

# Rules and Regulations

Federal Register

Vol. 66, No. 213

Friday, November 2, 2001

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## OFFICE OF PERSONNEL MANAGEMENT

### 5 CFR PART 630

RIN 3206-AJ51

#### Absence and Leave; Use of Restored Annual Leave

**AGENCY:** Office of Personnel Management.

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

**SUMMARY:** The Office of Personnel Management is issuing interim regulations to aid agencies and employees responding to the "National Emergency by Reason of Certain Terrorist Attacks" on the World Trade Center and the Pentagon. The regulations provide that employees who would forfeit excess annual leave because of their work to support the nation during the national emergency will be deemed to have scheduled their excess annual leave in advance. Such employees will be entitled to restoration of their annual leave under these regulations.

**DATES:** The interim regulations are effective on December 3, 2001. Comments must be received on or before January 2, 2002.

**ADDRESSES:** Comments may be sent or delivered to Donald J. Winstead, Assistant Director for Compensation Administration, Workforce Compensation and Performance Service, Office of Personnel Management, Room 7H31, 1900 E Street NW., Washington, DC 20415, FAX: (202) 606-0824, or e-mail: [payleave@opm.gov](mailto:payleave@opm.gov).

**FOR FURTHER INFORMATION CONTACT:** Sharon A. Herzberg, (202) 606-2858.

**SUPPLEMENTARY INFORMATION:** On September 14, 2001, President Bush declared a "National Emergency by Reason of Certain Terrorist Attacks" on the World Trade Center and the

Pentagon. The unprecedented events of September 11, 2001, the efforts toward recovery and response, and the continuing and immediate threat of further attacks on the United States have found many Federal agencies involved in activities vital to our nation. The Office of Personnel Management (OPM) is issuing these regulations to assist Federal employees who would lose entitlement to excess annual leave because of their involvement in national emergency efforts. These interim regulations simplify the restoration of employees' forfeited annual leave and impose relaxed time limitations for using restored annual leave. The procedures established by these interim regulations are similar to those established at 5 CFR 630.309 for employees who were deemed essential to the Year 2000 (Y2K) computer conversion.

Section 6304 of title 5, United States Code, establishes limitations on the amount of annual leave an employee may carry over from one leave year to the next. Most employees can carry over no more than 240 hours of annual leave to the next leave year. However, 5 U.S.C. 6304(d)(1)(b) also provides that excess annual leave lost as a result of "exigencies of the public business when the annual leave was scheduled in advance" may be restored to the affected employee. For the purpose of Federal leave administration, an exigency of the public business occurs when there is a pressing need for an employee's service and his or her pre-approved annual leave must be canceled because there are no other practical alternatives available to accomplish the work by a given deadline.

Many employees in Federal agencies are essential to on-going efforts to cope with the national emergency. As a result, many of these employees will be faced with the possible forfeiture of "use or lose" annual leave because they must remain on the job to guarantee the fulfillment of the agencies' missions during this critical period and beyond. Under the normal rules, agencies would be faced with the administrative burden of scheduling, canceling, and restoring such leave for these employees at a time when all available attention and energy should be focused on the national emergency.

The "National Emergency by Reason of Certain Terrorist Attacks" constitutes

an exigency of the public business under 5 U.S.C. 6304(d)(1)(b), which justifies the restoration of any forfeited annual leave in excess of the maximum allowable limits. Since it is known in advance that it is not possible for employees involved in the national emergency to be absent on leave, the scheduling and canceling of such leave places an unnecessary administrative burden on the employees and agencies involved. In support of both agencies' and employees' needs, we are simplifying the procedures for restoring annual leave forfeited as a result of the national emergency. Section 630.311(a) of title 5, Code of Federal Regulations, will deem the "National Emergency by Reason of Certain Terrorist Attacks" an exigency of the public business. In addition, under § 630.311(b), annual leave forfeited in a leave year as a result of the national emergency will be deemed to have been scheduled in advance for the purpose of satisfying the requirements in 5 U.S.C. 6304(d) and 5 CFR 630.308. Therefore, annual leave forfeited at the end of a leave year as a result of the national emergency will be restored under 5 U.S.C. 6304 and placed in a separate restored leave account.

#### Time Limit for Use of Restored Leave

Under the current § 630.306, all restored annual leave must be scheduled and used not later than the end of the leave year ending 2 years after the termination date of the exigency of the public business—i.e., the end of the national emergency or transfer of the employee to another position that is not considered essential. Employees with large restored annual leave accounts or employees remaining in positions performing work that is essential to the national emergency for an extended period of time may accrue large amounts of annual leave in their accounts. Under the current regulations, the affected employees would have to schedule and use all of the restored leave by the end of the leave year ending 2 years after the termination date of the exigency of the public business. As a result, employing agencies would have to deal with the consequence of employees using sizeable amounts of leave within 2 to 3 years after the end of the national emergency. At the same time, annual leave that accrues during that 2- to 3-year period would routinely create a "use or lose" situation.

To help alleviate this situation, we are providing that leave which is restored as a result of the exigency caused by the national emergency will have the same time limits for restoration as are currently used for Department of Defense employees in installations undergoing closure or realignment. (See 5 CFR 630.306(b).) A full-time employee will be required to schedule and use excess annual leave of 416 hours or less by the end of the leave year in progress 2 years after the date the employee is no longer subject to the exigency of the public business created by the national emergency. The agency will extend that period by 1 leave year for each additional 208 hours of excess annual leave or any portion thereof. A part-time employee will be required to schedule and use excess annual leave in an amount equal to or less than 20 percent of the number of hours in the employee's scheduled annual tour of duty by the end of the leave year in progress 2 years after the date the employee is no longer subject to the exigency. The agency will extend this period by 1 leave year for each additional number of hours of excess annual leave, or any portion thereof, equal to 10 percent of the number of hours in the employee's scheduled annual tour of duty.

#### **Treatment of Current Restored Leave Accounts**

Some employees currently involved in the exigency created by the national emergency have an "active" restored leave account—*i.e.*, an account of restored annual leave that was established under other conditions permitting restoration of annual leave under 5 U.S.C. 6304(d). Since there is no authority to restore previously restored annual leave, employees (and agencies) have little option but to use (or permit the use of) the leave in the "active" restored leave account to avoid the forfeiture of annual leave, even though the employees are needed for critical projects in connection with the national emergency. The interim regulations at § 630.311(d) will alleviate this problem because the time limitation for using active restored annual leave will be canceled for the entire period during which employees' services are determined to be essential for activities associated with the national emergency. At the end of the national emergency, a new time limit will be established under § 630.311(c) for using all restored leave available to the employee under 5 U.S.C. 6304(d).

#### **Employees Who Transfer to Another Position**

As noted earlier, § 630.308 currently requires that before forfeited leave may be considered for restoration, the leave must have been scheduled in writing before the start of the third biweekly pay period prior to the end of the leave year. We are concerned about the possible consequences of requiring advance scheduling for an employee who transfers from a position deemed necessary for the national emergency to another position during the latter portion of a leave year. It is possible that such employees would have leave in excess of the maximum limitation, but would still be unable to schedule it. Therefore, the interim regulations at § 630.310(e) will allow an agency to consider restoration of annual leave forfeited at the end of the leave year to an employee whose involvement in the national emergency ends during the leave year if the agency determines that there is a correlation between the lack of advance scheduling and the duties of the employee's former position.

OPM believes such annual leave may be considered for restoration. Section 630.311(e) requires affected employees to make a reasonable effort to comply with the advance scheduling requirement in § 630.308(a). However, the head of an agency may exempt an employee from the advance scheduling requirement if the employee can show that he or she was involved in activities necessary to the national emergency during the leave year and was unable to comply with the scheduling requirement due to circumstances beyond his or her control. Since the agency may determine that there was sufficient time for the employee to schedule and use annual leave before the end of the leave year, this provision does not guarantee that excess annual leave will be restored.

#### **Waiver of Notice of Proposed Rule Making and Delay in Effective Date**

In order to give practical effect to these regulations, I find that good cause exists to waive the general notice of proposed rulemaking pursuant to 5 U.S.C. 553(b)(3)(B). Also, I find that good cause exists for making this rule effective in less than 30 days. The delay in the effective date is being waived to give affected employees the benefit of these new provisions as quickly 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.

#### **E.O. 12866, Regulatory Review**

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

#### **List of Subjects in 5 CFR Part 630**

Government employees.

Office of Personnel Management.

**Kay Coles James,**

*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; Sec. 630.301 also issued under Pub. L. 103–356, 108 Stat. 3410; Sec. 630.303 also issued under 5 U.S.C. 6133(a); Secs. 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; Sec. 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.

#### **Subpart C—Annual Leave**

2. In § 630.308, paragraph (a) is revised to read as follows:

##### **§ 630.308 Scheduling of annual leave.**

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

\* \* \* \* \*

3. A new § 630.311 is added to read as follows:

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

(a) The "National Emergency by Reason of Certain Terrorist Attacks" (Presidential Proclamation of September 14, 2001) is deemed to be an exigency

of the public business for the purpose of restoring annual leave forfeited under 5 U.S.C. 6304.

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

(c) Annual leave restored under 5 U.S.C. 6304(d) because of the national emergency must be scheduled and used within the time limits prescribed in paragraphs (c)(1) and (c)(2) of this section:

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

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

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

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

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

[FR Doc. 01-27518 Filed 11-1-01; 8:45 am]

BILLING CODE 6325-39-P

## NUCLEAR REGULATORY COMMISSION

### 10 CFR Part 72

RIN 3150-AG82

#### List of Approved Spent Fuel Storage Casks: Westinghouse MC-10 Termination; Confirmation of Effective Date

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Direct final rule; confirmation of effective date.

**SUMMARY:** The Nuclear Regulatory Commission (NRC) is confirming the effective date of November 5, 2001, for the direct final rule that appeared in the **Federal Register** of August 21, 2001 (66 FR 43761). This direct final rule amended the NRC's regulations revising the "List of Approved Spent Fuel Storage Casks" by terminating Certificate of Compliance Number 1001 for the Westinghouse MC-10 cask system. The Westinghouse MC-10 can no longer be used to store spent fuel under a general license. This document confirms the effective date.

**DATES:** The effective date of November 5, 2001 is confirmed for this direct final rule.

**ADDRESSES:** Documents related to this rulemaking, including comments received, may be examined at the NRC Public Document Room, 11555 Rockville Pike, Rockville, MD. These same documents may also be viewed and downloaded electronically via the rulemaking Web site (<http://ruleforum.llnl.gov>). For information about the interactive rulemaking website, contact Ms. Carol Gallagher (301) 415-5905; e-mail [CAG@nrc.gov](mailto:CAG@nrc.gov).

**FOR FURTHER INFORMATION CONTACT:** Merri Horn, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone (301) 415-8126 (E-mail: [mlh1@nrc.gov](mailto:mlh1@nrc.gov)).

**SUPPLEMENTARY INFORMATION:** On August 21, 2001 (66 FR 43761), the NRC published in the **Federal Register** a direct final rule amending its regulations in 10 CFR 72 revising the "List of Approved Spent Fuel Storage Casks" by terminating Certificate of

Compliance Number 1001 for the Westinghouse MC-10 cask system. The Westinghouse MC-10 can no longer be used to store spent fuel under a general license. In the direct final rule, NRC stated that if no significant adverse comments were received, the direct final rule would become final on the date noted above. The NRC did not receive any comments that warranted withdrawal of the direct final rule. Therefore, this rule will become effective as scheduled.

Dated at Rockville, Maryland, this 29th day of October, 2001.

For the Nuclear Regulatory Commission.  
**Michael T. Lesar,**  
*Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration.*

[FR Doc. 01-27578 Filed 11-1-01; 8:45 am]

BILLING CODE 7590-01-P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. 98-CE-113-AD; Amendment 39-12493; AD 2001-22-14]

RIN 2120-AA64

#### Airworthiness Directives; Overland Aviation Services Fire Extinguishing System Bottle Cartridges

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD) that applies to certain Overland Aviation Services (OAS) fire extinguishing system bottle cartridges that were distributed during a certain time period and are installed on aircraft. This AD requires you to remove from service any of these fire extinguishing system bottle cartridges. This AD is the result of several incidents where the fire extinguishing system bottle cartridges activated with excessive energetic force. In one instance, the discharge valve outlet screen fractured and the screen material went through the distribution manifold. The actions specified by this AD are intended to prevent damage to fire extinguishing system components caused by a fire extinguishing system bottle cartridge activating with excessive energetic force, which could result in the fire extinguishing system operating improperly.

**EFFECTIVE DATE:** This AD becomes effective on December 10, 2001.