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## OFFICE OF PERSONNEL MANAGEMENT

### 5 CFR Part 630

RIN 3206-AK72

### Absence and Leave; SES Annual Leave

**AGENCY:** Office of Personnel Management.

**ACTION:** Final rule.

**SUMMARY:** The Office of Personnel Management is issuing final regulations to provide a higher annual leave accrual rate of 1 day (8 hours) per biweekly pay period for members of the Senior Executive Service, employees in senior-level and scientific or professional positions, and other employees covered by equivalent pay systems.

**DATES:** The regulations are effective November 20, 2006.

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

**SUPPLEMENTARY INFORMATION:** On March 21, 2005, the Office of Personnel Management (OPM) published interim regulations (70 FR 13343) to implement Section 202(b) of the Federal Workforce Flexibility Act of 2004 (Pub. L. 108-411, October 30, 2004) hereafter referred to as “the Act.” Section 202(b) added paragraph (f) to 5 U.S.C. 6303 to provide that members of the Senior Executive Service (SES), employees in senior-level (SL) and scientific or professional (ST) positions, and employees covered by a pay system equivalent to the SES pay system or SL/ST pay system, as determined by OPM, will accrue annual leave at the rate of 1 day (8 hours) for each full biweekly pay period, without regard to their length of service in the Federal Government.

The 60-day comment period for the interim regulations ended on May 20, 2005. During the comment period, OPM received comments from 2 agencies, 3 professional organizations, 1 union, and 14 individuals. In this final rule document, we address the comments received on the interim regulations.

The majority of individuals commented that the interim regulations were unfair and created disparate treatment of Federal employees. The commenters believe the annual leave accrual rate should be based solely on an employee’s length of creditable service and not on the employee’s grade or pay level. OPM’s regulations are consistent with the statutory language in 5 U.S.C. 6303(f), which provides entitlement to a higher annual leave accrual rate to SES members, employees in SL and ST positions, and employees in positions covered by a pay system, determined by OPM, to be equivalent to the SES or SL/ST pay systems. This annual leave benefit is one of two leave enhancements provided in the Act. Section 202(a) of the Act added paragraph (e) to 5 U.S.C. 6303 to provide OPM with the authority to prescribe regulations to permit an agency to provide to a newly appointed or reappointed employee service credit for prior work experience that otherwise would not be creditable for the purpose of determining the employee’s annual leave accrual rate. An agency may provide service credit to an employee if his or her work experience was obtained in a position having duties that directly relate to the duties of the position to which the employee is being appointed and if it is determined that the use of this authority is necessary to recruit an individual with the skills and experience necessary to achieve an important agency mission or performance goal. (See OPM’s interim regulations issued on April 29, 2005, at 70 FR 22245.) Agencies have discretionary authority to use this enhanced authority, regardless of an employee’s grade.

Several commenters disagreed with the criteria in § 630.301(b)(3) of the interim regulations that require an SES or SL/ST “equivalent position” to be subject to a performance appraisal system. The commenters believe there is no basis in law to require an SES or SL/ST “equivalent position” to be covered by a performance appraisal system, and

this requirement is not consistent with Congress’ intent in providing this leave benefit. Further, the commenters believe the requirement that an equivalent position must be subject to a performance appraisal system will have an adverse impact on an agency’s ability to recruit exceptionally qualified and experienced individuals.

The law gives OPM sole authority to determine whether a pay system is equivalent to the SES pay system or SL/ST pay system for the purpose of authorizing the 8-hour annual leave accrual rate for categories of employees in positions covered by the pay system. OPM’s regulations in § 630.301(b) allow the head of an agency to request that OPM authorize the 8-hour annual leave accrual rate for additional categories of employees in positions in pay systems, determined by OPM, to be equivalent to the SES pay system or SL/ST pay system because the covered pay systems meet three conditions—

1. Pay rates are established under an administratively determined (AD) pay system that has a single rate of pay (excluding locality pay) that is higher than the rate for GS-15, step 10 (excluding locality pay) or has a range of rates where the minimum rate (excluding locality pay) of the rate range is at least equal to the minimum rate for the SES and SL/ST pay systems (120 percent of the rate for GS-15, step 1, excluding locality pay) and the maximum rate (excluding locality pay) of the rate range is at least equal to the rate for level IV of the Executive Schedule;

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

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

The SES pay system assures a clear and direct linkage between performance

and pay. Paysetting for a member of the SES is based on the individual's performance, contribution to the agency's performance, or both, as determined under a rigorous performance management system. Since the SES and SL/ST pay systems are both subject to a performance appraisal system established under 5 U.S.C. chapter 43 and 5 CFR part 430, subparts B and C, it is essential that, for any position to be deemed equivalent, it must be subject to an equivalent performance appose of allowing a higher annual leave accrual rate is to provide agencies with an additional tool to recruit well-qualified, experienced individuals for senior positions. We believe this additional leave benefit will assist agencies in recruiting mid-career individuals who may be hesitant to enter Federal service if they have to surrender a considerable amount of personal or vacation time without an opportunity to accrue additional paid time off in a timely manner.

Finally, we have amended § 630.301(b) to remove the word "Executive" to allow the head of any agency to request that OPM authorize the 8-hour annual leave accrual rate for additional categories of employees. We are revising this section to be consistent with the legislation.

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

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

**Regulatory Flexibility Act**

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

**List of Subjects in 5 CFR 630**

Government employees.  
Office of Personnel Management.  
**Linda M. Springer,**  
*Director.*

■ Accordingly, the interim rule amending 5 CFR part 630, which was published at 70 FR 13343 on March 21, 2005, is adopted as final 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; 630.205 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 5 U.S.C. 6391 and Pub. L. 102-25, 105 Stat. 92.

**Subpart C—Annual Leave**

■ 2. In § 630.301, paragraph (b) introductory text, is revised to read as follows:

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

\* \* \* \* \*

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

\* \* \* \* \*

[FR Doc. E6-17389 Filed 10-18-06; 8:45 am]  
**BILLING CODE 6325-39-P**

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 39**

[Docket No. FAA-2005-23809; Directorate Identifier 2005-NE-52-AD; Amendment 39-14795; AD 2006-21-10]

**RIN 2120-AA64**

**Airworthiness Directives; Turbomeca Arriel 2B Series Turboshaft Engines**

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

**ACTION:** Final rule.

**SUMMARY:** The FAA is adopting a new airworthiness directive (AD) for Turbomeca Arriel 2B, 2B1, and 2B1A turboshaft engines. This AD requires visually inspecting the splines of the high-pressure (HP) pump drive gear shaft and coupling shaft assembly for

wear. This AD results from reports of uncommanded in-flight shutdowns of engines. We are issuing this AD to detect wear on the splines of the HP pump drive gear shaft and coupling shaft assembly, which could interrupt the fuel flow and cause an uncommanded in-flight shutdown of the engine on a single-engine helicopter. The in-flight shutdown of the engine could result in a forced autorotation landing or accident.

**DATES:** This AD becomes effective November 24, 2006. The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulations as of November 24, 2006.

**ADDRESSES:** You can get the service information identified in this AD from Turbomeca, 40220 Tarnos—France; Tel (33) 05 59 74 40 00; Telex 570 042; Fax (33) 05 59 74 45 15.

You may examine the AD docket on the Internet at <http://dms.dot.gov> or in Room PL-401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Christopher Spinney, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; telephone (781) 238-7175; fax (781) 238-7199.

**SUPPLEMENTARY INFORMATION:** The FAA proposed to amend 14 CFR part 39 with a proposed AD. The proposed AD applies to Turbomeca Arriel 2B, 2B1, and 2B1A turboshaft engines. We published the proposed AD in the **Federal Register** on March 9, 2006 (71 FR 12150). That action proposed to require visually inspecting the splines of the HP pump drive gear shaft and coupling shaft assembly for wear.

**Examining the AD Docket**

You may examine the docket that contains the AD, any comments received, and any final disposition in person at the Docket Management Facility Docket Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone (800) 647-5227) is located on the plaza level of the Department of Transportation Nassif Building at the street address stated in **ADDRESSES**. Comments will be available in the AD docket shortly after the DMS receives them.

**Comments**

We provided the public the opportunity to participate in the development of this AD. We received no