

# Rules and Regulations

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## OFFICE OF PERSONNEL MANAGEMENT

### 5 CFR Part 630

RIN 3206-AK72

#### Absence and Leave; SES 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 implement a provision of the Federal Workforce Flexibility Act of 2004 which provides a higher annual leave accrual rate of 1 day (8 hours) per biweekly pay period for members of the Senior Executive Service, employees in senior-level and scientific or professional positions, and other employees covered by equivalent pay systems.

**DATES:** *Effective Date:* The interim regulations will become effective on March 21, 2005.

*Comment Date:* Comments must be received on or before May 20, 2005.

**ADDRESSES:** Send or deliver written comments to Donald J. Winstead, Deputy Associate Director for Pay and Performance Policy, Division for Strategic Human Resources Policy, Office of Personnel Management, Room 7H31, 1900 E Street, NW., Washington, DC 20415-8200; by FAX at: (202) 606-0824, or by e-mail at [pay-performance-policy@opm.gov](mailto:pay-performance-policy@opm.gov).

**FOR FURTHER INFORMATION CONTACT:** Sharon Dobson by telephone at (202) 606-2858; by fax at (202) 606-0824; or by e-mail at [pay-performance-policy@opm.gov](mailto:pay-performance-policy@opm.gov).

**SUPPLEMENTARY INFORMATION:** The Office of Personnel Management (OPM) is issuing interim regulations to implement section 202(b) of the Federal

Workforce Flexibility Act of 2004 (Pub. L. 108-411, October 30, 2004). Section 202(b) amends 5 U.S.C. 6303 to add a new section (f) to provide that members of the Senior Executive Service (SES), employees in senior-level (SL) and scientific or professional (ST) positions, and employees covered by an equivalent pay system, as determined by OPM, who are covered by the Federal annual and sick leave program established under chapter 63 of title 5, United States Code, will accrue annual leave at the rate of 1 day (8 hours) for each full biweekly pay period, without regard to their length of service in the Federal Government. Under 5 U.S.C. 6311, OPM has general authority to issue regulations necessary to administer the Federal annual and sick leave program established under chapter 63 of title 5, United States Code. We have amended the regulations at 5 CFR 630.301(a) to reflect the new annual leave accrual rate for members of the SES and employees in SL/ST positions.

The higher annual leave accrual rate became effective on October 30, 2004 (the date of enactment of the Federal Workforce Flexibility Act of 2004). Section 6303 of title 5, United States Code, provides that employees accrue annual leave on the basis of full biweekly pay periods. Since the annual leave accrual rate changed during the October 17-30, 2004, pay period, agencies must credit annual leave accruals at the 8-hour accrual rate for affected employees who are employed for the full pay period beginning on October 17, 2004.

Section 202(b) provides OPM with the authority to provide the 8-hour annual leave accrual rate to employees covered by a pay system that is equivalent to the SES pay system or the SL/ST pay system, as determined by OPM. We have extended coverage of the higher annual leave accrual rate to employees in the Senior Foreign Service, the Defense Intelligence Senior Executive Service, the Senior Cryptologic Executive Service, the Federal Bureau of Investigation and Drug Enforcement Administration Senior Executive Service, and the Senior Intelligence Service. (See <http://www.opm.gov/oca/compmemo/2004/2004-23.asp>.) In addition, we have approved agency requests to extend coverage to additional categories of employees which OPM has determined are covered

by pay systems that are equivalent to the SES or SL/ST pay system. A list of the additional categories of employees to which OPM has extended coverage of the higher annual leave accrual rate is posted on OPM's Web site in the fact sheet titled "Annual Leave Accrual Rates for the Senior Executive Service, Senior-Level and Scientific or Professional Positions, or Equivalent Positions" at <http://www.opm.gov/oca/leave/HTML/ANNUAL.asp>.

The law and the interim regulations at 5 CFR 630.301(b) allow the head of an agency to request that OPM authorize the 8-hour annual leave accrual rate for additional categories of employees who hold positions in pay systems determined by OPM to be equivalent to the SES pay system or the SL/ST pay system. Such a request must include documentation that the affected pay system is equivalent to the SES or SL/ST pay system because it meets all three of the following conditions:

1. Pay rates are established under an administratively determined (AD) pay system that was created under a separate statutory authority. If an AD position has a single rate of pay established under an authority outside of 5 U.S.C. chapters 51 and 53, that single rate (excluding locality pay) must be higher than the rate for GS-15, step 10 (excluding locality pay). If an AD position is paid within a rate range established under an authority outside of 5 U.S.C. chapters 51 and 53, the minimum rate of the rate range (excluding locality pay) must be at least equal to the minimum rate for the SES and SL/ST pay systems (120 percent of the rate for GS-15, step 1, excluding locality pay), and the maximum rate of the rate range (excluding locality pay) must be at least equal to the rate for level IV of the Executive Schedule.

2. Covered positions are equivalent to a "Senior Executive Service position" as defined in 5 U.S.C. 3132(a)(2), a senior-level position (*i.e.*, a non-executive position that is classified above GS-15, such as a high-level special assistant or a senior attorney in a highly-specialized field who is not a manager, supervisor, or policy advisor), or a scientific or professional position as described in 5 U.S.C. 3104; and

3. Covered positions are subject to a performance appraisal system established under 5 U.S.C. chapter 43 and 5 CFR part 430, subparts B and C,

or other applicable legal authority, for planning, monitoring, developing, evaluating, and rewarding employee performance.

If OPM approves an agency's request to extend coverage of the higher annual leave accrual rate to additional categories of employees, the change to the higher accrual rate will become effective for the pay period during which OPM approves the agency's request. As coverage is approved for additional categories of employees, they will be added to the list of approved categories at <http://www.opm.gov/oca/leave/HTML/ANNUAL.asp>.

The higher annual leave accrual rate applies only to an employee who holds a position covered by the SES or SL/ST pay system or a position covered by a pay system determined by OPM to be equivalent to the SES or SL/ST pay system. An employee who moves from a covered pay system to a noncovered pay system is no longer entitled to the higher annual leave accrual rate. In such a case, the employee's annual leave accrual rate must be determined based on his or her length of Federal service, as provided in 5 U.S.C. 6303(a). Agencies must continue to follow current guidance in determining the service computation date for leave for current and newly appointed members of the SES, employees in SL/ST positions, and employees who hold positions in equivalent pay systems.

#### Waiver of Notice of Proposed Rulemaking and Delayed 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 for making this rule effective in less than 30 days. These regulations implement a provision of Public Law 108-411, which became effective on October 30, 2004. The waiver of the requirements for proposed rulemaking and a delay in the effective date is necessary to ensure timely implementation of the law as intended by Congress.

#### 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.

Dan G. Blair,

Acting Director.

■ Accordingly, OPM is amending 5 CFR part 630 as follows:

#### PART 630—ABSENCE AND LEAVE

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

**Authority:** 5 U.S.C. 6311; 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.

#### Subpart C—Annual Leave

■ 2. In § 630.301, the section heading is revised, paragraphs (a), (b), (c), (d), and (e) are redesignated as paragraphs (e), (f), (g), (h), and (i), respectively, and new paragraphs (a), (b), (c), and (d) are added to read as follows:

##### § 630.301 Annual leave accrual and accumulation—Senior Executive Service.

(a) Annual leave accrues at the rate of 1 day (8 hours) for each full biweekly pay period for an employee who is covered by 5 U.S.C. 6301, who is employed for the full pay period, and who—

(1) Holds a position in the Senior Executive Service (SES) which is subject to 5 U.S.C. 5383; or

(2) Holds a senior-level (SL) or scientific or professional (ST) position which is subject to 5 U.S.C. 5376.

(b) The head of an Executive agency may request that OPM authorize an annual leave accrual rate of 1 full day (8 hours) for each biweekly pay period for additional categories of employees who are covered by 5 U.S.C. 6301 and who hold positions that are determined by OPM to be equivalent to positions subject to the pay systems under 5 U.S.C. 5383 or 5376. Such a request must include documentation that the affected pay system is equivalent to the SES or SL/ST pay system because it

meets all three of the following conditions:

(1) Pay rates are established under an administratively determined (AD) pay system that was created under a separate statutory authority. If an AD position has a single rate of pay established under an authority outside of 5 U.S.C. chapters 51 and 53, that single rate (excluding locality pay) must be higher than the rate for GS-15, step 10 (excluding locality pay). If an AD position is paid within a rate range established under an authority outside of 5 U.S.C. chapters 51 and 53, the minimum rate of the rate range (excluding locality pay) must be at least equal to the minimum rate for the SES and SL/ST pay systems (120 percent of the rate for GS-15, step 1, excluding locality pay), and the maximum rate of the rate range (excluding locality pay) must be at least equal to the rate for level IV of the Executive Schedule;

(2) Covered positions are equivalent to a "Senior Executive Service position" as defined in 5 U.S.C. 3132(a)(2), a senior-level position (*i.e.*, a non-executive position that is classified above GS-15, such as a high-level special assistant or a senior attorney in a highly-specialized field who is not a manager, supervisor, or policy advisor), or a scientific or professional position as described in 5 U.S.C. 3104; and

(3) Covered positions are subject to a performance appraisal system established under 5 U.S.C. chapter 43 and 5 CFR part 430, subparts B and C, or other applicable legal authority, for planning, monitoring, developing, evaluating, and rewarding employee performance.

(c) If OPM approves an agency's request to cover additional categories of employees, the higher annual leave accrual rate will become effective for the pay period during which OPM approves the agency's request. Agencies must credit annual leave at the 8-hour accrual rate for affected employees who are employed for the full pay period.

(d) An employee who moves to a position not covered by this section will no longer be entitled to the higher annual leave accrual rate established under paragraph (a) or (b) of this section, except as provided in 5 U.S.C. 6303(a). Upon movement to a noncovered position, an employee's annual leave accrual rate must be determined based on his or her years of creditable service, as provided in 5 U.S.C. 6303(a).

\* \* \* \* \*

■ 3. In § 630.301, in newly redesignated paragraph (f)(2), remove the phrase "in paragraph (a) of this section" and add in

its place “in paragraph (e) of this section”.

■ 4. In § 630.301, in newly redesignated paragraphs (g) and (i), remove the phrase “under paragraph (d) of this section” and add in its place “under paragraph (h) of this section” wherever it occurs.

[FR Doc. 05–5508 Filed 3–18–05; 8:45 am]

BILLING CODE 6325–39–P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 13

#### Rules of Practice in FAA Civil Penalty Actions

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule; technical amendment.

**SUMMARY:** The FAA amended the procedural regulations governing the assessment of civil penalties against persons other than individuals acting as pilots, flight engineers, mechanics or repairmen in a notice published in the *Federal Register* on February 18, 2005. We explained in the preamble of that notice that we were amending the procedural rules to provide the FAA Hearing Docket’s new address and new instructions on filing of documents. We inadvertently failed to amend the rule about filing an appeal, to include the new address information. We are now making that inadvertently omitted amendment.

**DATES:** This rule is effective on March 21, 2005.

**FOR FURTHER INFORMATION CONTACT:** Vicki Leemon, Office of the Chief Counsel, Adjudication Branch, 800 Independence Avenue, SW., Washington, DC 20591; telephone 202/385–8227.

#### SUPPLEMENTARY INFORMATION:

##### Background

The Administrator may impose a civil penalty against a person other than an individual acting as a pilot, flight engineer, mechanic, or repairman, after notice and an opportunity for a hearing on the record, for violations cited in 49 U.S.C. 46301(d)(2) or 47531. 49 U.S.C. 46301(d)(7)(A) and 47531. These violations, in general, involve aviation safety issues. Also, under 49 U.S.C. 5123 and 49 CFR 1.47(k), the Administrator may, after notice and an opportunity for a hearing, assess a civil penalty against any person who knowingly violates the Federal

hazardous materials transportation law, 49 U.S.C. chapter 51, or any of its implementing regulations. The rules governing proceedings in these civil penalty cases are set forth in 14 CFR 13.16 and 14 CFR part 13, subpart G. We recently amended those rules to, among other things, provide the new address of the FAA Hearing Docket. 70 FR 8236, February 18, 2005. As we explained in the February 18, 2005, notice, the FAA Hearing Docket is now located in Room 2014 of the Wilbur Wright Building, 600 Independence Avenue, SW., Washington, DC 20591. Anyone hand-delivering a document for filing should go to the Wilbur Wright Building at the above address. Packages sent by expedited courier to the Hearing Docket should be addressed as follows: Hearing Docket, Federal Aviation Administration, 600 Independence Avenue, SW., Wilbur Wright Building—Room 2014, Washington, DC 20591; Att: Hearing Docket Clerk, AGC–430.

As explained further in the February 18, 2005, notice, all envelopes and packages sent by U.S. Mail to individuals in the Wilbur Wright Building are processed by the FAA Headquarters’ mail room staff located at 800 Independence Avenue, SW., Washington, DC 20591. Consequently, anyone using U.S. Mail to file a document should use the following address: Hearing Docket, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; Att: Hearing Docket Clerk, AGC–430, Wilbur Wright Building—Room 2014.

We explained in the February 18, 2005, notice that we were revising several sections of 14 CFR part 13, subpart G—including 14 CFR 13.233—to include this new information. However, we failed to include the actual revision in the notice. This technical amendment is intended to correct that omission from the previous revision.

#### Procedural Matters

In general, under the APA, 5 U.S.C. 533, agencies must publish regulations for public comment and give the public at least 30 days notice before adopting regulations. There is an exception to these requirements if the agency for good cause finds that notice and public procedure are impracticable, unnecessary, or contrary to the public interest. In this case, the FAA finds that notice and comment requirements are unnecessary due to the administrative nature of the changes. It is in the public interest that the revision to 14 CFR 13.233 takes effect promptly so that anyone appealing from an administrative law judge’s initial

decision or order knows the correct address to use for the Hearing Docket. This revision was inadvertently omitted during the previous revision. The amendments set forth in this notice do not affect the rights or duties of any regulated entity.

#### List of Subjects in 14 CFR Part 13

Administrative practice and procedure, Air transportation, Aviation safety, Hazardous materials transportation, Investigations, Law enforcement, Penalties.

#### The Amendments

■ Accordingly, the Federal Aviation Administration amends part 13 of title 14, Code of Federal Regulations as follows:

#### PART 13—INVESTIGATIVE AND ENFORCEMENT PROCEDURES

■ 1. The authority citation for part 13 continues to read as follows:

**Authority:** 18 U.S.C. 6002; 28 U.S.C. 2461 (note); 49 U.S.C. 106(g), 5121–5124, 40113–40114, 44103–44106, 44702–44703, 44709–44710, 44713, 46101–46110, 46301–46316, 46318, 46501–46502, 46504–46507, 47106, 47111, 47112, 47122, 47306, 47531–47532; 49 CFR 1.47.

■ 2. Amend § 13.233 by revising the second sentence of paragraph (a) to read as follows:

#### § 13.233 Appeal from initial decision.

(a) \* \* \* A party must file the notice of appeal in the FAA Hearing Docket using the appropriate address listed in § 13.210(a). \* \* \*

\* \* \* \* \*

Issued in Washington, DC on March 15, 2005.

**Rebecca MacPherson,**

*Assistant Chief Counsel for Regulations.*

[FR Doc. 05–5439 Filed 3–18–05; 8:45 am]

BILLING CODE 4910–13–M

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. FAA–2005–20025; Directorate Identifier 2004–NM–208–AD; Amendment 39–14016; AD 2005–06–08]

RIN 2120–AA64

#### Airworthiness Directives; Airbus Model A330, A340–200, and A340–300 Series Airplanes

**AGENCY:** Federal Aviation Administration (FAA), Department of Transportation (DOT).