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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 630 and 890

RIN 3206–AH 10

Family and Medical Leave

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management is issuing final regulations on family and medical leave consistent with Title II of Family and Medical Leave Act of 1993. The final regulations provide covered Federal employees a total of 12 administrative workweeks of unpaid leave during any 12-month period for certain family and medical needs. The employee may continue health benefits while he or she is on leave and is entitled to be returned to the same position or to an equivalent position with equivalent benefits, pay, status, and other terms and conditions of employment.

EFFECTIVE DATE: January 6, 1997.

FOR FURTHER INFORMATION CONTACT: For information on the Family and Medical Leave Act of 1993, contact Jo Ann Perrini (202) 606–2858, or FAX (202) 606–0824. For information on the Federal Employees Health Benefits Program, contact Margaret Sears, (202) 606–0004.

SUPPLEMENTARY INFORMATION: On July 23, 1993, the Office of Personnel Management (OPM) published interim regulations (58 FR 39596) to implement the requirements set forth in sections 6381 through 6387 of title 5, United States Code, as added by Title II of the Family and Medical Leave Act of 1993 (FMLA) (Public Law 103–3, February 5, 1993). The FMLA became effective on August 5, 1993. The FMLA provides eligible Federal employees a total of 12 administrative workweeks of unpaid leave during any 12-month period for (a) the birth of a son or daughter and care of the newborn; (b) the placement of a child with the employee for adoption or foster care; (c) the care of the employee's spouse, son, daughter, or parent with a serious health condition; or (d) a serious health condition of the employee that makes the employee unable to perform the essential functions of his or her position. OPM's regulations implementing the FMLA are found in subpart L of part 630 of title 5, Code of Federal Regulations.

Title I of the FMLA covers non-Federal employees and certain Federal employees not covered by Title II. The Secretary of Labor issued final regulations implementing Title I of the FMLA in 29 CFR part 825 (60 FR 2180, January 6, 1995). The Department of Labor's final regulations became effective on April 6, 1995. OPM's final regulations, as set forth below, are, to the extent appropriate, consistent with the final regulations issued by the Department of Labor (DOL), as required by 5 U.S.C. 6387. In the discussion that follows, we have noted those provisions that were revised to be consistent with DOL's final regulations.

The House Committee Report for Titles I and II of the Family and Medical Leave Act of 1993 (Rept. No. 103–8, 103d Cong., 1st Sess., Parts 1 and 2, February 2, 1993) (hereinafter referred to as the ''legislative history'') provides additional information on the intent of Congress in enacting the FMLA. In some cases where the language of the FMLA is not determinative, we have drawn from the legislative history for guidance in developing the regulations.

During the comment period, OPM received comments from 14 Federal agencies, 4 labor organizations, 2 professional associations, and 3 individuals, for a total of 23 comments. A summary of the comments received and a description of the revisions made in the regulations as a result of the comments are presented below.

Employees Covered

Three agencies commented on the scope of employees covered by OPM's regulations. In the interim regulations, OPM delegated responsibility for issuing regulations to implement sections 6381 through 6387 of title 5, United States Code, to the Secretary of Veterans Affairs for physicians, dentists, and nurses in the Veterans Health Administration appointed under section 7401(1) of title 28, United States Code. The Department of Veterans Affairs noted that the scope of 38 U.S.C. 7401(1) has been expanded to cover other occupations in addition to those currently listed in §§ 630.1201(b)(1)(ii)(B) and 630.1201(b)(3)(i). The agency requested that the regulations be modified to include all employees in the Veterans Health Administration of the Department of Veterans Affairs who are appointed under 38 U.S.C. 7401(1). OPM agrees and has revised the regulations to be consistent with 38 U.S.C. 7401(1).

In addition, since employees of the Library of Congress are covered under 5 U.S.C. 6301(2) and Title II of the FMLA, DOL has revised its regulations in 29 CFR 825.109 to exclude employees of the Library of Congress from coverage under Title I of the FMLA. However, effective 1 year after transmission to the Congress of a study required under Public Law 104–1, Section 230, dated January 23, 1995, the coverage of the employees of the Library of Congress for purposes of FMLA leave will be made in accordance with Public Law 104–1, section 202.

An agency recommended that temporary and intermittent service should be deemed creditable toward the 12-month service requirement for coverage under Title II of the FMLA if the employee later receives a permanent appointment. However, under 5 U.S.C. 6381(1)(B), temporary and intermittent service is specifically excluded as creditable service for determining the 12-month service requirement. Therefore, the recommendation cannot be adopted.

Definitions

The following definitions were revised, deleted, or added in the final regulations:

Continuing treatment by a health care provider. The term was deleted as a separate definition because it was incorporated in the expanded definition of ''serious health condition'' in the final regulations. This is consistent with DOL's final regulations.

Essential functions. The Equal Employment Opportunity Commission recommended that the citation used in defining essential functions be revised to reference only the applicable provisions—i.e., 29 CFR 1630(n), rather

than the whole section—i.e., 29 CFR 1630. We agree. In addition, the revised definition states that if an employee must be absent from work to receive medical treatment for a serious health condition, the employee is considered to be unable to perform the essential functions of the position during the absence for treatment. This is consistent with DOL's regulations.

Foster care. This term was clarified by adding a statement that removal of a child from parental custody must be the result of State action even if the placement for foster care is with relatives. This is consistent with DOL's regulations.

Health Care Provider. Several commenters recommended revising the definition to include health care providers who are recognized by the Federal Employees Health Benefits Program or health care providers who are licensed by a State. OPM agrees and has revised the regulations to include health care providers who are recognized by the Federal Employees Health Benefits Program or who are licensed or certified under Federal or State law to provide the service in question.

Two agencies recommended that the definition of ''health care provider'' be broadened to include traditional healing practitioners—i.e., healer, shaman, or medicine man—who are recognized by Native American traditional religious leaders to perform traditional healing methods. The agencies were concerned that denial of leave under the FMLA for purposes of traditional healing could give rise to complaints of discrimination based on race or religion or litigation based on a perceived violation of the Native American Religious Freedom Act. The Act states that it ''shall be the policy of the United States to protect and preserve for American Indians their inherent right of freedom to believe, express, and exercise the[ir] traditional religions . . . , including but not limited to access to sites, use and possession of sacred objects, and the freedom to worship through ceremonials and traditional rights.''

Under 5 U.S.C. 6381(2)(B), OPM is authorized to designate any other health care provider who is determined by OPM to be capable of providing health care services. In response to these comments, OPM has revised the definition of ''health care provider'' to include a Native American, including an Eskimo, Aleut, and Native Hawaiian, who is recognized as a traditional healing practitioner by native traditional religious leaders and who practices traditional healing methods as believed, expressed, and exercised and in Indian religions of the American Indian, Eskimo, Aleut, and Native Hawaiians, consistent with the Native American Religious Freedom Act.

In addition, the definition of ''health care provider'' has been expanded to include health care providers who practice in a country other than the United States. This change ensures coverage under the FMLA for an employee or his or her spouse, son, daughter, or parent who becomes eligible for leave under the FMLA while abroad or residing in a foreign country. This is consistent with DOL's final regulations.

One commenter suggested that the definition of ''health care provider'' should provide more specificity as to who is an acceptable health care provider. We believe that the broad scope of the revised definition of ''health care provider'' should minimize the need for an exhaustive listing of health care providers.

Incapacity. A definition of ''incapacity'' was added because the term is used within the expanded definition of ''serious health condition'' in the final regulations. ''Incapacity'' means the inability to work, attend school, or perform other regular daily activities because of a serious health condition or treatment for or recovery from a serious health condition.

Intermittent leave or reduced leave schedule. An agency noted that the interim regulations state that intermittent leave may include time periods of less than 1 hour. The agency stated that this would obligate agencies to grant leave in increments of less than 1 hour, even though the agency's policy for granting all other leave is in increments of full hours. The regulations have been revised to permit agencies to grant leave under the FMLA in the same increments as all other leave is granted. Leave under the FMLA may be taken for a period of less than 1 hour if agency policy provides for a minimum charge for leave of less than 1 hour.

Parent, Son or Daughter, and Spouse. Four commenters stated that the definition of ''family'' in OPM's interim regulations is too narrow and does not reflect the reality of today's family arrangements. The commenters recommended that the definition of ''family'' be broadened to include individuals in other than traditional nuclear families. One commenter suggested adopting the definition of ''family member'' used in the Voluntary Leave Transfer Program.

Under 5 U.S.C. 6382 and in the legislative history, Congress specifically defined ''family'' to include only a spouse, son or daughter, and parent. Accordingly, the recommendation to broaden the definition of ''family'' cannot be adopted. This is consistent with DOL's final regulations.

An agency requested that the citation used in defining ''disability'' in the definition of ''son or daughter'' be changed to 29 CFR 1630.2(h), instead of 29 CFR 1630.2(g). The agency stated that paragraph (g), ''disability,'' includes individuals who have ''a record of such an impairment'', but who may not be affected currently by the impairment. Paragraph (h), ''physical or mental impairment,'' limits the coverage to those individuals with *actual* disabilities and omits individuals who have a record of or are regarded as individuals with disabilities. The citation has been revised as suggested to restrict coverage to individuals with actual disabilities who *require* assistance or supervision to provide daily self-care. This is consistent with DOL's final regulations.

The same agency pointed out that the use of the term ''child'' in the definition of ''parent'' may be perceived as connoting a lack of maturity, is not appropriate for individuals over 18 years old who are disabled, and may reinforce negative stereotypes about individuals with disabilities. In the final regulations, the definition of ''parent'' has been revised to include the term ''son or daughter.'' This is consistent with DOL's final regulations.

A commenter requested that the definition of ''parent'' be revised to allow the claim of *in loco parentis* only if the individual has served in this capacity for a major portion of the employee's childhood. Section 6381(3) of title 5, United States Code, specifically defines the term ''parent'' to mean ''the biological parent of an employee or an individual who stood in loco parentis to an employee when the employee was a son or daughter'' and does not include any such limitation. Therefore, no change was made in the definition.

The definition of ''spouse'' has been revised to be consistent with the definition of ''spouse'' in the Defense of Marriage Act (Public Law 104–199, September 21, 1996). The Act defines ''marriage'' as ''a legal union between one man and one woman as husband and wife'' and ''spouse'' as ''a person of the opposite sex who is a husband or a wife.''

Serious Health Condition. Three commeters suggested extending the qualifying period of incapacity from ''more than 3 calendar days'' to 5 days or longer. They contended that 3 days of incapacity is normal for very minor

health conditions and that such conditions should be covered under the rules and remedies related to short-term absences because of illnesses. One commenter suggested that Congress had very serious health conditions in mind and that the term ''serious health condition'' was not intended to cover short-term conditions for which treatment and recovery are very brief and it is expected that such conditions will fall within the scope of an agency's normal sick leave policy. Another commenter noted that the serious nature of the condition should be stressed by presenting some specific examples, such as cancer treatment and kidney dialysis. One commenter opposed relying on the provisions in 5 U.S.C. 8117 relating to workers' compensation programs to support the requirement of ''more than 3 calendar days'' of incapacity because the rationale and application of these two programs are different.

Conversely, three organizations remarked that although duration may be a factor in determining whether a condition is a serious health condition, there cannot be a threshold duration in order to qualify for leave. The organizations expressed the view that seriousness and duration do not necessarily correlate, particularly for individuals with disabilities for whom a health condition may be considered serious long before a similar health condition would be considered serious for the average person.

The organizations also stated that although OPM's definition of ''serious health condition'' includes chronic or long-term health conditions that require treatment to prevent longer-term illness or injury or a more severe disability, it does not cover acute or episodic conditions of shorter duration, which also require immediate treatment to prevent aggravation into a long-term injury or illness.

The legislative history states that the term ''serious health condition'' is not intended to cover short-term conditions for which treatment and recovery are very brief. Sick leave policies should address minor illnesses that last only a few days and surgical procedures that typically do not involve hospitalization and require only a brief recovery period. We believe the established duration period clarifies congressional intent within the regulations. In addition, DOL has concluded that the ''more than 3 days'' test continues to be appropriate. However, we have revised the regulations to specify that ''more than 3 days'' means ''more than 3 consecutive calendar days.'' This revision is consistent with DOL's final regulations.

An agency recommended adding a paragraph to the definition stating that cosmetic or other treatments that are not medically necessary are not to be covered unless overnight inpatient hospital care is required. Others recommended that conditions that are not considered serious health conditions should be specifically included in the regulations. We agree and have added a paragraph at the end of the definition of ''serious health condition'' to address those treatments and conditions that are not considered a serious health condition. For example, the common cold, the flu, earaches, upset stomach, headaches (other than migraines), routine dental or orthodontia problems, etc., are not serious health conditions unless complications arise. In addition, a regimen of continuing treatment involving the taking of over-the-counter medications, bed-rest, exercises, and other similar activities that can be initiated without a visit to the health care provider is not, by itself, sufficient to meet the definition of continuing treatment for purposes of FMLA leave.

An agency questioned the need for OPM's supplemental guidance on the treatment of substance abuse. The agency stated that it believes the guidance is inappropriate, especially in assuming that an employee's drug abuse problems may affect his or her job performance. However, OPM believes the guidance is appropriate to acknowledge concerns expressed by many agencies about the treatment of substance abuse as a serious health condition, as well as the interplay between the various rules concerning adverse actions, performance-based actions, and reasonable accommodation. We restate that the treatment of substance abuse may be included as a condition covered by the FMLA, but absence because of the employee's use of the substance, without treatment, does not qualify for leave under the FMLA. Also, the exercise of an employee's right to take leave under the FMLA for treatment of substance abuse does not prevent an agency from taking action against the employee, provided the agency complies with the Rehabilitation Act of 1973 (29 U.S.C. 701 *et seq.*), where appropriate.

Consistent with DOL's final regulations, the definition of ''serious health condition'' has been significantly revised. The criteria used to determine whether a condition may be considered a serious health condition have been grouped into two major categories—i.e., inpatient care or continuing treatment by a health care provider. A major change is the addition of chronic conditions, such as asthma, diabetes, and epilepsy, that continue over an extended period of time (i.e., from several months to several years), often without affecting day-to-day activities, but may cause episodic periods of incapacity of less than 3 days.

Another change is the addition of serious health conditions that are not ordinarily incapacitating (at least at the current state of the patient's condition), but for which multiple treatments are being given because the condition would likely result in a period of incapacity of more than 3 consecutive calendar days in the absence of medical intervention or treatment (e.g., chemotherapy or radiation for cancer dialysis for kidney disease, physical therapy for severe arthritis, or multiple treatments for restorative surgery after an accident or other injury). The definition of long-term, chronic conditions such as Alzheimer's or a severe stroke has been modified to delete the reference to the condition being incurable and to require instead that the condition involve a period of incapacity that is permanent or long-term and for which treatment may not be effective. Other changes involve clarifying terms and providing information on the types of conditions that are not considered serious health conditions.

Leave Entitlement

Section 630.1203(a)(4) of the interim regulations provides that an employee is entitled to a total of 12 administrative workweeks of unpaid leave during any 12-month period for a serious health condition of the employee that makes the employee unable to perform the essential functions of his or her position. A commenter suggested revising § 630.1203(a)(4) to extend the determination of whether an employee is able to perform the essential functions of his or her position to include whether an employee is able to perform in an available alternative position or to be detailed to a temporary light duty assignment. The statute does not provide for placing an employee in an alternative or light-duty position in lieu of his or her entitlement under the FMLA. Therefore, the regulations were not revised.

An agency should not confuse an employee's entitlement to leave under the FMLA with its ongoing obligation to provide reasonable accommodation under the Rehabilitation Act of 1973. While an agency cannot require an employee to accept an alternative position offer, an employee continues to maintain the right to request light duty

assignment in lieu of unpaid leave under the FMLA.

Section 630.1203(a) has been clarified to state that an employee is eligible to take FMLA leave because of a serious health condition if he or she is unable to perform *any one or more* of the essential functions of his or her position. This revision is consistent with DOL's final regulations.

Three organizations objected to requiring an employee to conclude FMLA leave taken for the birth or placement of a child within 12 months after the birth or placement. The organizations recommended revising the regulations to provide that an employee must commence FMLA leave, but not complete it, within 1 year of the birth or placement. Section 6382(a) states that the entitlement to leave for a birth or placement for adoption or foster care expires at the end of the 12-month period beginning on the date of such birth or placement. In addition, the legislative history states that in cases of birth or placement of a child, family leave *must be taken within* 12 months following the event. DOL, in its final regulations, also upholds that FMLA leave ''must conclude within one year of the birth or placement.''

In the interim regulations, § 630.1203(c) provides that the 12-month period of entitlement to FMLA leave begins on the date an employee first takes FMLA leave and continues for 12 months. In addition, § 630.1203(d)(1) and (d)(2) provides that an employee may begin FMLA leave prior to the date of birth or placement for adoption or foster care and that FMLA leave must be concluded within 12 months after the date of birth or placement.

An agency commented that these two provisions read together may imply that a new 12-month period with a new 12-week entitlement cannot begin until 12 months after the date of the birth or placement, even if the employee begins FMLA leave prior to the date of birth or placement. The agency believed this provision could be discriminatory and potentially in violation of the Pregnancy Discrimination Act (Pub. L. 95–555, October 31, 1978). Another agency believed that the provisions covering the entitlement to FMLA leave for a birth or placement implied that the employee may be entitled to more than 12 weeks of unpaid leave.

The legislative history clearly states that it was not the committee's intent *to require* that FMLA leave because of a birth or placement for adoption or foster care begin on the date of the birth or placement. Congress recognized that employees may need to begin FMLA leave prior to a birth or placement. At the same time, 5 U.S.C. 6382(a)(2) states that entitlement to a total of up to 12 workweeks of FMLA leave based on a birth or placement expires at the end of the 12-month period beginning on the date of such birth or placement. The result of combining these provisions is that the time period in which an employee may use FMLA leave because of a birth or placement for adoption or foster care may extend into a succeeding 12-month period.

For example, if an employee invokes his or her entitlement to FMLA leave before the birth or placement for adoption or foster care, the 12-month period begins on that date and ends 12 months later (e.g., June 2, 1996, through June 1, 1997). In addition, the statutory entitlement to FMLA leave for 1-year after the actual birth or placement may permit an employee to use some FMLA leave in a second 12-month period for the birth or placement (e.g., June 14, 1996, through June 13, 1997). The second 12-month period begins immediately after the expiration of the first 12-month period. The employee may use up to a total of 12 weeks of FMLA leave during the first 12-month period for the birth or placement. During the second 12-month period, the employee would be entitled to use FMLA leave for care of the newborn or adopted child but only for the time period between the end of the first 12-month period and the expiration of the 12-month period after the date of birth or placement (e.g., June 2, 1997, through June 13, 1997). During any 12-month period an employee may use no more than 12 weeks of FMLA leave. The final regulations have been clarified to state that leave taken for the birth of a child or placement for adoption or foster care may begin prior to or on the actual date of birth or placement.

Four commenters recommended changes that would place limitations on the rights of an employee under the FMLA. One commenter suggested that leave without pay not formally requested under the FMLA, but granted for purposes appropriate under the FMLA, should count against the FMLA entitlement, especially if the same condition or situation prompted both the non-FMLA and FMLA leave requests. Another commenter stated that a limitation should be placed on foster care benefits because participating in foster care programs may result in individuals becoming foster care parents for numerous children over the years. The commenter believes this would permit individuals to invoke FMLA leave year after year, placing a terrible hardship on the agency, especially when such individuals are employed in critical positions (e.g., health care occupations). Finally, a commenter expressed concern that an agency's missing could be disrupted seriously because the beginning and ending dates of the 12-month period of entitlement would allow the ''stacking'' of FMLA leave. The agency recommended adopting a provision that would not allow, or at least minimize, the possibility of stacking one 12-week period onto a second 12-week period.

The legislative history clearly states that the 12 workweeks of unpaid leave under the FMLA is a new entitlement in addition to any annual leave, sick leave, or other leave or compensatory time off available to an employee. An employee may choose to take FMLA leave in combination with any other available leave. However, an employee must obtain approval and/or meet statutory and regulatory requirements to take additional leave or other periods of paid time off. Under 5 U.S.C. 6382(a)(1)(b), an employee is entitled to FMLA leave for the placement of a son or daughter with the employee for adoption or foster care. This entitlement does not limit the number of times an employee may invoke FMLA leave for foster care.

Another commenter requested that the regulations requiring the employee to take only the amount of family leave and medical leave that is necessary to manage the circumstances that prompted the need for FMLA leave should not apply to a birth or adoption, since these purposes should not be limited to a subjective definition of what is necessary. We believe an employee must be responsible for taking only the amount of family and medical leave that is necessary for any of the purposes for which FMLA leave may be taken.

We have not adopted any of these recommendations. We believe a leave program built on open communication between managers and employees should alleviate many of the concerns that have been expressed. The regulations acknowledge that the manager and the employee have responsibilities and obligations in preparing and planning for FMLA leave, as well as in following procedures for invoking and taking FMLA leave.

Three of the organizations and two individual commenters were concerned that many agencies have not fully informed their employees of their entitlements and responsibilities under the FMLA. In addition, it is apparent from the numerous telephone inquiries and letters received by OPM that many employees are not aware of the provisions of the FMLA. In response, we have clarified § 630.1203(g) to *require*

agencies to inform employees of their entitlements and responsibilities under the FMLA. To meet this requirement, agencies may wish to provide employees access to the FMLA and OPM's implementing regulations or agency policies or guidance on implementing the FMLA. Also, agencies may provide employees access to OPM's fact sheet and brochure, *''Federal Employee Entitlements Under the Family and Medical Leave Act of 1993''* or *''Family-Friendly Leave Policies for Federal Employees.''* These publications are available on OPM's Mainstreet and PayPerNet electronic bulletin boards. In addition, these final regulations will be posted on OPM's World Wide Web site at www.opm.gov in the near future.

Consistent with all other Federal leave programs and policies, an employee who chooses to take leave under the FMLA must initiate the action to take such leave. Therefore, to eliminate misunderstandings between supervisors and employees, § 630.1203(b) has been clarified to state that an employee must invoke his or her entitlement to family and medical leave, subject to the notification and medical certification requirements in §§ 630.1206 and 630.1207. An employee may *not* retroactively invoke his or her entitlement to leave under the FMLA for a previous absence from work. The legislative history establishes an intent to authorize the use of leave ''to be taken'' under the FMLA on a prospective basis. In addition, both the law and OPM's regulations require that if the need for leave is foreseeable, the employee must provide the employing agency with not less than 30 days notice, before the date the leave is to begin, of the employee's intention to take family and medical leave. If the need for leave is not foreseeable, the employee must provide such notice as is practicable. We believe the employee remains responsible for providing his or her agency as much notice as is practicable to allow the agency ample opportunity to plan the work during the employee's absence.

Intermittent Leave or Reduced Leave Schedule

Section 630.1204(b) states that if an employee takes leave intermittently or on a reduced leave schedule for planned medical treatment or recovery, the agency may place the employee in an available alternative position. A commenter recommended that OPM add that an alternative position is not required to have duties that are equivalent to those of the employee's original position. We agree and have added this statement, consistent with DOL's final regulations.

Section 630.1204(f) has been clarified to state that only the amount of leave taken intermittently or on a reduced leave schedule, as these terms are defined in § 630.1202, can be subtracted from the total of 12 weeks of FMLA leave available to the employee. This will ensure that FMLA leave is subtracted from the total 12-week entitlement in the same increments that it is taken, consistent with the revised definition of ''intermittent leave or reduced leave schedule'' in § 630.1202.

Another commenter requested that the term ''reduced leave schedule'' be changed to ''reduced work schedule,'' because the hours of work are reduced and supplemented by FMLA leave. ''Reduced leave schedule'' is the term used in the statute, and we do not believe it is necessary to make this change. ''Reduced leave schedule'' means a work schedule under which the usual work per workday or workweek of an employee is reduced. The number of hours by which the daily or weekly tour of duty is reduced are counted as FMLA leave.

In response to numerous calls, we restate that an employee must obtain approval from his or her employing agency to take FMLA leave on an intermittent basis or reduced leave schedule for the birth of a child or for placement for adoption or foster care.

Substitution of Paid Leave

Section 630.1205(b)(1) states that an employee may elect to substitute annual or sick leave for unpaid leave under the FMLA, ''consistent with current law and regulations governing the granting and use of annual and sick leave.'' Three organizations believe the legislative history of the FMLA shows that Congress intended that employees would be entitled to substitute their accrued or accumulated sick leave for any or all of the 12 weeks of unpaid FMLA leave to care for a family member. Other commenters recommended that unlimited sick leave be allowed for bonding following childbirth or adoption and for the care of a family member.

Under 5 U.S.C. 6382(d), an employee may elect to substitute ''accrued or accumulated annual or sick leave'' for unpaid leave under the FMLA, ''except that nothing in this subchapter shall require an employing agency to provide paid sick leave in any situation in which such employing agency would not normally provide any such paid leave.'' On December 2, 1994, OPM issued final regulations on the use of sick leave for Federal employees (59 FR 62266). The final regulations expand the use of sick leave by permitting most full-time employees to use a total of up to 104 hours (13 workdays) of sick leave each leave year to provide care for a family member as a result of physical or mental illness; injury; pregnancy; childbirth; or medical, dental, or optical examination or treatment. In addition, OPM issued interim and final regulations on the use of sick leave for adoption-related purposes (59 FR 62272 and 60 FR 26977). Under § 630.401(a)(6), sick leave may be used for purposes relating to the adoption of a child—e.g., appointments with adoption agencies, court proceedings, and required travel. Sick leave may be granted for any period during which an adoptive parent is ordered or required by the adoption agency or by a court to be absent from work to care for the adopted child. However, sick leave may *not* be used either by birth or adoptive parents who voluntarily choose to be absent from work to bond with a birth or adopted child.

If an employee chooses to substitute paid sick leave for unpaid leave under the FMLA, he or she may do so, but only in those situations where the use of sick leave would otherwise be permitted by law or regulation. OPM has addressed comments on the issue of unlimited substitution of sick leave for unpaid leave under the FMLA in its final sick leave regulations published on December 2, 1994 (59 FR 62266), and the final regulations on sick leave for adoption published on May 22, 1995 (60 FR 26977). In addition, OPM agrees with DOL's assessment that the legislative history does not support the idea that Congress intended unlimited substitution of paid sick leave for unpaid leave under the FMLA. (Also, see DOL's final regulations published on January 6, 1995 (60 FR 2180).) There is nothing in the FMLA or its legislative history that would allow agencies to permit the use of paid sick leave for the care of a family member in any situation in which the agency would not otherwise permit the use of such paid sick leave.

Several commenters requested additional clarification on the substitution of paid leave for leave without pay under the FMLA. Specifically, the commenters questioned whether the substitution of paid leave can be done retroactively and whether an agency may deny an employee's request to substitute annual leave for leave without pay.

The substitution of paid leave must be consistent with current law and regulations for granting and using annual and sick leave. Once an

employee has invoked his or her entitlement to FMLA leave and has provided all the necessary notifications and certifications for agency approval, an agency may not deny an employee's request to substitute annual leave. However, an employee cannot substitute any more annual leave than he or she has available. Likewise, an agency may not deny the employee's request to substitute sick leave if the use of sick leave is consistent with current law and regulations.

The right to substitute paid leave for leave without pay under the FMLA applies only to leave that is to be taken in the future. The legislative history provides an intent to authorize the use of leave ''to be taken'' under the FMLA. Therefore, the substitution of paid leave for unpaid FMLA leave can be accomplished only on a prospective basis. Section 630.1205(e) has been clarified to state than an employee who has invoked his or her entitlement to FMLA leave may *not* retroactively substitute paid leave for any leave without pay previously taken under the FMLA.

Several commenters requested an explanation of the relationship between the FMLA and the voluntary leave transfer and leave bank programs. We provide the following example:

Example: An employee invokes his entitlement to FMLA leave as a result of a medical emergency. The employee does not have any paid leave available and therefore applies for donated leave under his agency's leave transfer program. Approximately 2–3 weeks later, the employee is approved as a leave recipient and receives donated annual leave. Under the voluntary leave transfer and leave bank programs, the employee may retroactively substitute paid leave for leave without pay beginning on the date the emergency began, consistent with §§ 630.906(d) and 630.1009(d). The 12-month period and the 12-week entitlement to leave under the FMLA begins on the date the employee first invoked FMLA leave. The employee receives the benefits and protections of both the FMLA and the voluntary leave transfer program simultaneously.

A commenter stated that an agency should be allowed to apply the same requirements for requesting annual and sick leave to requests for leave under the FMLA; e.g., agency policy may require medical certification for sick leave of more than 6 weeks to be used in connection with a pregnancy. Section 630.1207 already permits an agency to request a medical certification for the serious health condition of the employee—e.g., pregnancy or illnesses related to pregnancies. Therefore, we do not believe additional changes are needed.

In its final regulations, DOL addressed the issue of permitting the substitution of compensatory time off under the Fair Labor Standards Act (FLSA) for unpaid leave under the FMLA. DOL stated that the use of compensatory time off is severely restricted under the FLSA in ways that are not compatible with the substitution of paid leave provisions under the FMLA. Compensatory time off is not a form of accrued paid leave mentioned in the FMLA or legislative history for purposes of substitution of leave. Rather, it is an alternative form of payment for overtime hours worked. An agency's right to deny an employee's request for compensatory time off under the FLSA, if it would be unduly disruptive to the agency's operations, is inconsistent with the provision in the FMLA authorizing the employee to elect to substitute paid leave for unpaid leave under the FMLA. An agency may not simultaneously charge the FLSA compensatory time hours taken against the employee's separate FMLA leave entitlement. DOL states that ''to do so would amount to charging (debiting) two separate entitlements for a single purpose.''

We believe DOL's argument applies to any compensatory time off earned under 5 U.S.C. 5543. Similarly, we believe this restriction should also apply to any credit hours accrued under a flexible work schedule under 5 U.S.C. 6122. Therefore, § 630.1205 has been revised to state that only annual leave, sick leave, and advanced annual leave and sick leave may be substituted for leave without pay under the FMLA. An employee may continue to use earned compensatory time off and credit hours in addition to his or her entitlement to leave under the FMLA.

Notice of Leave

Section 630.1206(d) of the interim regulations provides that when leave is foreseeable, and the employee fails to give 30 days' notice with no reasonable excuse for the delay of notification, the agency may delay the taking of FMLA leave until at least 30 days after the date the employee provides notice of his or her need for FMLA leave. Three organizations believe an agency should be allowed to penalize an employee only if the agency has been adversely affected. This is to guard against employers denying leave on mere technicalities and penalizing employees for failure to give timely notice.

The legislative history states that an employee who intends to take leave for the birth or placement of a child *shall* provide 30 days' notice, or such notice as is practicable, of his or her intention to take such leave. If the employee intends to take leave to care for a family member with a serious health condition, the employee, subject to the approval of the health care provider, *must* make a reasonable effort to schedule treatment so as not to unduly disrupt the operations of the agency and must provide 30 days notice, or such notice as is practicable, of his or her intention to take such leave.

Congressional intent clearly indicates that the responsibility to give notice abides with the employee, and with that, the accountability for fulfilling the notification requirement. DOL has stated, ''[A]s this is an affirmative responsibility of the employee it would be inappropriate to require the employer to show any prejudice resulting from an employee's failure to provide adequate notice.''

Another organization believes strict interpretation of the regulation would result in undue hardships for employees in circumstances where leave must be taken sooner than 30 days after the date of notification, without regard to whether the need for leave is foreseeable. The commenter recommended mandatory exceptions from the waiting requirement in circumstances where leave cannot reasonably be delayed for 30 days.

We believe the regulations already accommodate situations in which 30 days notice for unforeseen medical emergencies is not possible. In cases where leave is foreseeable, we believe it is appropriate to require an employee to provide notice 30 days prior to the date leave is to begin or such notice as is practicable. Therefore, the regulations have not been revised.

A commenter requested that employees to required to keep supervisors informed of their intentions on the kinds and amounts of leave planned if extended absence is likely either before or after beginning FMLA leave. The regulations require a 30-day notice of intent to take FMLA leave and allow an agency to require an employee to report periodically on his or her status and intention to return to work. Also, the regulations allow agencies to require periodic recertification of a serious health condition. We do not believe any additional requirements are necessary.

Section 630.1206(c) requires that if the need for leave is not foreseeable and an employee cannot provide 30 days notice, he or she must provide notice within a reasonable period of time appropriate to the circumstances involved. One commenter suggested that a time limit for such notification be established similar to the time limit set by DOL—i.e., 1 or 2 working days after

learning of the need for leave. Agencies are responsible for the administration of the FMLA and may establish such time limitations in their agency policies. Therefore, the regulations have not been changed.

An agency requested guidance on the appropriate documentation to support a request for FMLA leave for a birth, adoption, or foster care. Section 630.1206(f) has been revised to permit agencies to require an employee to provide evidence that is administratively acceptable to the agency in support of his or her intent to use FMLA leave for the birth of a child or placement of a child for adoption or foster care.

Medical Certification

A commenter asked what information may be submitted for the medical certification to be considered sufficient to justify leave taken under the FMLA. Section 6838 of title 5, United States Code, lists what information is sufficient in determining the appropriateness of the medical certification. The law also provides for action to be taken if an agency doubts the validity of the certification by permitting agencies to request a second and a third opinion. To prevent a stalemate from happening, the opinion of the third health care provider is deemed binding. To assist agencies and employees, OPM's regulations have been revised to permit a health care provider representing the agency to contact the health care provider of the employee, *with the employee's permission*, to clarify medical information pertaining to the condition. The information on the medical certification must relate only to the serious health condition for which the current need for family and medical leave exists. No additional personal or confidential information may be requested. This is consistent with DOL's regulations.

An agency objected to OPM's exception in § 630.1207(d), which permits an agency to designate, for the second opinion, a health care provider employed or under the administrative oversight of the agency in areas where access to health care is extremely limited. This provision is an important and reasonable alternative in rural areas and overseas locations where it may be extremely difficult to locate a health care provider that is not employed or under the administrative oversight of the agency. However, an agency's suggestion that, given tight budgets, it would be reasonable to permit agencies to use a health care provider with whom the agency had developed a relationship cannot be adopted because such a change is prohibited by law. Permitting an agency to designate for the second opinion a health care provider employed or under the administrative oversight of the agency in areas where access to health care is extremely limited is consistent with DOL's regulations.

Other commenters stated that the guidance presented in OPM's Supplementary Information on provisional leave was incorrect in stating that if an employee does not submit the required medical certification, an agency should charge the employee's appropriate paid leave account. In the Supplementary Information, OPM was restating guidance from the legislative history. Section 630.1207(h) specifically states that if an employee is unable to provide the requested medical certification after leave has commenced, the agency may charge the employee as absent without leave (AWOL) or allow the employee to request that the provisional leave be charged as leave without pay or to the employee's annual and/or sick leave account, as appropriate.

A commenter questioned the need to provide information to the health care provider on the essential functions of the employee's position. Although appropriate in some cases, the commenter stated that, in many instances, the need for leave will be based on an employee's need for treatment or continuous medical supervision and not on his or her inability to perform the essential functions of the position. We believe the health care provider must first determine that the condition or illness qualifies as a serious health condition. Secondly, the health care provider must be aware of the essential functions of the employee's position in order to make a determination that if treatment or supervision is not provided, the employee cannot perform the essential functions of his or her position. If an employee must be absent from work to receive medical treatment for a serious health condition, the employee is considered to be unable to perform the essential functions of the position during the absence for treatment.

The regulations require that the written medical certification include the date the serious health condition commenced, the probable duration of the serious health condition, and the appropriate medical facts within the knowledge of the health care provider. However, in the situations described, the dates of treatment and duration are unknown. In response to these comments, we have revised the regulations to permit the health care provider to specify that the serious health condition is a chronic or continuing condition with an unknown duration. The health care provider must also specify whether the patient is currently incapacitated and the likely duration and frequency of episodes of incapacity.

Section 630.1207(i) has been revised to provide that an agency may waive the requirement for an initial medical certification in a subsequent 12-month period if leave for a serious health condition is for the same chronic or continuing condition. Also, the regulations have been revised to stipulate that for most serious health conditions (excluding pregnancy, chronic conditions, or permanent or long-term conditions under the continuing supervision of a health care provider), if the health care provider has specified on the medical certification a minimum duration of the period of incapacity, the agency may not request recertification until that minimum duration has passed. Section 630.1207(i) continues to permit agencies to require more frequent medical recertification if an employee requests that the original leave period be extended, the circumstances described in the original medical certification have changed significantly, or the agency receives information that casts doubt upon the continuing validity of the medical certification. These revisions are consistent with DOL's final regulations.

A commenter suggested that OPM incorporate DOL's provision that an employee must submit a medical certification within the time frame set by the employer (i.e., allowing at least 15 days for an employee to do so). We believe the establishment of time limitations is at an agency's discretion. Therefore, this change was not made.

Four agencies requested that OPM develop a standardized, user-friendly medical certification form that can be used Governmentwide. Three organizations recommended that OPM not adopt DOL's medical certification form because it is unnecessarily detailed and confusing. In the Supplementary Information accompanying its interim regulations, OPM suggested that agencies use DOL's medical certification form or develop their own form for obtaining medical certification from a health care provider. DOL has extensively revised its medical certification form. The new form design is easier to use. Agencies have had experience using DOL's medical certification form or their own medical certification form for more than 3 years. We do not believe it would be cost-

effective to develop a duplicate medical certification form for use by Federal agencies. We will, however, make the DOL medical certification form available to agencies on OPM electronic bulletin boards. OPM Mainstreet may be reached on (202) 606–4800, and PayPerNet may be reached on (202) 606–2675. The medical certification form will also be posted on OPM's World Wide Web site at www.opm.gov.

Protection of Employment and Benefits

One commenter recommended that the regulations include a statement that restoration to an ''equivalent position'' does not extend to intangible, unmeasurable aspects of the job, such as perceived loss of potential for future promotional opportunities.'' We agree that an ''equivalent position'' does not extend to intangible, unmeasurable aspects of the job and have revised § 630.1208(b)(5) to include this statement. However, additional clarification may be needed. There may be significant aspects of a previous position that an ''equivalent position'' must retain—e.g., if the previous position was a supervisory or team leader position or had an established career ladder. Although an ''equivalent position'' must have the same career-ladder promotion potential, an employee returning from FMLA leave enjoys no greater privileges or protections than other employees and must still meet the agency's requirements for receiving a promotion.

Several commenters asked for clarification and guidance in dealing with probationary employees, adverse actions, and performance-based actions and questioned whether agencies can proceed with such actions if an employee invokes FMLA leave.

If an employee is in an LWOP status during the probationary period, the probationary period will be extended by the amount of LWOP in excess of 22 days. Therefore, depending upon the duration of the LWOP, the length of an employee's probationary period could be extended by the FMLA leave. If so, the employee would still be in a probationary status upon his or her return to work. However, an employee who invokes his or her entitlement to leave under the FMLA is not protected from termination during probation if the agency decides to terminate the individual's employment during probation. For example, if an agency notified a probationary employee with 10 months of service that he or she was to be removed due to misconduct, and the employee invoked his or her FMLA entitlement, the agency would not need to wait until the FMLA leave was exhausted (and the employee completed probation) before taking action.

Pending adverse actions or performance-based actions may be taken and made effective even if the employee is taking FMLA leave. For example, if an employee was unsuccessful in improving his or her performance during an opportunity period to improve and invoked his FMLA entitlement immediately following the opportunity period, the agency may issue the proposal and decision notices for removal based on unacceptable performance and effect the action just as if normally would. There is no obligation to wait until the employee has returned from FMLA leave in order to proceed with an otherwise valid adverse or performance-based action. Of course, agencies cannot remove or otherwise discipline an employee based on his or her use of leave under the FMLA.

In response to the comments and numerous inquiries on the appropriate application of the FMLA in these matters, § 630.1208(k) has been added to state that an employee's request for and/or use of leave under the FMLA does not prevent an agency from taking appropriate action under 5 CFR part 432 or 5 part CFR 752. Also it remains the case that an employee who invokes his or her entitlement to FMLA leave is not immune from the impact of a reduction in force before, during, or after the period of FMLA leave.

Medical Certification to Return to Work

OPM received written and telephone comments from several agencies that advocated requiring medical certification to return to work when an employee's serious health condition represented a danger to the employee or coworkers. The commenters strongly objected to OPM's interim regulations limiting medical certification to return to work only to those employees who occupy a position that has medical standards or physical requirements. The agencies believe this restriction is in conflict with 5 U.S.C. 6384(d). In addition, an agency commented that in any other situation where there is a question as to whether an employee's presence at work may present a danger to the employee or to others, or when an employee appears to be too ill to work, management has the right to request medical documentation to ascertain whether it is appropriate to allow the employee to return to work. The agency does not believe the intent of the FMLA is to relieve management of this right.

Section 6384(d) of title 5 states, ''As a condition of restoration * * *, the employing agency may have a uniformly applied practice or policy that requires each such employee to receive certification from the health care provider of the employee that the employee is able to resume work.'' After careful analysis and review of the law and legislative history, OPM agrees that Congress intended to provide agencies the authority to establish a uniform policy to require medical certification to return to work from each employee who invokes FMLA leave for his or her own serious health condition. Therefore, § 630.1208(h) has been revised to permit agencies to establish a uniformly applied practice or policy that covers *all similarly-situated employees (e.g., same occupation, same serious health condition, or same duration of absence from work)* to obtain medical certification from the health care provider of the employee that the employee is able to perform the essential functions of his or her position. The information on the medical certification to return to work must relate only to the serious health condition for which FMLA leave was taken.

The statute permits an agency to require an employee to provide medical certification from his or her health care provider that the employee is able to resume work. In most circumstances, an agency must return to work an employee who has provided a completed medical certification. An agency may not require a second or third opinion on the medical certification to return to work. If an employee submits medical certification but an agency believes that the employee is not fully recovered when he or she returns to work, may be a danger to himself or herself or others, or is a disruptive force in the worksite, the agency may take action under 5 CFR part 752 or other appropriate authority. If the agency believes that additional medical documentation would be helpful in determining appropriate action, the agency may offer a medical or psychiatric examination under 5 CFR 339.302.

If an employee returns to work without the required documentation, an agency may delay the return of an employee until acceptable medical certification is provided. During this period of delay, an agency may grant the employee's request for appropriate leave. If the employee refuses to request leave until the medical certification is provided, or does not provide the required medical certification, the agency may use the procedures provided under 5 CFR part 752 to place the employee on enforced leave,

suspend the employee, or remove the employee, as appropriate.

One commenter disagreed with OPM's requirement that agencies notify employees before leave commences of the employee's obligation to provide medical certification to return to work. The agency noted that this requirement under the FMLA is not appropriate where employees are already on a standing notice that all absences due to illness of a certain duration will require a medical certification to return to work. The statute and legislative history specify the medical certification that may be required under the FMLA. If an agency's policy requiring medical certification, including certification to return to duty, is more stringent than that required under the FMLA, the agency may not apply its own policy to an employee invoking leave under the FMLA. However, to accommodate situations in which the need for leave is not foreseeable—e.g., a medical emergency—§ 630.1208(i) has been revised to state that an agency must notify an employee of the requirement to provide medical certification to return to work before the leave commences, or to the extent practicable in emergency medical situations.

A commenter objected to the requirement that the agency must pay for the medical certification to return to work. Since the request for medical certification to return to work is at the discretion and direction of the agency, the agency assumes the responsibility to pay for the expenses.

Relationship to Other Entitlements

Nothing in the FMLA modifies or affects any Federal law prohibiting discrimination on the basis of race, religion, color, national origin, sex, age, or disability. An agency must comply with whichever statute provides the greater rights to the employee.

For example, in the case of an employee with a serious health condition under the FMLA who is also qualified individual with a disability under the Rehabilitation Act of 1973 (29 U.S.C. 701 *et seq.*), the FMLA and the Rehabilitation Act are to be applied simultaneously and in a manner that assures the most generous provisions of both Acts for the employee. Satisfying the requirements under the FMLA by granting 12 weeks of leave and restoring the employee to the same or equivalent position does not absolve an agency of any potential responsibilities to that employee under the Rehabilitation Act.

If an employee is a qualified individual with a disability under the Rehabilitationn Act, the agency must make reasonable accommodations, etc., barring undue hardship. The Equal Employment Opportunity Commission has advised DOL that employers may consider FMLA leave already taken when deciding whether granting leave in excess of 12 weeks as an accommodation under the Rehabilitation Act poses an undue hardship. This does not mean, however, that more than 12 weeks of leave automatically poses an undue hardship under the Rehabilitation Act. Agencies must apply the full undue hardship analysis under the Rehabilitation Act to each individual case to determine whether leave in excess of 12 weeks poses an undue hardship.

An employee's right to be returned to the same or equivalent position under the FMLA applies to the position held at the time the employee commences FMLA leave. If an employee is unable to perform the essential functions of the same or equivalent position because of a disability, even with reasonable accommodation, the Rehabilitation Act may require the agency to make a reasonable accommodation when the employee returns. An agency may not change the essential functions of an employee's position in order to deny an employee's rights under the FMLA. However, an employee may voluntarily accept an alternative position (e.g., ''light-duty'' position) rather than use leave under FMLA. Additional questions on the Rehabilitation Act should be addressed to the Equal Employment Opportunity Commission.

An employee may receive workers' compensation and be absent from work due to an on-the-job illness or injury that also qualifies as a serious health condition under the FMLA. The absence on workers' compensation and FMLA leave may run concurrently. At some point, the health care provider managing care pursuant to the workers' compensation injury may certify that the employee is able to return to work in a ''light duty'' position. If the agency offers such a position, the employee is permitted, but not required, to accept the position. If the employee refuses the offer, the employee *may* no longer qualify for payments under the workers' compensation program, but the employee is entitled to continue on unpaid FMLA leave up to a total of 12 administrative workweeks as long as the employee is affected by a serious health condition that makes the employee unable to perform the essential functions of his or her position. If the employee returning from the workers' compensation injury is a qualified individual with a disability, he or she has certain rights under the Rehabilitation Act. For additional information on workers' compensation benefits, agencies are encouraged to contact the Office of Workers' Compensation, Department of Labor.

Federal Employees Health Benefits Program

On July 22, 1996, OPM issued interim regulations in the Federal Register (61 FR 37807) that reorganized 5 CFR 890.502 (Employee withholdings and contributions) and made conforming changes in the paragraph on direct payment of premiums during periods of LWOP status in excess of 365 days. The conforming changes were based on policy changes previously published in the Federal Register. On December 27, 1994, OPM issued final regulations in the Federal Register that delegated from OPM to Federal agencies the authority to reconsider disputes about coverage and enrollment issues. On June 1, 1995, OPM issued final regulations in the Federal Register that eliminated the requirement for the use of certified mail, return receipt requested, when notifying certain enrollees that their enrollment will be terminated because of nonpayment of premiums unless the payments is received within 15 days. The interim regulations published on July 22, 1996, reflected both of these policy changes, and the pertinent paragraph is reproduced in these final regulations.

Greater Leave Entitlement

Some commenters asked about the effect of FMLA on current agency leave policies and collective bargaining agreements—e.g., whether leave under the FMLA is considered to be the minimum within the labor-management agreement or is in addition to an existing contract provision already available through the labor-management agreement. Agencies must observe any employment policies or collective bargaining agreements that provide greater family or medical leave rights to employees than those established under the FMLA. Conversely, the rights established by the Act may not be diminished by any agency leave policies or collective bargaining agreement. However, nothing in the FMLA prevents an agency from amending existing leave and entitlement benefit programs, provided the changes comply with the FMLA. We have revised § 630.1210(a) to clarify this point.

One commenter suggested adding references to ''reasonable accommodation'' and ''offers of assignment'' to § 630.1210(d). Since the intent of § 630.1210(d) is to cover all possible discriminatory acts, we believe

a broad statement is required, such as is currently provided in § 630.1210(d)—i.e., ''any Federal law prohibiting discrimination.'' Nonetheless, the FMLA is not intended to modify or affect the Rehabilitation Act of 1973, as amended.

Other Changes

On December 29, 1995, OPM issued final regulations to revise the format of certain regulatory provisions in title 5, United States Code, relating to Federal employees' compensation so that all definitions of terms are listed in alphabetical order, consistent with the format preferred by the Office of the Federal Register. In these regulations, the designation for paragraph (a) of § 630.201 was removed, and the paragraph was erroneously placed within the alphabetical listing. We have reinstated paragraph (a) and in paragraph (b) listed the definitions that pertain to subparts B through G of part 630.

Section 630.401(3) has been revised to permit the use of sick leave by an employee to provide care for a family member *who is incapacitated* as the result of physical or mental illness, injury, pregnancy, or childbirth or who receives medical, dental, or optical examination or treatment. The purpose of this change is to clarify the circumstances in which an employee is entitled to use sick leave.

In addition, we are adding § 630.911(h) and § 630.1010(d) to the Voluntary Leave Transfer and Voluntary Leave Bank regulations to make it clear that when a leave recipient elects to buy back annual leave as a result of a claim for an employment-related injury approved by the Office of Workers' Compensation Programs (OWCP), and the annual leave was leave donated under the voluntary leave transfer or leave bank programs, the amount of annual leave brought back by the leave recipient must be restored to the leave donor or returned to the leave bank as provided in § 630.911 and § 630.1010. We are also using this opportunity to make a clarifying amendment to § 630.1210(c) and correct typographical and grammatical errors in § 630.905 and § 630.907(d)(2) respectively.

Reports and Records

We received many requests from agencies to revise the SF–71, Application for Leave, and the SF–1150, Record of Leave Data. As a result, OPM has established an interagency working group that has volunteered to assist in revising the leave forms. This work is in progress. We will provide agencies information on the availability of any revised leave forms through OPM's electronic bulletin boards and OPM's World Wide Web site at www.opm.gov.

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 this regulation will not have a significant economic impact on a substantial number of small entities, since it applies only to Federal employees and agencies.

List of Subjects

5 CFR Part 630

Government employees.

5 CFR 890

Administrative practice and procedure, Government employees, Health facilities, Health insurance, Health professions, Hostages, Iraq, Kuwait, Lebanon, Reporting and recordkeeping requirements, Retirement.

U.S. Office of Personnel Management.
James B. King,
Director.

Accordingly, the interim rule amending parts 630 and 890 of title 5 of the Code of Federal Regulations, which was published at 58 FR 39596, is adopted as a final rule with the following changes:

PART 630—ABSENCE AND LEAVE

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

Authority: 5 U.S.C. 6311; § 630.301 also issued under Pub. L. 103–356, 108 Stat. 3410; § 630.303 also issued under 5 U.S.C. 6133(a); §§ 630.306 and 630.308 also issued under 5 U.S.C. 6304(d)(3), 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. 102–25, 105 Stat. 92; and subpart L also issued under 5 U.S.C. 6387 and Pub. L. 103–3, 107 Stat. 23.

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

2. Section 630.201 is revised to read as follows:

§ 630.201 Definitions.

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

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

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

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

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

Family member means the following relatives of the employee:

(1) Spouse, and parents thereof;

(2) Children, including adopted children and spouses thereof;

(3) Parents;

(4) Brothers and sisters, and spouses thereof; and

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

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

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

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

Uncommon tour of duty means a tour of duty that exceeds 80 hours of work in a biweekly pay period, including hours of actual work plus hours in a standby status for which the employee is compensated by annual premium pay under 5 U.S.C. 5545(c)(1) and part 550 of this chapter.

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

Subpart D—Sick Leave

3. In § 630.401, paragraph (a)(3) is revised to read as follows:

§ 630.401 Grant of sick leave.

(a) * * *

(3) Provides care for a family member who is incapacitated as the result of physical or mental illness, injury, pregnancy, or childbirth or who receives medical, dental or optical examination or treatment;

* * * * *

Subpart I—Voluntary Leave Transfer Program

§ 630.905 [Amended]

4. In § 630.905, paragraph (c) is amended by removing the term *party-time* and inserting in its place *part-time*.

5. In § 630.907, paragraph (d)(2) is revised to read as follows:

§ 630.907 Accrual of annual and sick leave.

* * * * *

(d)* * *

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

* * * * *

6. In § 630.911, paragraph (h) is added to read as follows:

§ 630.911 Restoration of transferred annual leave.

* * * * *

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

Subpart J—Voluntary Leave Bank Program

7. In § 630.1010, paragraph (d) is added to read as follows:

§ 630.1010 Termination of medical emergency.

* * * * *

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

Subpart L—Family and Medical Leave

8. In § 630.1201, paragraphs (b)(1)(ii)(B) and (b)(3)(i) are revised to read as follows:

§ 630.1201 Purpose, applicability, and administration.

* * * * *

(b)* * *

(1)* * *

(ii)* * *

(B) An employee in the Veterans Health Administration of the Department of Veterans Affairs who is appointed under section 7401(1) of title 38, United States Code.

* * * * *

(3)* * *

(i) An employee in the Veterans Health Administration of the Department of Veterans Affairs who is appointed under section 7401(1) of title 38, United States Code, shall be governed by the terms and conditions of regulations prescribed by the Secretary of Veterans Affairs;

* * * * *

9. In § 630.1202, the definition of *Continuing treatment by a health care provider* is removed; the definition of *Incapacity* is added in alphabetical order, and the definitions of *Essential functions*, *Foster care*, *Health care provider*, *Intermittent leave or leave taken intermittently*, *Parent*, *Serious health condition*, *Son or daughter*, and *Spouse* are revised to read as follows:

§ 630.1202 Definitions.

* * * * *

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

* * * * *

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

Health care provider means—

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

(2) Any health care provider recognized by the Federal Employees Health Benefits Program or who is licensed or certified under Federal or State law to provide the service in question;

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

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

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

* * * * *

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

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

* * * * *

Parent means a biological parent or an individual who stands or stood *in loco parentis* to an employee when the employee was a son or daughter. This term does not include parents ''in law.''

* * * * *

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

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

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

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

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

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

(B) Any period of incapacity due to pregnancy, or for prenatal care, even if the affected individual does not receive active treatment from a health care provider during the period of incapacity or the period of incapacity does not last more than 3 consecutive calendar days.

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

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

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

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

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

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

(2) (Serious health condition does not include routine physical, eye, or dental examinations; a regimen of continuing treatment that includes the taking of over-the-counter medications, bed-rest, exercise, and other similar activities that can be initiated without a visit to the health care provider; a condition for which cosmetic treatments are administered, unless inpatient hospital care is required or unless complications develop; or an absence because of an employee's use of an illegal substance, unless the employee is receiving treatment for substance abuse by a health care provider or by a provider of health care services on referral by a health care provider. Ordinarily, unless complications arise, the common cold, the flu, earaches, upset stomach, minor ulcers, headaches (other than migraines), routine dental or orthodontia problems, and periodontal disease are not serious health conditions. Allergies, restorative dental or plastic surgery after an injury, removal of cancerous growth, or mental illness resulting from stress may be serious health conditions only if such conditions require inpatient care or continuing treatment by a health care provider.)

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

(1) Under 18 years of age; or

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

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

* * * * *

10. In § 630.1203, paragraphs (a)(4), (b), (c), (d), (g), and (h) are revised to read as follows:

§ 630.1203 Leave entitlement.

(a) * * *

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

(b) An employee shall invoke his or her entitlement to family or medical leave under paragraph (a) of this section, subject to the notification and medical certification requirements in §§ 630.1206 and 630.1207. An employee may take only the amount of family and medical leave that is necessary to manage the circumstances that prompted the need for leave under paragraph (a) of this section.

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

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

* * * * *

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

(h) An agency may not subtract leave from an employee's entitlement to leave

under paragraph (a) of this section unless the agency has obtained confirmation from the employee of his or her intent to invoke entitlement to leave under paragraph (b) of this section. An employee's notice of his or her intent to take leave under § 630.1206 may suffice as the employee's confirmation.

11. In § 630.1204, paragraphs (d) introductory text and (f) are revised to read as follows:

§ 630.1204 Intermittent leave or reduced leave schedule.

* * * * *

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

* * * * *

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

12. In § 630.1205, paragraph (b) is amended by revising the introductory text, removing paragraphs (b)(4) and (b)(5), adding the word ''and'' to paragraph (b)(2) after the semicolon and removing the semicolon after the word ''chapter'' in paragraph (b)(3) and adding a period in its place; and paragraphs (c), (d), (e) are revised to read as follows:

§ 630.1205 Substitution of paid leave.

* * * * *

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

* * * * *

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

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

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

13. In § 630.1206, paragraph (f) is revised to read as follows:

§ 630.1206 Notice of leave.

* * * * *

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

14. In § 630.1207, paragraphs (a), (b)(2), (b)(5), (b)(6), (c), and (i) are revised to read as follows:

§ 630.1207 Medical certification.

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

(b) * * *

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

* * * * *

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

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

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

* * * * *

(i) For leave taken for the purposes of pregnancy, chronic conditions, or long-term conditions under the continuing supervision of a health care provider, as these terms are defined in § 630.1202 in the definition of ''serious health condition'' under paragraphs (2)(ii), (iii), and (iv), the agency may require, at the agency's expense, subsequent medical recertification from the health care provider on a periodic basis, but not more than every 30 calendar days. For leave taken for all other serious health conditions and including leave taken on an intermittent or reduced leave schedule, if the health care provider has specified on the medical certification a minimum duration of the period of incapacity, the agency may not request recertification until that period has passed. An agency may require subsequent medical recertification more frequently than every 30 calendar days, or more frequently than the minimum duration of the period of incapacity specified on the medical certification, if the employee requests that the original leave period be extended, the circumstances described in the original medical certification have changed significantly, or the agency receives information that casts doubt upon the continuing validity of the medical certification.

* * * * *

15. In § 630.1208, paragraphs (b)(5), (h), and (i) are revised, and paragraph (k) is added to read as follows:

§ 630.1208 Protection of employment and benefits.

* * * * *

(b) * * *

(5) The same or equivalent opportunity for a within-grade increase, performance award, incentive award, or other similar discretionary and non-discretionary payments, consistent with

applicable laws and regulations; however, the entitlement to be returned to an equivalent position does not extend to intangible or unmeasurable aspects of the job;

* * * * *

(h) As a condition to returning an employee who takes leave under § 630.1203(a)(4), an agency may establish a uniformly applied practice or policy that requires all similarly-situated employees (i.e., same occupation, same serious health condition) to obtain written medical certification from the health care provider of the employee that the employee is able to perform the essential functions of his or her position. An agency may delay the return of an employee until the medical certification is provided. The same conditions for verifying the adequacy of a medical certification in § 630.1207(c) shall apply to the medical certification to return to work. No second or third opinion on the medical certification to return to work may be required. An agency may not require a medical certification to return to work during the period the employee takes leave intermittently or under a reduced leave schedule under § 630.1204.

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

* * * * *

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

16. § 630.1210, paragraphs (a) and (c) are revised to read as follows:

§ 630.1210 Greater leave entitlement.

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

* * * * *

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

* * * * *

17. In § 630.1211, paragraph (b)(3) is revised to read as follows:

§ 630.1211 Records and reports.

* * * * *

(b) * * *

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

* * * * *

PART 890—FEDERAL EMPLOYEES HEALTH BENEFITS PROGRAM

18. The authority citation for part 890 continues to read as follows:

Authority: 5 U.S.C. 8913, § 890.803 also issued under 50 U.S.C. 403p, 22 U.S.C. 4069c and 4069c–1; subpart L also issued under sec. 599C of Pub. L. 101–513, 104 Stat. 2064, as amended.

19. In § 890.502, paragraph (e) is revised to read as follows:

§ 890.502 Employee withholdings and contributions.

* * * * *

(e) *Direct payment of premiums during periods of LWOP status in excess of 365 days.*

(1) An employee who is granted leave without pay under subpart L of part 630 of this chapter which exceeds the 365 of continued coverage under section 890.303(e) must pay the employee contributions directly to the employing office on a current basis.

(2) Payment must be made after the pay period in which the employee is covered in accordance with a schedule established by the employing office. If the employing office does not receive the payment by the date due, the employing office must notify the employee in writing that continuation of coverage depends upon payment being made within 15 days (45 days for employees residing overseas) after receipt of the notice. If no subsequent payments are made, the employing office terminates the enrollment 60 days (90 days for enrollees residing overseas) after the date of the notice.

(3) If the enrollee was prevented by circumstances beyond his or her control from making payment within the timeframe specified in paragraph (e)(2) of this section he or she may request reinstatement of the coverage by writing to the employing office. The employee must file the request within 30 calendar days from the date of termination and must include supporting documentation.

(4) The employing office determines whether the employee is eligible for reinstatement of coverage. If the determination is affirmative, the employing office reinstates the coverage of the employee retroactive to the date of termination. If the determination is negative, the employee may request a review of the decision from the employing agency as provided under § 890.104.

(5) An employee whose coverage is terminated under paragraph (e)(2) of this section may register to enroll upon his or her return to duty in a pay status in a position in which the employee is eligible for coverage under this part.

* * * * *

[FR Doc. 96–30810 Filed 12–4–96; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 989

[Docket No. FV96–989–3 FIR]

Raisins Produced From Grapes Grown in California; Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (Department) is adopting as a final rule, without change, the provisions of an interim final rule establishing an assessment rate for the Raisin Administrative Committee (Committee) under Marketing Order No. 989 for the 1996–97 and subsequent crop years. The Committee is responsible for local administration of the marketing order which regulates the handling of raisins produced from grapes grown in California. Authorization to assess raisin handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program.

EFFECTIVE DATE: August 1, 1996.

FOR FURTHER INFORMATION CONTACT: Mary Kate Nelson, Marketing Assistant, Marketing Order Administration