

responsibility for making exclusions under section 6301(2)(xi), and the Office of Personnel Management has delegated responsibility to the head of each agency consistent with the provisions of this section.

(3) Presidential appointees in positions where the rate of basic pay is equal to or exceeds the rate for level V of the Executive Schedule are already excluded from the annual and sick leave provisions by 5 U.S.C. 6301(2)(x). Therefore, no further action by an agency is necessary to exclude these appointees.

(b) *Criteria for exclusions.* The head of an agency may exclude an officer in the agency from the annual and sick leave provisions only if the officer meets all of the following criteria:

(1) The officer is a Presidential appointee;

(2) The officer is not a United States attorney or United States marshal; and

(3) The officer's responsibilities for carrying out the duties of the position continue outside normal duty hours and while away from the normal duty post.

(c) *Revocation of exclusion.* The head of an agency may revoke an exclusion from the annual and sick leave provisions which was made under this section.

(d) *Reports.* The head of an agency must report any exclusion, or revocation of an exclusion, authorized under this section to the Office of Personnel Management.

(e) *Continuation of previous authorizations.* Any officer in an agency who was excluded by action of the President or the Civil Service Commission prior to February 15, 1979, from the annual and sick leave provisions under the authority of 5 U.S.C. 6301(2)(xi) shall continue to be excluded from annual and sick leave unless the exclusion is revoked by the agency under the provisions of this section.

[44 FR 54694, Sept. 21, 1979, as amended at 56 FR 18663, Apr. 23, 1991]

§ 630.212 Use of annual leave to establish initial eligibility for retirement or continuation of health benefits.

(a) An employee may elect to use annual leave and remain on the agency's rolls in order to establish initial eligi-

bility for immediate retirement under 5 U.S.C. 8336, 8412, or 8414, and/or to establish initial eligibility under 5 U.S.C. 8905 to continue health benefits coverage into retirement, as provided in:

(1) Section 351.606(b)(1) for an employee who would otherwise have been separated by reduction in force procedures under part 351 of this chapter; or

(2) Section 351.606(b)(2) of this chapter for an employee who would otherwise have been separated by adverse action procedures under authority of part 752 of this chapter because of the employee's decision to decline relocation (including transfer of function).

(b)(1) Annual leave that may be used for the purposes described in paragraph (a) of this section includes all accumulated, accrued, and restored annual leave to the employee's credit prior to the effective date of the reduction in force or relocation (including transfer of function) and annual leave earned by an employee while in a paid leave status after the effective date of the reduction in force or relocation (including transfer of function).

(2) Annual leave that is advanced to an employee under 5 U.S.C. 6302(d), including any advance annual leave that may be credited to an employee's leave account after the effective date of the reduction in force or relocation (including transfer of function), may not be used for purpose of this section.

(3) For purposes of this section, the employing agency may approve the use of any or all annual leave donated to an employee under part 630, subpart I, of this chapter (Voluntary Leave Transfer Program), or made available to the employee under part 630, subpart J, of this chapter (Voluntary Leave Bank Program), as of the effective date of the reduction in force or relocation.

[62 FR 10683, Mar. 10, 1997]

Subpart C—Annual Leave

§ 630.301 Annual leave accumulation—Senior Executive Service.

(a) Unused annual leave accrued by an employee while serving under an appointment in the Senior Executive Service under 5 U.S.C. chapter 33, subchapter VIII, shall accumulate for use in succeeding years until it totals not

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more than 90 days (720 hours) at the beginning of the first full biweekly pay period (or corresponding period for an employee who is not paid on the basis of biweekly pay periods) occurring in a calendar year.

(b) When an employee in a position outside of the Senior Executive Service moves to a position in the Senior Executive Service, any annual leave accumulated prior to movement shall remain to the employee's credit.

(1) Annual leave accumulated prior to movement to the Senior Executive Service that is in excess of the amount allowed for the former position by 5 U.S.C. 6304 (a), (b), or (c) and that is not used by the beginning of the first full biweekly pay period in the next leave year shall be subject to forfeiture.

(2) If an employee serves less than a full pay period under an appointment in the Senior Executive Service, only that portion of accrued annual leave that is attributable to service in the Senior Executive Service shall be subject to the 90-day (720-hour) limitation on accumulation of annual leave provided in paragraph (a) of this section. Annual leave accrued during the remainder of the pay period shall be subject to the limitations in 5 U.S.C. 6304(a), (b), and (c), as appropriate.

(c) When an employee in the Senior Executive Service moves to a position outside the Senior Executive Service, any annual leave accumulated while serving in the Senior Executive Service that is in excess of the amount allowed for the position by subsection (a), (b), or (c) of 5 U.S.C. 6304 shall remain to the employee's credit and shall be subject to reduction under procedures identical to those described in 5 U.S.C. 6304(c).

(1) If the employee has more than 720 hours of annual leave at the time of the move and has a personal leave ceiling under paragraph (d) of this section, the employee may not carry over to the next leave year an amount greater than the employee's personal leave ceiling.

(2) If the employee has more than 720 hours of annual leave at the time of the move and does not have a personal leave ceiling under paragraph (d) of this section, the employee may not

carry over to the next leave year more than 720 hours.

(d) An employee in the Senior Executive Service who, as of the first day of the first pay period beginning after October 13, 1994, has accumulated annual leave in excess of 90 days (720 hours) is entitled to retain that leave as a personal leave ceiling. The leave shall be credited to the employee and shall be subject to reduction in the following manner:

(1) Annual leave credited to an employee shall be based on the amount of annual leave accumulated by the employee as of the end of the pay period preceding the first pay period beginning after October 13, 1994. The credited leave shall exclude—

(i) Any annual leave restored to the employee under 5 U.S.C. 6304(d); and

(ii) Any annual leave advanced to the employee under 5 U.S.C. 6302(d) that had not yet been earned.

(2) Annual leave credited to an employee that is in excess of 90 days (720 hours) shall be subject to reduction in the same manner as provided in 5 U.S.C. 6304(c) until the employee's accumulated annual leave is equal to or less than 90 days (720 hours). For the 1994 leave year, 5 U.S.C. 6304(c) shall be applied only for leave earned and used between the start of the first pay period beginning after October 13, 1994, and the end of the 1994 leave year.

(e) Agencies shall notify affected employees and maintain records on the accumulated annual leave credited to each employee under paragraph (d) of this section and on any reductions in the credited annual leave made under 5 U.S.C. 6304(c). If the employee transfers to another agency, such records shall be provided to the gaining agency.

[59 FR 65705, Dec. 21, 1994, as amended at 60 FR 33328, June 28, 1995]

§ 630.302 Maximum annual leave accumulation—forty-five day limitation.

(a) The effective date on which an employee (otherwise eligible thereunder) becomes subject to section 6304(b) of title 5, United States Code, is the:

(1) Date of his entry on duty when he is employed locally;

(2) Date of his arrival at a post of regular assignment for duty; or