DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY

# DEPARTMENTAL PERSONNEL MANUAL LETTER

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**DPM LETTER NO. 630-7** **DATE:** SEP 29 1999

## SUBJECT: Absence and Leave; Use of Restored Leave

This DPM provides the Department of Transporation's policy on the Year 2000 (Y2K) Computer Conversion Project

On August 25, 1999, the Office of Personnel Management (OPM) issued final regulations to provide relief to both Federal agencies and employees involved in Y2K computer conversion efforts (see attachment). The regulations provide that excess annual leave forfeited by employees who are unable to schedule and use their leave as a result of Y2K computer conversion efforts will be deemed to have been scheduled in advance and therefore eligible for restoration.

Under current regulations, most employees can only carry 240 hours of annual leave into the next leave year. However, 5 U.S.C. 6304(d)(1)(b) allows excess annual leave forfeited as a result of exigencies of the public business when the annual leave was scheduled in advance to be restored to the affected employee. Many of the employees involved in Y2K efforts would face the possible forfeiture of "use or lose" annual leave because they must remain on the job until the Y2K computer conversions have been implemented and thoroughly tested. Under the normal rules, agencies would be faced with the administrative burden of scheduling, canceling, and restoring such leave for these employees at a time when all available attention and energy should be focused on Y2K conversion efforts.

To simplify procedures for restoring annual leave forfeited as a result of Y2K computer conversion efforts, OPM has determined that the Y2K computer conversion project as an exigency of the public business and establishes January 31, 2000, as the Governmentwide termination date for the Y2K exigency. In addition, under section 630.310(b), annual leave forfeited as a result of the Y2K exigency is deemed to have been scheduled in advance for the purpose of satisfying the requirements in 5 U.S.C. 6304(d) and 5 CFR 630.308.

Each operating administration is responsible for implementation within their respective administration and appropriate distribution of this notice. Should you have further questions, please call Maxcine Sterling on (202) 366-1291 or Jan Karicher on (202) 366-9450.

William H. Freed

WILLIAM H. FREED
Acting Departmental Director
Office of Human Resources Management

Attachment

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**FILING INSTRUCTIONS:** File after DPM Chapter 630 Letters

**DISTRIBUTION:** Personnel Council Members, SVC-162, B-30, AMZ-500, AAA-100

**OPI:** OST/M-12, Maxcine Sterling (202) 366-1291 or Jan Karicher, (202) 366-9450

# Rules and Regulations

Federal Register
Vol. 64, No. 164
Wednesday, August 25, 1999

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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## OFFICE OF PERSONNEL MANAGEMENT

### 5 CFR Part 630

**RIN 3206–AI71**

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

**AGENCY:** Office of Personnel Management.

**ACTION:** Final rule.

**SUMMARY:** The Office of Personnel Management is issuing final regulations to aid agencies and employees involved in Year 2000 (Y2K) computer conversion efforts. The regulations provide that excess annual leave forfeited by employees who are unable to schedule and use their leave as a result of Y2K computer conversion efforts will be deemed to have been scheduled in advance and therefore eligible for restoration.

**EFFECTIVE DATE:** August 25, 1999.

**FOR FURTHER INFORMATION CONTACT:** Sharon Herzberg, (202) 606–2858, FAX (202) 606–0824, or email to payleave@opm.gov.

**SUPPLEMENTARY INFORMATION:** On June 14, 1999, the Office of Personnel Management (OPM) published proposed regulations (64 FR 31735) that would provide relief to Federal employees involved in Year 2000 (Y2K) computer conversion efforts. Many of these employees would have faced the possible forfeiture of "use or lose" annual leave because they must remain on the job until the Y2K computer conversions have been implemented and thoroughly tested. Under the normal rules, agencies would be faced with the administrative burden of scheduling, canceling, and restoring such leave for these employees at a time when all available attention and energy should be focused on Y2K conversion efforts. Therefore, OPM issued proposed regulations to simplify the procedures for restoring annual leave forfeited as a result of the Y2K exigency. Section 630.310(a) of title 5, Code of Federal Regulations, as added by these final regulations, deems the Y2K computer conversion project an exigency of the public business and establishes January 31, 2000, as the Governmentwide termination date for the Y2K exigency. In addition, under § 630.310(b), annual leave forfeited as a result of the Y2K exigency is deemed to have been scheduled in advance for the purpose of satisfying the requirements in 5 U.S.C. 6304(d) and 5 CFR 630.308.

The 30-day comment period closed on July 14, 1999. During the comment period, OPM received six comments, five from agencies and one from an individual. The agency that initially requested this regulatory action expressed its gratitude to OPM for taking the lead in protecting employees involved in Y2K conversion efforts and its satisfaction with the proposed regulations, which they found well-thought out and comprehensive. The other four agencies that commented also fully supported OPM's proposed regulations.

The individual strongly objected to OPM's proposed regulations, believing that our regulations are not consistent with the statute at 5 U.S.C. 6304(d)(1)(B), which requires that annual leave lost as the result of an exigency of the public business may be restored when it was scheduled in advance. We believe it is necessary to consider the intent of Congress and what has happened since the enactment of the law. In this case, we believe the intent of Congress was to have employees use their annual leave. However, when the statutes outlining procedures for restoration of excess annual leave were enacted, Congress could not have foreseen the consequences of the law in emergency situations, such as the Y2K computer conversion problem.

Obviously, Congress believes there are situations in which this law needs to be more flexible. For example, legislation was enacted in 1993 to consider closure of DOD installations as "an exigency of the public business" and to exempt affected employees from the advance scheduling requirement in 5 U.S.C. 6304(d). Congress has set a precedent for permitting the restoration of annual leave without advance scheduling. While we cannot exempt employees who have been determined to be necessary for Y2K conversion from the statutory requirements, we believe we can provide that any leave lost as a result of the Y2K exigency can, by regulation, be deemed to have been scheduled in advance and therefore eligible for restoration.

The individual questioned the need for the proposed regulations, stating that the Y2K conversion is not sufficient reason to exempt employees from the scheduling requirements. We strongly disagree. OPM recognizes that the Y2K conversion is a major effort that has required and is continuing to require employees to perform not just their regularly scheduled work, but overtime work on nights and weekends as well. Further, we believe forcing employees and agencies to go through the charade of scheduling and canceling annual leave that both parties know cannot be taken places an administrative burden on agencies already dealing with other problems caused by the Y2K conversion.

The commenter feels that employees should have to show they made a "good faith effort" by attempting to schedule annual leave, pointing out that employees who forfeited leave as a result of Government furloughs in 1996 were required to have scheduled leave in advance to qualify for restoration. However, during the furlough period in 1996, employees were prevented from using leave only briefly, at the end of the leave year. The Y2K exigency has prevented and will continue to prevent employees from using leave throughout the 1999 leave year. When there is no possibility that an employee can be away from the workplace, we believe requiring efforts to schedule and cancel leave flies in the face of OPM's commitment to provide agencies with the human resources management tools they need to address Y2K computer conversion problems.

The commenter also objects to the extension of time limits for using previously restored leave because of the preference given to employees in the Y2K situation over those affected by extended exigencies not related to the Y2K conversion effort. Extended exigencies are already recognized as unique situations and have special time limits under 5 CFR 530.309. The Y2K

conversion effort does not qualify for these special time limits because it does not meet the definition of "extended exigency" in 5 CFR 630.309, i.e., an exigency lasting more that 3 years. OPM has the authority to set time limits for using restored annual leave (5 U.S.C. 6304(d)(2)), and there is precedent for extending the time for using previously restored leave. In regulations published on December 7, 1994, OPM provided new time limits for using previously restored leave for employees at Department of Defense installations undergoing closure or realignment. Those employees, like employees involved in Y2K conversion, needed to be at work and also needed to use their previously restored leave or it would have been forfeited with no possibility of further restoration. We believe the situation experienced by employees involved in the Y2K conversion effort is similar enough to the experiences of DOD employees involved in base closure and realignment to justify extending the time limits for using previously restored leave.

Finally, the commenter objects to the budgetary implications of OPM's regulations, saying that the restoration of forfeited leave has cost implications for agencies at a time when many are faced with serious downsizing and budget cuts. Employees earn annual leave as a part of their total compensation. When a work situation prevents an employee from scheduling annual leave, an agency is required to make every effort to help the employee reschedule that leave. If this cannot be done because of circumstances beyond the control of the employee and the agency, and the employee forfeits annual leave in excess of the amount allowable, the employee must be able to have that leave restored for use at a later date. We do not believe the regulations will increase costs for agencies because employees would not have forfeited large amounts of annual leave at the end of leave year 1999. Most, if not all, affected employees would have gone through the conventions of scheduling leave in order to qualify for restoration of forfeited leave. OPM's regulations merely simplify the procedures for restoring forfeited annual leave and reduce the administrative burden on agencies. In addition, denial of restoration of forfeited annual leave should never be based on projected budgetary savings, but rather on failure to meet the requirements of 5 U.S.C. 6304(d)(1).

An agency requested clarification of § 630.310(e), which deals with employees who transfer from positions deemed necessary for Y2K conversion efforts to other positions during the latter portion of leave year 1999. The agency asked whether this section applies to reassignments within an agency, transfers to positions at other agencies, or both. The regulation applies to *any* employee who moves from a position deemed essential to Y2K conversion efforts to a position not deemed essential for those purposes. The agency also asked which agency would then be responsible for exempting the employee from the scheduling requirement. If a transfer involves two agencies, the gaining agency will be responsible for determining whether the employee "was unable to comply with the advance scheduling requirement due to circumstances beyond his or her control" and therefore should be exempt from the scheduling requirements and able to have the forfeited leave restored.

One agency requested that the proposed date of the exigency be changed from January 31, 2000, to March 31, 2000, the end of the first quarter in Y2K. OPM considered several ending dates in drafting the proposed regulations. Lengthening the period of the exigency would have no bearing on the employee's inability to use sufficient annual leave during the 1999 leave year to avoid forfeiture. We realize that there may continue to be computer problems associated with Y2K after January 31, 2000. However, we are confident that employees will have sufficient time in the year 2000 to schedule and use their annual leave to avoid forfeiture. In addition, a change in the ending date of the exigency would have no effect on the time limits for using any restored leave. For these reasons, the termination date of the exigency remains January 31, 2000.

Another agency requested that OPM consider extending the policy established by these final regulations to other situations, as well. Such as extension would require the issuance of further proposed regulations for comment. Since we do not wish to delay the publication of the final Y2K leave restoration regulations, we will consider this suggestion as we continue to review the Federal leave program.

We believe no changes are necessary in the proposed regulations. Therefore, we are adopting as final the proposed rule to provide that excess annual leave forfeited by employees who are unable to schedule and use their leave as a result of Y2K computer conversion efforts will be deemed to have been scheduled in advance and therefore eligible for restoration.

**Waiver of Delay in Effective Date**

Pursuant to 5 U.S.C. 553(d)(3), we find that good cause exists to make this rule effective in less than 30 days in order to give agencies ample time to plan and implement procedures prior to the end of the leave year. An immediate effective date is necessary to provide agencies with an additional human resources management tool to address Y2K computer conversion problems.

**Regulatory Flexibility Act**

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

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

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

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

Government employees.

Office of Personnel Management.

**Janice R. Lachance,**

*Director.*

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

## PART 630—ABSENCE AND LEAVE

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

**Authority:** 5 U.S.C. 6311; § 630.301 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 C—Annual Leave

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

**§ 630.308 Scheduling of annual leave.**

(a) Except as provided in paragraph (b) of this section and § 630.310, before annual leave forfeited under section 6304 of title 5, United States Code, may be considered for restoration under that section, use of the annual leave must have been scheduled in writing before

the start of the third biweekly pay period prior to the end of the leave year.

* * * * *

3. A new § 630.310 is added to read as follows:

**§ 630.310 Scheduling of annual leave by employees determined necessary for Year 2000 computer conversion efforts.**

(a) Year 2000 computer conversion efforts are deemed to be an exigency of the public business for the purpose of restoring annual leave forfeited under 5 U.S.C. 6304. This exigency terminates on January 31, 2000.

(b) For any employee who forfeits 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 exigency, the forfeited annual leave is deemed to have been scheduled in advance for the purpose of 5 U.S.C. 6304(d)(1)(B) and § 630.208.

(c) Annual leave restored under 5 U.S.C. 6304(d) because of the Year 2000 computer conversion exigency must be scheduled and used not later than the end of leave year 2002.

(d) The time limits established under paragraphs (a) and (b) of § 630.308 for using previously restored annual leave do not apply for the period during which an employee's services were determined necessary for the completion of Year 2000 computer conversion efforts. On January 31, 2000, a new time limit will be established under paragraph (c) of this section for all annual leave restored to such an employee.

(e) An employee whose services were determined necessary during the Year 2000 computer conversion exigency for a portion of leave year 1999, but who subsequently moves to a position not involving Year 2000 computer conversion efforts, must make a reasonable effort to comply with the scheduling requirement in § 630.308(a). The head of the agency or his or her designee may exempt such an employee from the advance scheduling requirement in § 630.308(a) if coverage under paragraphs (a) and (b) of this section terminated during leave year 1999 and the employee can demonstrate that he or she was unable to comply with the advance scheduling requirement due to circumstances beyond his or her control.

[FR Doc. 99-22081 Filed 8-24-99; 8:45 am]

BILLING CODE 6325-01-P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 39

**[Docket No. 99-NM-179-AD; Amendment 39-11267; AD 99-18-01]**

**RIN 2120-AA64**

## Airworthiness Directives; Boeing Model 737-700 and -800 Series Airplanes

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

**ACTION:** Final rule; request for comments.

**SUMMARY:** This amendment supersedes an existing airworthiness directive (AD), applicable to certain Boeing Model 737-700 and -800 series airplanes, that currently requires revising the Airplane Flight Manual (AFM) to prohibit operation of the airplane under certain conditions; repetitive inspections of the tab mast fitting of the elevator tab assemblies to detect cracking; an elevator tab freeplay check; and corrective actions, if necessary. That AD also provides for optional terminating action for certain repetitive inspections, and requires installing an additional fastener on the elevator tab mast fitting, which terminates the AFM revision and extends certain repetitive inspection intervals. This amendment continues to require certain actions, and revises and adds certain other requirements. This amendment is prompted by a report of a severe vibration incident on a Boeing Model 737-800 series airplane; inspection revealed fracturing of the elevator tab mast fitting and excessive freeplay in the elevator tab. The actions specified in this AD are intended to prevent loss of controllability of the airplane due to excessive freeplay in the elevator tab or a free tab.

**DATES:** Effective September 9, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 9, 1999.

Comments for inclusion in the Rules Docket must be received on or before October 25, 1999.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-114, Attention: Rules Docket No. 99-NM-179-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124-2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Gregory L. Schneider, Aerospace Engineer, Airframe Branch, ANM-120S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (425) 227-2028; fax (425) 227-1181.

**SUPPLEMENTARY INFORMATION:** On June 22, 1999, the FAA issued AD 99-13-51, amendment 39-11213 (64 FR 34976, June 30, 1999), applicable to certain Boeing Model 737-700 and -800 series airplanes, to require revising the Airplane Flight Manual (AFM) to prohibit operation of the airplane under certain conditions; repetitive inspections of the tab mast fitting of the elevator tab assemblies to detect cracking; an elevator tab freeplay check; and corrective actions, if necessary. That AD also provides for optional terminating action for certain repetitive inspections. In addition, that AD requires installing an additional fastener on the elevator tab mast fitting, which terminates the AFM revision and extends certain repetitive inspections. That action was prompted by a report of a severe vibration incident on a Boeing Model 737-800 series airplane; inspection revealed fracturing of the elevator tab mast fitting and excessive freeplay in the elevator tab. The actions required by that AD are intended to prevent reduced controllability of the airplane due to excessive freeplay in the elevator tab or a free tab.

### Actions Since Issuance of Previous Rule

Since the issuance of that AD, the FAA has reviewed and approved the following new service information:

- Boeing Alert Service Bulletin 737-55A1068, Revision 1, dated June 11, 1999, describes procedures similar to those described in the original issue of that alert service bulletin, as cited in AD 99-13-51. However, Revision 1 adds a close visual inspection (detailed visual inspection) of the elevator tab mast fitting and revises certain part numbers and references due to typographical errors in the original issue of the alert service bulletin.
- Boeing Service Bulletin 737-55-1063, dated July 1, 1999, describes procedures for replacing a cracked elevator tab mast fitting with a new, improved fitting. Such replacement eliminates the need for repetitive