Billing Code: 6325-39

OFFICE OF PERSONNEL MANAGEMENT

5 CFR PART 630

RIN: 3206-AN31

Disabled Veteran Leave and Other Miscellaneous Changes

AGENCY: Office of Personnel Management.

ACTION: Proposed rule.

SUMMARY: The Office of Personnel Management is issuing proposed regulations to implement the Wounded Warriors Federal Leave Act of 2015, which establishes a new leave category, to be known as "disabled veteran leave," available during a 12-month period beginning on the first day of employment to be used by an employee who is a veteran with a service-connected disability rated at 30 percent or more for purposes of undergoing medical treatment for such disability. In addition, we are proposing to rescind two obsolete regulations.

DATES: Comments must be received on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments, identified by RIN number ''3206-AN31,'' using either of the following methods:

Federal eRulemaking Portal: www.regulations.gov. Follow the instructions for submitting comments.

E-mail: pay-leave-policy@opm.gov.

FOR FURTHER INFORMATION CONTACT: Doris Rippey by telephone at (202) 606-2858 or by e-mail at pay-leave-policy@opm.gov.

SUPPLEMENTARY INFORMATION: The Office of Personnel Management (OPM) is issuing proposed regulations to implement the Wounded Warriors Federal Leave Act of 2015 (Public Law 114-75, November 5, 2015) (hereafter referred to as "the Act"). The Act adds section 6329 to title 5, United States Code, which establishes a new leave category, to be known as "disabled veteran leave." This new leave category is an entitlement for any employee who is a veteran with a service-connected disability rated at 30 percent or more to use disabled veteran leave during a 12-month period beginning on the first day of employment for the purposes of undergoing medical treatment for such disability. Disabled veteran leave available to an eligible employee may not exceed 104 hours for a regular full-time employee. Disabled veteran leave not used during this 12-month period may not be carried over to subsequent years and will be forfeited. By law, disabled veteran leave is available only to covered employees who are hired on or after November 5, 2016.

Section 2(d) of the Act gives OPM authority to regulate the disabled veteran leave provision. The regulations on disabled veteran leave will be located in subpart M of part 630 (Absence and Leave) of title 5, Code of Federal Regulations. They will replace the regulations currently found in subpart M, Reservist Leave Bank Program. The Reservist Leave Bank Program was authorized by Public Law 102-25, April 6, 1991. Under that program, OPM established a leave bank that distributed annual leave to returning Federal employees who were called to active duty in the U.S. Armed Forces during the Persian Gulf War. Employees were allowed to contribute unused accrued annual leave to the leave bank during an open season, which ran from July 13, 1991, until August 10, 1991. The authority is no longer needed, since Federal agencies were required to distribute the donated annual leave by the end of November 1991.

OPM is also proposing to rescind 5 CFR 630.310, Scheduling of annual leave by employees determined necessary for Year 2000 computer conversion efforts. The regulations at 5 CFR 630.310 provided that year 2000 computer conversion efforts were deemed an exigency of the public business for the purpose of restoring annual leave to any employee who forfeited annual leave under 5 U.S.C. 6304 at the beginning of leave year 2000 because the agency determined the employee's services were required during the Year 2000 computer conversion. The forfeited annual leave was deemed to have been scheduled in advance for the purpose of 5 U.S.C. 6304(d)(1)(B) and § 630.308. This authority is no longer needed because the regulations at 5 CFR 630.310(a) provided that the exigency of the public business for Year 2000 computer conversion efforts terminated on January 31, 2000.

Background

There are several pieces of legislative history that provide additional information on the intent of Congress when enacting the Wounded Warriors Federal Leave Act of 2015, including—

- The Congressional Record for the House, H6268-H6269, September 28, 2015;
- The Congressional Record for the Senate, S6085-S6088, July 28, 2015;
- House Report 114-180, Wounded Warriors Federal Leave Act of 2015 (a report issued by the House Committee on Oversight and Governmental Reform to accompany H.R. 313, ordered to be printed June 25, 2015); and
- Senate Report 114-89, Wounded Warriors Federal Leave Act of 2015 (a report issued by the Senate Committee on Homeland Security and Governmental Affairs to accompany S. 242, ordered to be printed July 23, 2015).

These reports and records provide insight into Congressional intent when drafting and ultimately enacting the Wounded Warrior Act of 2015. When preparing these proposed regulations, OPM referred to these reports and records to assist in understanding Congressional intent.

Effective Date

Section 2(c) of the Act provides that its amendments will apply to employees hired on or after the date that is 1 year after the date of enactment of the Act. Since the Act was enacted on November 5, 2015, the effective date is November 5, 2016. Therefore, if an employee is hired on or after November 5, 2016, and is otherwise eligible, the employee may be granted disabled veteran leave during the 12-month eligibility period that begins on the employee's first day of employment, which can occur no earlier than November 5, 2016.

New Subpart M in 5 CFR Part 630

In order to implement the Act, OPM is proposing to replace Subpart M, Reservist Leave Bank, in part 630 (Absences and Leave) of title 5, Code of Federal Regulations, with a new Subpart M, Disabled Veteran Leave. A section-by-section explanation of the proposed regulations follows.

§ 630.1301—Purpose and authority

Section 630.1301 addresses the purpose of the proposed regulations—i.e., to implement the new section 6329 in title 5, United States Code. It also notes that OPM is relying on its regulatory authority in section 2(d) of the Act.

§ 630.1302—Applicability

Section 630.1302 provides that subpart M applies to an employee who is a veteran with a service-connected disability rating of 30 percent or more, subject to the conditions specified in subpart M. It also notes that subpart M does not apply to employees of the United States Postal

Service or the Postal Regulatory Commission, since they are covered by regulations issued by the Postmaster General. Section 630.1302 also states that subpart M applies only to an employee whose is hired on or after November 5, 2016.

§ 630.1303 –Definitions

Section 630.1303 provides definitions of terms for purposes of subpart M.

The term "12-month period" in 5 U.S.C. 6329(a) is not defined in law. In the regulations, we are using the term "12-month eligibility period" and making clear that it refers to the continuous 12-month period that begins on the first day of employment. We are also making clear in the definition that, if an employee was eligible (or is later determined to have been eligible) for disabled veteran leave while previously employed by the United States Postal Service or the Postal Regulatory Commission and subsequently commences employment covered by subpart M, the 12-month eligibility period is the period that began on the first day of employment with the United States Postal Service or the Postal Regulatory Commission (as determined under regulations issued by the Postmaster General to implement 5 U.S.C. 6329).

The 12-month eligibility period is fixed based on the "first day of employment," which triggers the start of the 12-month clock. (See discussion of the definition of "first day of employment" below.) There is only one 12-month eligibility period for any employee during his or her Federal civilian career, since there is only one "first" day of employment. The date of the first day of employment may be established retroactively after the Veterans Benefits Administration has made a disability rating determination, which could mean that the employee was not able to use disabled veteran leave during part or all of the 12-month eligibility period. In that case, the employee will be allowed to retroactively substitute disabled veteran leave for

other leave used for medical treatment of a qualifying service-connected disability, as provided in proposed § 630.1306(c).

We provide that the term ***agency*** refers to an agency of the Federal Government. When the term is used in the context of an agency making determinations or taking actions, it means management officials of an employing agency authorized to make a given determination or take a given action.

We define ***employee*** to have the same meaning as that term in 5 U.S.C. 2105, consistent with 5 U.S.C. 6329(d)(1). Since employees of the United States Postal Service and the Postal Regulatory Commission are not covered by subpart M, we do not mention them in the definition of "employee" even though they are included under section 6329(d)(1). (Under section 2105(e), an employee of the United States Postal Service or the Postal Regulatory Commission is generally deemed not to be considered an "employee" for purposes of title 5, except as otherwise provided by law. Section 6329(d)(1) is such a statutory exception.)

Under 5 U.S.C. 2105(c), an employee of a nonappropriated fund instrumentality (NAFI) under the jurisdiction of the armed forces (Army, Navy, Air Force, Marines, Coast Guard) that is conducted for the comfort, pleasure, contentment, and mental and physical improvement of personnel in the armed forces is "deemed not an employee" for the purpose of laws administered by OPM, except for certain listed exceptions. Section 6329 is not covered by any listed exception. Since the Act defines the term "employee" to be an employee as defined in 5 U.S.C. 2105 and since OPM administers section 6329, NAFI employees identified in section 2105(c) are not covered by section 6329 and are not entitled to disabled veteran leave under that section.

Section 6239(a) provides that disabled veteran leave is available to an eligible employee during the 12-month period "beginning on the first day of employment." By regulation, we are defining the terms ***employment*** and ***first day of employment***.

We are defining ***employment*** to mean service as an "employee" (as defined in 5 U.S.C. 2105) during which the employee is covered by a leave system under which leave is charged for periods of absence. Since section 6329 is designed to provide a paid "leave" benefit to employees, it is clear that the benefit applies only to employees performing service covered by a leave system. Section 6329(a) states that the periods during which disabled veteran leave is used are periods "for which sick leave could regularly be used." Also, the House and Senate committee reports describe the benefit as needed by employees who have insufficient paid leave and must currently use unpaid leave or take advanced sick leave that must be repaid at some point in the future. Accordingly, we are regulating that the "employment" that triggers entitlement to disabled veteran leave is service under a leave system. This would exclude service in which an employee has an intermittent work schedule or service by certain leave-exempt Presidential appointees.

We also note in the definition of ***employment*** that it excludes service in a position in which an employee (as defined in 5 U.S.C. 2105) is not covered by 5 U.S.C. 6329 due to application of another statutory authority, such as service as an employee of the Federal Aviation Administration (FAA) or the Transportation Security Administration (TSA).

In order to define ***first day of employment***, it is necessary to give context to the word "first". We interpret section 6329(a) as using the term "first" relative to the time the employee attains status as a veteran with a qualifying service-connected disability. Under current law, the effective date is based on various factors, but in most cases it is either the date after the date of

military discharge (for those who file within 1 year of that discharge date) or the date of receipt of the application, both of which occur prior to the date of the rating determination. That effective date may be before or after the date an employee is hired to perform service in a civilian position in the Federal Government that is covered employment under this subpart. If the effective date is before such hiring date, the first day of employment as an eligible veteran with a qualifying service-connected disability is the employee's hiring date. If the effective date is after the hiring date, the first day employment as an eligible veteran with a qualifying service-connected disability is the effective date of the disability rating. (As discussed earlier, by law, section 6329 applies only to employees who are hired on or after November 5, 2016. See section 6329(c).)

Since the ***first day of employment*** (incorporating the definition of "employment" in § 630.1303) is based on when the employee first has status as a veteran with a qualifying service-connected disability during a period of employment, that first day is the later of (1) the date the employee is hired (i.e., hiring date) or (2) the effective date of the qualifying disability rating. Accordingly, this "later of" approach is reflected in the proposed definition of ***first day of employment***.

The term ***hired*** is being defined to mean one of several actions: (1) initial appointment, (2) a qualifying reappointment, or (3) return to civilian duty following a break in civilian duty (with continuous civilian leave status) to perform military service. The term "hired" is used in the definition of "first day of employment" and in § 630.1302 (Applicability). Because there are several possible hiring actions and since there can be only one first day of employment, the definition of "first day of employment" speaks of the "earliest date" an employee is hired.

The legislative history of the Act indicates that Congress was focused on the most common scenario, addressing "new" employees who begin their Federal careers with zero hours of sick leave. (See House Report 114-180 and Senate Report 114-89.) However, the law itself does not exclude those with past Federal civilian service. Thus, OPM is not required to interpret "first day of employment" to mean a person's first ever appointment with the Federal Government. Some individuals could have small amounts of past Federal service before military service, and we do not believe that Congress would have intended to automatically disqualify them from receiving disabled veteran leave benefits. Thus, the proposed regulations would cover certain reappointments as triggering the first day of employment, which in turn triggers the 12-month eligibility period to use disabled veteran leave. At the same time, given that Congress intended the 104-hour leave benefit for those with an initial balance of zero sick leave hours, any sick leave restored to an employee's credit upon reappointment will be taken into account in determining the amount of disabled veteran leave that should be credited. (See proposed § 630.1305(d).)

While we are defining ***first day of employment*** to include the first "reappointment" following military service during which an individual incurred a qualifying disability, we are limiting the coverage of reappointments to those that occur after a 90-day break in employment (where "employment" is a defined term, as explained above). See the proposed definition of ***qualifying reappointment***. This 90-day break-in-employment rule is consistent with similar 90-day rules OPM has adopted for determining when a "newly appointed" employee can be treated in the same way as a true first-time appointee. (See provisions in 5 U.S.C. 5333 and 5 CFR 531.211-531.212 regarding setting pay above step 1 for a newly appointed General Schedule employee. See also the provision in 5 U.S.C. 5753 and 5 CFR 575.102 regarding recruitment

bonuses for a newly appointed employee.) The 90-day rule prevents employees from seeking a separation from Federal service merely to obtain a desired benefit. Civilian service with the Federal Government that is not "employment" covered by subpart M—such as FAA and TSA service—would be treated as a break in employment. Thus, for example, an individual who moves without a break in service between FAA and a position covered by subpart M could have a qualifying first day of employment under subpart M. However, as provided under § 630.1305(d), any sick leave transferred with the employee would offset the disabled veteran leave benefit. Further, if the employee already received an equivalent disabled veteran leave benefit under the FAA personnel authority, that could eliminate or reduce any entitlement to disabled veteran leave under subpart M, as provided under § 630.1305(e).

We are also proposing that the term ***first day of employment*** includes the date an employee returns to a civilian duty status after a break in civilian duty (with the employee in continuous civilian leave status) to perform military service. We believe that, for purposes of this leave benefit, such a return to civilian duty status following a leave of absence for military service can properly be considered an "employment" or "hiring" event, even though in one sense the individual retained continuous status as a civilian employee. Many Federal civilian employees go on leave to perform military service as reservists or members of the National Guard and, should they incur a qualifying service-connected disability, could have an insufficient balance of sick leave to meet their needs as a disabled veteran when they return to civilian duty. Given that the purpose of the Act is to assist disabled veterans, we believe it would be appropriate to ensure that such employees have sufficient paid leave by covering them under section 6329. However, the disabled veteran leave benefit would be offset by the amount of sick leave to the employee's credit at the time of the hiring event, as provided in § 630.1305(d).

As stated in our description of proposed § 630.1302 (Applicability), the provisions of section 6329 apply only to a qualifying employee hired on or after November 5, 2016. (See section 6329(c).) If a veteran with a qualifying service-connected disability is already a Federal employee as of November 4, 2016, that veteran would not qualify for disabled veteran leave unless he or she has a qualifying hiring event in the future.

Although many veterans may receive treatment for their service-connected disabilities by the Veterans Health Administration (VHA), others may seek treatment from other healthcare providers. Therefore, we define ***health care provider*** broadly, using the same broad definition used in OPM's regulations implementing the Family and Medical Leave Act. (See § 630.1202.)

Section 6329(a) requires that disabled veteran leave be used solely for the purpose of undergoing medical treatment of a qualifying service-connected disability. As a means of verification, section 6329(c) provides that an employee using disabled veteran leave must submit to the employing agency certification that the employee will (or has) used the leave for purposes of being furnished treatment for the disability. It further provides that OPM is authorized to prescribe the "form and manner" that this certification takes. While an employee's self-certification will always be required, we are proposing in § 630.1307 that the agency, at its discretion, may additionally require a medical certificate to support an employee's use of disabled veteran leave. We are defining ***medical certificate*** as a written statement signed by a health care provider certifying to the medical treatment of an employee for a qualifying service-connected disability. We are defining ***medical treatment*** as any activity carried out by, or prescribed by, a health care provider to treat an employee's qualifying service-connected disability.

Disabled veteran leave is only available to employees with a service-connected disability that meets the requirements of the statute, which provides that the disability is rated at 30 percent or more. We define *qualifying service-connected disability* for purposes of this subpart to mean a service-connected disability rated at 30 percent or more. The definition also makes clear that (1) a combined degree of disability of 30 percent or more that reflects the combined effect of multiple individual disabilities is a qualifying disability and (2) a temporary disability rating under 38 U.S.C. 1156 is considered a valid rating in applying this definition for as long as such rating is in effect.

The definitions of the terms *service-connected* and *veteran* are provided in the statute at 5 U.S.C. 6329(d) and refer to the definitions of those terms at 38 U.S.C. 101. Since the statutory text may change in the future, we provide the reference to the definition in 38 U.S.C. 101, but do not provide the text of the definitions themselves. We are providing the current statutory text in this supplementary information to ensure that the reader fully understands who qualifies as a veteran with a service-connected disability under current law.

We are defining *service-connected* as having the meaning given the term at 38 U.S.C. 101(16). The text of the statute currently reads, "The term 'service-connected' means, with respect to disability or death, that such disability was incurred or aggravated, or that the death resulted from a disability incurred or aggravated, in line of duty in the active military, naval, or air service."

The term *veteran* has the meaning given such term at 38 U.S.C. 101(2). The text of the statute currently reads, "The term 'veteran' means a person who served in the active military, naval, or air service, and who was discharged or released therefrom under conditions other than dishonorable."

Finally, we are proposing a definition of the term *military service*, which is based on the definition of *active military, naval, or air service* at 38 U.S.C. 101(24). This is the service that is a basis for a finding by the Veterans Benefits Administration that a veteran has a service-connected disability qualifying for benefits under title 38, United States Code. The term "active military, naval, or air service" is currently defined in 38 U.S.C. 101(24) as follows:

The term "active military, naval, or air service" includes—

- active duty;
- any period of active duty for training during which the individual concerned was disabled or died from a disease or injury incurred or aggravated in line of duty; and
- any period of inactive duty training during which the individual concerned was disabled or died—
  - from an injury incurred or aggravated in line of duty; or
  - from an acute myocardial infarction, a cardiac arrest, or a cerebrovascular accident occurring during such training."

We note that the terms "active duty for training" and "inactive duty training" are defined in 38 U.S.C. 101(22) and (23), respectively, and that those definitions must be used in applying the definition of "military service" in subpart M. In administering disabled veteran leave, agencies do not need to know all the title 38 requirements. They can simply rely on a determination of the Veterans Benefits Administration that an individual is a veteran with a qualifying service-connected disability.

§ 630.1304—Eligibility

Section 630.1304(a) provides that an employee with a qualifying service-connected disability is eligible for disabled veteran leave under subpart M, which is available for use during the employee's 12-month eligibility period. For any employee, there will be only one such period under section 6329 during his or her career.

Section 630.1304(b) addresses the employee's responsibility to provide documentation from the Veterans Benefits Administration certifying the qualifying service-connected disability to the agency. This certification is used by the agency to determine an employee's eligibility for disabled veteran leave. Since disabled veteran leave is only available during an eligible employee's first 12 months after employment, it is important that agencies be able to identify as soon as possible whether an employee is entitled to the benefit. An agency can only do so if it has received the proper documentation/certification. Employees should, when possible, provide the necessary documentation upon employment. For those who have not yet received such certifying documentation from the Veterans Benefits Administration, the employee should provide it to the agency as soon as practicable after he or she receives it.

Section 630.1304(c) allows for the possibility that an employee may submit certifying documentation at a later time, including after a period of absence for medical treatment. In that case, disabled leave may be provided retroactively, as described in § 630.1306(c). A delay in the employee providing certifying documentation to the employing agency does not affect the dates of the 12-month eligibility period, since that period is fixed by statute based on the first day of employment.

Section 630.1304(d) addresses situations in which a veteran's condition(s) improves such that the employee's disability rating is reduced or discontinued resulting in the employee no longer having a qualifying service-connected disability. In such cases, it is the responsibility of

the employee to notify the agency of the change in rating. Since the requirements of the statutory entitlement will no longer be met, the employee will no longer be entitled to disabled veteran leave as of the effective date of the change in rating. Any unused disabled veteran leave to such an employee's credit as of the effective date of the change in rating is forfeited. The rating change has only prospective effect. It does not invalidate the use of disabled veteran leave prior to the effective date of the rating change. (See also § 630.1308(b).)

§ 630.1305—Crediting disabled veteran leave

Section 630.1305 addresses an agency's responsibilities regarding the crediting of disabled veteran leave.

For regular full-time employees, agencies must credit 104 hours of disabled veteran leave to the employee's disabled veteran leave account, except as otherwise provided in § 630.1305. We are proposing special crediting rules for employees with part-time, seasonal, or uncommon tours of duty, which are found in paragraphs (a)-(c) of 630.1305.

Section 6329(b)(1) states that disabled veteran leave "may not exceed 104 hours." Based on the Act's legislative history, which stated that the intent of the statute was to provide disabled veterans "with immediate access to up to 13 days for sick leave," it is clear that Congress was focused on regular full-time employees. (See page H6268 of the House Congressional Record, September 28, 2015.) The 104 hours was based on the amount of sick leave hours a regular full-time employee would normally accrue in a 12-month period (4 hours x 26 biweekly pay periods = 104 hours or 13 days). (See page 2 of House Committee Report 114-180 and page 2 of Senate Committee Report 114-89.) While full-time employees with a standard 40-hour weekly tour generally accrue 104 hours of sick leave in a leave year, that is not true for employees with part-time, seasonal, or uncommon tours of duty. (See 5 CFR 630.201 and 630.210 for a description

of uncommon tours of duty that are more than 80 hours in a biweekly pay period.) These proposed regulations therefore provide that disabled veteran leave be proportionally adjusted for employees with part-time, seasonal, or uncommon tours of duty. For each type of schedule, a disabled veteran leave benefit would be derived to achieve a number of hours that is proportionally equivalent to 104 hours for a regular full-time employee. Under this approach, the value of the disabled veteran leave benefit as a percentage of projected total annual hours in the work schedule would be consistent across various types of schedules. This approach is consistent with OPM's administration of annual and sick leave accrual for employees with different types of work schedules and ensures equitable treatment of employees.

Section 630.1305(d) addresses the offset of the 104-hour leave benefit (or proportional equivalent) for employees who have a balance of sick leave on the first day of employment that starts the 12-month eligibility period. Based on House and Senate committee reports, the intent of Congress was to provide 104 hours of disabled veteran leave to full-time employees who begin their Federal careers with a zero sick leave balance. Section 6329(b)(1) states that disabled veteran leave "may not exceed 104 hours." It does not require the crediting of 104 hours.

As explained earlier, we have proposed regulating that certain employees who have past Federal civilian service may be eligible for disabled veteran leave. Such employees may have sick leave to their credit upon reemployment or return to civilian duty following military service. This specific circumstance was not anticipated or addressed in the House and Senate committee reports. Thus, OPM is using its regulatory authority to carry out section 6329 and its purposes by providing that any sick leave to the credit of such employees upon the first day of employment must be used to offset (reduce) the 104-hour disabled veteran leave benefit (or proportional equivalent). For example if a regular full-time employee is reemployed, qualifies

for the disabled veteran leave benefit, and is recredited with 30 hours of sick leave, the employee's disabled veteran leave would be credited at 74 hours (104 hours minus 30 hours of recredited sick leave).

Section 630.1305(e) addresses the special circumstance in which a Federal agency and its employees are not subject to chapter 63 of title 5, United States Code, based on another statutory authority (e.g., the authorities that apply to employees of the Federal Aviation Administration and the Transportation Security Administration). Thus, these employees are not subject to section 6329 and have no statutory entitlement to disabled veteran leave. Such agencies may decide to offer their employees a parallel benefit, which would not, however, be disabled veteran leave under section 6329. The proposed regulations provide that an employee who was previously employed by a noncovered agency with a parallel benefit must self-certify whether he or she received an equivalent (or better) leave benefit and the date eligibility commenced. If 12 months have elapsed since that eligibility commencing date, the employee will be considered to have received the full amount of an equivalent benefit and no benefit may be provided under subpart M. If the employee is still within the 12-month period that began on such commencing date, the employee must certify the number of hours of disabled veteran leave used at the former agency. Those hours would be used to offset the disabled veteran leave benefit provided under section 6329.

§ 630.1306—Requesting and using disabled veteran leave

Section 630.1306(a) provides, as required by 5 U.S.C. 6329, that disabled veteran leave may only be used for the medical treatment of an employee's qualifying service-connected disability. Disabled veteran leave must be distinguished from sick leave, which can be used if an employee is incapacitated for the performance of his or her duties by physical or mental illness,

injury, pregnancy, or childbirth (see 5 CFR 630.401(a)(2)). Such use of sick leave does not require that the employee undergo any specific medical treatment related to the incapacity. However, the disabled veteran leave benefit requires the benefit to be used for medical treatment as it relates to the employee's qualifying service-connected disability. The proposed regulations provide that the medical treatment may include a period of rest, but only if the period of rest is specifically ordered by the health care provider as part of a prescribed course of treatment for the qualifying service-connected disability. This means that an employee could not, for example, contact his or her manager to request a day of disabled veteran leave to rest because the employee believes he or she is incapacitated due to the service-connected disability. In such a circumstance, sick leave would be the appropriate choice.

Section 630.1306(b) specifies the requirements for an employee's application to use disabled veteran leave. In compliance with the law, the application must include the employee's personal self-certification that the requested leave will be (or was) used for purposes of being furnished medical treatment for a qualifying service-connected disability. Section 630.1306(b) also lays out the requirement to request the leave in advance, unless the need for the leave is critical and not foreseeable.

Section 630.1306(c) addresses the ability to substitute the disabled veteran leave retroactively for other leave or paid time off that was used for treatment of a qualifying service-connected disability during the 12-month eligibility period. For various reasons, an employee may not have provided the required certification of his or her qualifying service-connected disability before a period of absence for medical treatment of such disability (e.g., because the Veterans Benefits Administration's determination was pending). We believe the entitlement to disabled veteran leave should be preserved in such circumstances. Therefore, the proposed

regulations allow an eligible employee to substitute disabled veteran leave retroactively for a period of absence (excluding a period of suspension or absence without leave (AWOL)) during the 12-month eligibility period that was used for medical treatment of the qualifying service-connected disability.

§ 630.1307—Medical certification

Section 630.1307(a) provides that an agency may require an employee to provide to the agency a signed written medical certification issued by a health care provider to support each use of disabled veteran leave. Section 630.1307(b) describes what information a health care provider may be required to include in the medical certification. Section 630.1307(c) addresses the deadlines for submitting a medical certification and what action an agency may take if the medical certification is not submitted within the required timeframes.

§ 630.1308—Disabled veteran leave forfeiture, transfer, reinstatement

Section 630.1308(a) provides that an employee forfeits any disabled veteran leave to his or her credit if it is not used during the 12-month eligibility period.

Section 630.1308(b) provides that, if, during the 12-month eligibility period, a change in an employee's disability rating causes the employee to no longer have a qualifying service-connected disability, any disabled veteran leave to the employee's credit must be forfeited.

Section 630.1308(c) addresses the transfer of disabled veteran leave when an employee transfers between agencies without a break in employment during the 12-month eligibility period.

Section 630.1308(d) addresses the recrediting of disabled veteran leave when an employee has an unused balance of disabled veteran leave at the time of a break in employment

but returns to employment during the 12-month eligibility period. It also addresses the responsibilities of the losing agency to provide information to the gaining agency.

Section 630.1308(e) provides that an employee may not receive a lump-sum payment for any unused disabled veteran leave under any circumstance.

Executive Order 13563 and Executive Order 12866

The Office of Management and Budget has reviewed this rule in accordance with E.O. 13563 and 12866.

Regulatory Flexibility Act

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

List of Subjects in 5 CFR Part 630

Government employees.

U.S. Office of Personnel Management.

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Beth F. Cobert,
Acting Director.

Accordingly, OPM is proposing to amend part 630 of title 5 of the Code of Federal Regulations as follows:

PART 630 – ABSENCE AND LEAVE

1. Revise the authority citation for part 630 to read as follows:

Authority: 5 U.S.C. 6311; §630.205 also issued under Pub. L. 108-411, 118 Stat 2312; §630.301 also issued under Pub. L. 103-356, 108 Stat. 3410 and Pub. L. 108-411, 118 Stat 2312; §630.303 also issued under 5 U.S.C. 6133(a); §§630.306 and 630.308 also issued under 5 U.S.C. 6304(d)(3), Pub. L. 102-484, 106 Stat. 2722, and Pub. L. 103-337, 108 Stat. 2663; subpart D also issued under Pub. L. 103-329, 108 Stat. 2423; §630.501 and subpart F also issued under E.O. 11228, 30 FR 7739, 3 CFR, 1974 Comp., p. 163; subpart G also issued under 5 U.S.C. 6305; subpart H also issued under 5 U.S.C. 6326; subpart I also issued under 5 U.S.C. 6332, Pub. L. 100-566, 102 Stat. 2834, and Pub. L. 103-103, 107 Stat. 1022; subpart J also issued under 5 U.S.C. 6362, Pub. L 100-566, and Pub. L. 103-103; subpart K also issued under Pub. L. 105-18, 111 Stat. 158; subpart L also issued under 5 U.S.C. 6387 and Pub. L. 103-3, 107 Stat. 23; and subpart M also issued under section 2(d) of Pub. L. 114-75, 129 Stat. 640.

§ 630.310 [Removed and Reserved]

2. Remove and reserve § 630.310.

3. Revise subpart M to read as follows:

Subpart M—Disabled Veteran Leave

Sec.

Subpart M—Disabled Veteran Leave

§ 630.1301 Purpose and authority.

This subpart implements 5 U.S.C. 6329, which establishes a leave category, to be known as "disabled veteran leave," for an eligible employee who is a veteran with a service-connected disability rated at 30 percent or more. Such an employee is entitled to this leave for purposes of undergoing medical treatment for such disability. Disabled veteran leave must be used during the 12-month period beginning on the first day of employment following the military service

during which the employee incurred such disability. OPM's authority to regulate section 6329 is found in section 2(d) of Public Law 114-75.

§ 630.1302 Applicability.

This subpart applies to an employee who is a veteran with a service-connected disability rated at 30 percent or more, subject to the conditions specified in this subpart. This subpart does not apply to employees of the United States Postal Service or the Postal Regulatory Commission who are subject to regulations issued by the Postmaster General under section 2(d)(2) of Public Law 114-75. This subpart applies only to an employee who is hired on or after November 5, 2016.

§ 630.1303 Definitions.

In this subpart:

12-month eligibility period means the continuous 12-month period that begins on the first day of employment. For an employee who was eligible (or later determined to have been eligible) for disabled veteran leave as an employee of the United States Postal Service or the Postal Regulatory Commission and who subsequently commences employment covered by this subpart, the 12-month eligibility period is the period that began on the first day of employment with the United States Postal Service or the Postal Regulatory Commission (as determined under regulations issued by the Postmaster General to implement 5 U.S.C. 6329).

Agency means an agency of the Federal Government. In the case of an agency in the Executive branch, it means an Executive agency as defined in 5 U.S.C. 105. When the term "agency" is used in the context of an agency making determinations or taking actions, it means management officials of the agency who are authorized by the agency head to make the given determination or take the given action.

Employee has the meaning given that term in 5 U.S.C. 2105.

Employment means service as an employee during which the employee is covered by a leave system under which leave is charged for periods of absence. This excludes service in a position in which the employee is not covered by 5 U.S.C. 6329 due to application of another statutory authority.

First day of employment means the first day of service that qualifies as employment that occurs on or after the later of—

(1) The earliest date an employee is hired after a period of military service during which the employee incurred a qualifying service-connected disability; or

(2) The effective date of the employee's qualifying service-connected disability, as determined by the Veterans Benefits Administration.

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

Hired means the action of—

(1) Receiving an initial appointment to a civilian position in the Federal Government in which the service qualifies as employment under this subpart;

(2) Receiving a qualifying reappointment to a civilian position in the Federal Government in which the service qualifies as employment under this subpart; or

(3) Returning to duty status in a civilian position in the Federal Government in which the service qualifies as employment under this subpart, when such return immediately followed a break in civilian duty (with the employee in continuous civilian leave status) to perform military service.

Medical certificate means a written statement signed by a health care provider certifying to the treatment of a veteran's qualifying service-connected disability.

Medical treatment means any activity carried out or prescribed by a health care provider to treat a veteran's qualifying service-connected disability.

Military service means "active military, naval, or air service" as that term is defined in 38 U.S.C. 101(24).

Qualifying reappointment means an appointment of a former employee of the Federal Government following a break in employment of at least 90 calendar days.

Qualifying service-connected disability means a veteran's service-connected disability rated at 30 percent or more by the Veteran Benefits Administration, including a combined degree of disability of 30 percent or more that reflects the combined effect of multiple individual disabilities, which resulted in the award of disability compensation under title 38, United States Code. A temporary disability rating under 38 U.S.C. 1156 is considered a valid rating in applying this definition for as long as it is in effect.

Service-connected has the meaning given such term in 38 U.S.C. 101(16).

Veterans Benefits Administration means the Veterans Benefits Administration of the Department of Veterans Affairs.

Veteran has the meaning given such term in 38 U.S.C. 101(2).

§ 630.1304 Eligibility.

(a) An employee who is a veteran with a qualifying service-connected disability is entitled to disabled veteran leave under this subpart, which will be available for use during the 12-month eligibility period beginning on the first day of employment. For each employee, there is a single first day of employment.

(b) In order to be eligible for disabled veteran leave, an employee must provide to the agency documentation from the Veterans Benefits Administration certifying that the employee

has a qualifying service-connected disability. The documentation should be provided to the agency—

(1) Upon the first day of employment, if the employee has already received such certifying documentation; or

(2) For an employee who has not yet received such certifying documentation from the Veterans Benefit Administration, as soon as practicable after the employee receives the certifying documentation.

(c) Notwithstanding paragraph (b) of this section, an employee may submit certifying documentation at a later time, including after a period of absence for medical treatment, as described in § 630.1306(c). The 12-month eligibility period is fixed based on the first day of employment and is not affected by the timing of when certifying documentation is provided.

(d) If an employee's service-connected disability rating is decreased or discontinued during the 12-month eligibility period such that the employee no longer has a qualifying service-connected disability—

(1) The employee must notify the agency of the effective date of the change in the disability rating; and

(2) The employee is no longer eligible for disabled veteran leave as of the effective date of the rating change.

§ 630.1305 Crediting disabled veteran leave.

(a) Upon receipt of the certifying documentation under § 630.1304, an agency must credit 104 hours of disabled veteran leave to a full-time, nonseasonal employee or a proportionally equivalent amount for employees with part-time, seasonal, or uncommon tours of duty, except as otherwise provided in this section.

(b) The proportional equivalent of 104 hours for a full-time employee is determined for employees with other schedules as follows:

(1) For an employee with a part-time work schedule, the 104 hours is prorated based on the number of hours in the part-time schedule (as established for leave charging purposes) relative to a full-time schedule (e.g., 52 hours for a half-time schedule);

(2) For an employee with a seasonal work schedule, the 104 hours is prorated based on the total projected hours to be worked in an annual period of 52 weeks (based on the seasonal employee's seasonal work periods and full-time or part-time schedule during those periods) relative to a full-time work year of 2,080 hours (e.g., 52 hours for a seasonal employee who works full-time for half a year); and

(3) For an employee with an uncommon tour of duty (as defined in § 630.201 and described in § 630.210), 104 hours is proportionally increased based on the number of hours in the uncommon tour relative to the hours in a regular full-time tour (e.g., 187 hours for an employee with a 72-hour weekly uncommon tour of duty.)

(c) When an employee is converted to a different tour of duty for leave purposes, the employee's balance of unused disabled veteran leave must be converted to the proper number of hours based on the proportion of hours in the new tour of duty compared to the former tour of duty. For seasonal employees, hours must be annualized in determining the proportion.

(d) The amount of disabled veteran leave initially credited to an employee under paragraphs (a) and (b) of this section must be offset by the number of hours of sick leave an employee has credited to his or her account as of the first day of employment. For example, if an employee is being reappointed and having sick leave recredited upon such reappointment, the amount of disabled veteran leave must be reduced by the amount of such recredited sick leave.

Similarly, if an employee is returning to civilian duty status after a period of leave for military service, that employee may have a balance of sick leave, which must be used to offset the disabled veteran leave.

(e)(1) An employee who was previously employed by an agency whose employees were not subject to 5 U.S.C. 6329 must certify, at the time the employee is hired in a position subject to 5 U.S.C. 6329, whether or not that former agency provided entitlement to an equivalent disabled veteran leave benefit to be used in connection with the medical treatment of a service-connected disability rated at 30 percent or more. The employee must certify the date he or she commenced the period of eligibility to use disabled veteran leave in the former agency.

(2) If 12 months have elapsed since the commencing date referenced in paragraph (e)(1) of this section, the employee will be considered to have received the full amount of an equivalent benefit and no benefit may be provided under this subpart.

(3) If the employee is still within the 12-month period that began on the commencing date referenced in paragraph (e)(1) of this section, the employee must certify the number of hours of disabled veteran leave used at the former agency. The gaining agency must offset the number of hours of disabled veteran leave to be credited to the employee by the number of such hours used by the employee at such agency, while making no offset under paragraph (d) of this section. If the employee had a different type of work schedule at the former agency, the hours used at the former agency must be converted before applying the offset, consistent with § 630.1305(c).

§ 630.1306 Requesting and using disabled veteran leave.

(a) An employee may use disabled veteran leave only for the medical treatment of a qualifying service-connected disability. The medical treatment may include a period of rest, but

only if such period of rest is specifically ordered by the health care provider as part of a prescribed course of treatment for the qualifying service-connected disability.

(b)(1) An employee must file an application—written, oral, or electronic, as required by the agency—to use disabled veteran leave. The application must include a personal self-certification by the employee that the requested leave will be (or was) used for purposes of being furnished medical treatment for a qualifying service-connected disability. The application must also include the specific days and hours of absence required for the treatment. The application must be submitted within such time limits as the agency may require.

(2) An employee must request approval to use disabled veteran leave in advance unless the need for leave is critical and not foreseeable—e.g., due to a medical emergency or the unexpected availability of an appointment for surgery or other critical treatment. The employee must provide notice within a reasonable period of time appropriate to the circumstances involved. If the agency determines that the need for leave is critical and not foreseeable and that the employee is unable to provide advance notice of his or her need for leave, the leave may not be delayed or denied.

(c)(1) When an employee did not provide the agency with certification of a qualifying service-connected disability before having a period of absence for treatment of such disability, the employee is entitled to substitute approved disabled veteran leave retroactively for such period of absence (excluding periods of suspension or absence without leave (AWOL), but including leave without pay, sick leave, annual leave, compensatory time off, or other paid time off) in the 12-month eligibility period. Such retroactive substitution cancels the use of the original leave or paid time off and requires appropriate adjustments. In the case of retroactive

substitution for a period when an employee used advanced annual leave or advanced sick leave, the adjustment is a liquidation of the leave indebtedness covered by the substitution.

(2) An agency may require an employee to submit the medical certification described in § 630.1307(a) before approving such retroactive substitution.

§ 630.1307 Medical certification.

(a) In addition to the employee's self-certification required under § 630.1306(b)(1), an agency may additionally require that the use of disabled veteran leave be supported by a signed written medical certification issued by a health care provider.

(b) When an agency requires a signed written medical certification by a health care provider, the agency may specify that the certification include—

(1) A statement by the health care provider that the medical treatment is for one or more service-connected disabilities of the employee rated at 30 percent or more;

(2) The date or dates of treatment or, if the treatment extends over several days, the beginning and ending dates of the treatment;

(3) If the leave was not requested in advance, a statement that the treatment required was of an urgent nature or there were other circumstances that made advanced scheduling not possible; and

(4) any additional information that is essential to verify the employee's eligibility.

(c)(1) An employee must provide any required written medical certification no later than 15 calendar days after the date the agency requests such medical certification, except as otherwise allowed under paragraph (c)(2) of this section.

(2) If the agency determines it is not practicable under the particular circumstances for the employee to provide the requested medical certification within 15 calendar days after the date

requested by the agency despite the employee's diligent, good faith efforts, the employee must provide the medical certification within a reasonable period of time under the circumstances involved, but no later than 30 calendar days after the date the agency requests such documentation.

(3) An employee who does not provide the required evidence or medical certification within the specified time period is not entitled to use disabled veteran leave, and the agency may, as appropriate and consistent with applicable laws and regulations—

(i) Charge the employee as absent without leave (AWOL); or

(ii) Allow the employee to request that the absence be charged to leave without pay, sick leave, annual leave, or other forms of paid time off.

§ 630.1308 Disabled veteran leave forfeiture, transfer, reinstatement.

(a) Disabled veteran leave not used during the 12-month eligibility period may not be carried over to subsequent years and must be forfeited.

(b) If a change in the employee's disability rating during the 12-month eligibility period causes the employee to no longer have a qualifying service-connected disability (as described in § 630.1304(d)), any unused disabled veteran leave to the employee's credit as of the effective date of the rating change must be forfeited.

(c) When an employee with a positive disabled veteran leave balance transfers between positions in different agencies, or transfers from the United States Postal Service or Postal Regulatory Commission to a position in another agency, during the 12-month eligibility period, the agency from which the employee transfers must certify the number of unused disabled veteran leave hours available for credit by the gaining agency. The losing agency must also certify the expiration date of the employee's 12-month eligibility period to the gaining agency.

Any unused disabled veteran leave will be forfeited at the end of that eligibility period. For the purpose of this paragraph, the term "transfers" means movement from a position in one agency (or the United States Postal Service or Postal Regulatory Commission) to a position in another agency without a break in employment of 1 workday or more in circumstances where service in both positions qualifies as employment under this subpart.

(d)(1) An employee covered by this subpart, or an employee of the United States Postal Service or Postal Regulatory Commission, with a balance of unused disabled veteran leave who has a break in employment of at least 1 workday during the employee's 12-month eligibility period, and later recommences employment covered by 5 U.S.C. 6329 within that same eligibility period, is entitled to a recredit of the unused balance.

(2) When an employee has a break in employment as described in paragraph (d)(1) of this section, the losing agency must certify the number of unused disabled veteran leave hours available for recredit by the gaining agency. The losing agency must also certify the expiration date of the employee's 12-month eligibility period. Any unused disabled veteran leave must be forfeited at the end of that eligibility period.

(3) In the absence of the certification described in paragraph (d)(2) of this section, the recredit of disabled veteran leave may also be supported by written documentation available to the employing agency in its official personnel records concerning the employee, the official records of the employee's former employing agency, copies of contemporaneous earnings and leave statement(s) provided by the employee, or copies of other contemporaneous written documentation acceptable to the agency.

(e) An employee may not receive a lump-sum payment for any unused disabled veteran leave under any circumstance.

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