient is using donated annual leave from an emergency leave transfer program, annual and sick leave continue to accrue to the credit of the employee at the same rate as if he or she were in a paid leave status under 5 U.S.C. chapter 63, subchapter I, 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.

§ 630.1115 Limitations on the use of donated annual leave.

Donated annual leave transferred to a leave recipient under this subpart may not be—

- (a) Included in a lump-sum payment under 5 U.S.C. 5551 or 5552;
- (b) Recredited to a former employee who is reemployed by a Federal agency; or
- (c) Used to establish initial eligibility for immediate retirement or acquire eligibility to continue health benefits into retirement under 5 U.S.C. 6302(g).

§ 630.1116 Termination of a disaster or emergency.

The disaster or emergency affecting the employee as an emergency leave recipient terminates at the earliest occurrence of the following conditions.

- (a) When the employing agency determines that the disaster or emergency has terminated;
- (b) When the employee's Federal service terminates;
- (c) At the end of the biweekly pay period in which the employee, or his or her personal representative, notifies the emergency leave recipient's agency that he or she is no longer affected by such disaster or emergency;
- (d) At the end of the biweekly pay period in which the employee's agency determines, after giving the employee or his or her personal representative written notice and an opportunity to answer orally or in writing, that the employee is no longer affected by such disaster or emergency; or
- (e) At the end of the biweekly pay period in which the employee's 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.

§ 630.1117 Procedures for returning unused donated annual leave to emergency leave donors and leave banks.

(a) When a disaster or emergency is terminated, any unused annual leave donated to the emergency leave transfer program must be returned by the employing agency to the emergency leave donors, and if annual leave was donated by any leave bank(s) it must be returned to the leave bank(s).

(b) Each agency must determine the amount of annual leave to be restored to any leave bank and/or to each of the emergency leave donors who, on the date leave restoration is made, is employed in the Federal service. The amount of unused annual leave to be returned to each emergency leave donor and/or leave bank must be proportional

to the amount of annual leave donated by the employee or the leave bank to the emergency leave transfer program for such disaster or emergency, and must be returned according to the procedures outlined in § 630.911(b). Any unused annual leave remaining after the distribution will be subject to forfeiture.

(c) 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.

(d) At the election of the emergency leave donor, the employee may choose to have the agency restore unused donated annual leave by crediting the restored annual leave to the emergency leave donor's annual leave account in either the current leave year or the first pay period of the following leave year.

§ 630.1118 Protection against coercion.

(a) An employee may not directly or indirectly intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce, any emergency leave donor or emergency leave recipient 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).

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DEPARTMENT OF AGRICULTURE**Rural Housing Service****7 CFR Part 1980****RIN 0575-AC73****Income Limit Modification**

AGENCY: Rural Housing Service, USDA.

ACTION: Direct final rule.

SUMMARY: The Rural Housing Service (RHS) is amending its exiting income limit structure for the Single Family Housing Guaranteed Loan Program (SFHGLP). The effect of this action is to provide more efficient service to lenders, investors and Agency staff by modifying the existing Rural Development eight (8) tiered income structure into a simplified two (2) tiered

structure. This modification will simplify program requirements and the qualification process.

DATES: This rule is effective January 20, 2009, unless we receive written adverse comments or written notices of intent to submit adverse comments on or before January 5, 2009.

FOR FURTHER INFORMATION CONTACT: Joaquín Tremols, Acting Director, Single Family Housing Guaranteed Loan Division, USDA, Rural Development, 1400 Independence Avenue, SW., Room 2250, Stop 0784, Washington, DC 20250, telephone (202) 720-1465, e-mail: joaquin.tremols@wdc.usda.gov.

SUPPLEMENTARY INFORMATION:**Classification**

This rule has been determined to be non-significant by the Office of Management and Budget (OMB) under Executive Order 12866 and, therefore, has not been reviewed by OMB.

Civil Justice Reform

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. In accordance with this rule: (1) All state and local laws and regulations that are in conflict with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings in accordance with the regulations of the National Appeals Division of USDA at (7 CFR Part 11), must be exhausted before bringing suit in court challenging action taken under this rule unless those regulations specifically allow bringing suit at an earlier date.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1996 (UMRA), Public Law 104-4, establishes requirements for Federal agencies to assess the effect of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, the Agency generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, or tribal governments, in the aggregate, or to the private sector, of \$100 million or more in any one year. When such a statement is needed for a rule, section 205 of the UMRA generally requires the Agency to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of this rule. This rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for