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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 351 and 630

RIN 3206-AH64

Reduction in Force and Mandatory Exceptions

AGENCY: Office of Personnel Management.

ACTION: Final rulemaking.

SUMMARY: The Office of Personnel Management (OPM) is issuing final regulations that implement legislation giving employees the right to use annual leave to establish initial retirement eligibility for employees in reduction in force and other restructuring situations. These regulations also implement related provisions concerning the availability of annual leave to qualify for continuance of health benefits in the same situation.

DATES: These regulations are effective June 12, 1998.

FOR FURTHER INFORMATION CONTACT: (part 351) Thomas A. Glennon or Jacqueline R. Yeatman, (202) 606-0960, FAX (202) 606-2329; (part 630) Jo Ann Perrini, (202) 606-2858, FAX (202) 606-0824.

SUPPLEMENTARY INFORMATION:

Background

On March 10, 1997, OPM published interim regulations at 62 FR 10681 to implement section 634 of the Treasury, Postal Service, and General Government Appropriations Act, 1997, as contained in section 101(f) of the Omnibus Consolidated Appropriations Act, 1997 (P.L. 104-208, approved September 30, 1996). Section 634 of the Act is codified in 5 U.S.C. 6302(g).

The regulations were effective upon publication in the **Federal Register**. Interested parties could submit written comments to OPM concerning the regulations in the 60 day period following publication of the regulations.

As authorized by section 634 of the Act, the interim regulations provide that an employee who has received a specific notice of involuntary separation by reduction in force, or by adverse action after declining relocation (including transfer of function), has the right to use annual leave past the effective date the employee would otherwise have been separated in order to establish initial eligibility for immediate retirement, including discontinued service or voluntary early retirement. The same option is also available for the employee to acquire initial eligibility for continuation of health benefits into retirement.

Comments

OPM received four comments, all from Federal agencies, on the interim regulations.

One agency concurred with the regulations as published.

The second agency asks that sections 351.606(b) (1) and (2), and section 351.608(e)(1), be revised to specify that an agency must elect to provide voluntary early retirement authority in order for an employee retained under Section 634 to separate under that early retirement option.

After reviewing the regulations, no further revision was made because even without the voluntary early retirement option, the employee would still have the right to separate under the discontinued service retirement option.

The third agency asked that 5 CFR part 630 be revised to provide that an employee retained under section 634 of the Act would not be required to return to duty for the last day of employment in order to receive a lump sum payment for terminal leave. Specifically, the agency commented that under 5 U.S.C. 5551, the employee would be entitled to a lump-sum payment for the annual leave earned during this period of terminal leave.

The agency stated that a previous Comptroller General opinion required that an employee on terminal leave report for duty on his or her last workday to receive leave credit (B-223876, June 12, 1987). The agency recommended that OPM waive the requirement that an employee on terminal leave must return to duty on his or her last workday in order to accrue annual leave for that period so as to allow such annual leave to be included in a lump-sum payment.

Under 5 U.S.C. 6302(g), Congress specifically provided employees an entitlement to elect to use their annual leave to remain on the agency's rolls for the time needed to establish initial eligibility for immediate retirement and/or to acquire eligibility to continue health benefits into retirement. There is no statutory requirement that employees must return to work on their last workday in order to accrue annual leave for the period of absence. For purposes of § 630.212, an employee continues to accrue annual leave while in a paid leave status. We do not believe a waiver or a new regulatory provision is necessary, since the entitlement in 5 U.S.C. 6302(b) supersedes any previous Comptroller General opinion to the contrary.

The fourth agency asks for clarification of 5 CFR part 630 concerning whether a leave recipient would be permitted to continue to use donated annual leave if the medical emergency that served as the basis for the donated leave ends before the employee attains first eligibility for benefits under section 634 of the Act.

In section 630.212(b)(3), an agency may permit an approved leave recipient to use any or all donated annual leave made available to the employee under the agency's voluntary leave transfer and/or leave bank programs for the purpose of establishing initial retirement eligibility and/or qualifying for continuance of health benefits.

Under § 630.910(d), an agency may deem a medical emergency to continue for the purpose of providing a leave recipient an adequate period of time within which to receive donations of annual leave (e.g., to permit retroactive substitution of donated annual leave for any advance leave or leave without pay taken during the medical emergency or to arrange for or attend the funeral of the family member affected by the medical emergency). However, § 630.910(c) states that when a medical emergency terminates, no further requests for donated annual leave may be granted and any unused donated annual leave must be returned to the leave donor(s). Therefore, if a medical emergency terminates prior to establishing initial retirement eligibility and/or qualifying for continuance of health benefits, the employee may not continue to use donated annual leave. Agencies are responsible for continuously monitoring

the status of a medical emergency affecting a leave recipient to ensure that the leave recipient continues to be affected by the medical emergency. We encourage agencies to verify the status of a medical emergency before granting approval to a leave recipient to use any and all donated annual leave for the purpose of establishing initial retirement eligibility and/or qualifying for continuance of health benefits.

Final Regulations

After consideration of all comments, the interim regulations published at 62 FR 10681 are published as final regulations without further revision.

Regulatory Flexibility Act

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

List of Subjects in Parts 351 and 630

Administrative practice and procedure, Government employees.

U.S. Office of Personnel Management.

Janice R. Lachance,

Director.

Accordingly, the interim rule published March 10, 1997 (62 FR 10681) is adopted as final without change.

[FR Doc. 98-12632 Filed 5-12-98; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 21 and 27

[Docket No. SW003; Special Conditions No. 27-003-SC]

Special Conditions: Eurocopter Model AS-355 E, F, F1, F2, N "Ecureuil II/Twinstar" Helicopters, Electronic Flight Instruments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special condition; request for comments.

SUMMARY: This special condition is issued for the Eurocopter Model AS-355 E, F, F1, F2, N "Ecureuil II/Twinstar" helicopters. These helicopters will have a novel or unusual design feature associated with the Electronic Flight Instruments. The applicable airworthiness regulations do not contain adequate or appropriate safety standards to protect systems that perform critical control functions, or provide critical displays, from the effects of high-

intensity radiated fields (HIRF). This special condition contains the additional safety standards that the Administrator considers necessary to ensure that critical functions of systems will be maintained when exposed to HIRF.

DATES: The effective date of this special condition is April 30, 1998. Comments must be received on or before July 13, 1998.

ADDRESSES: Comments on this special condition may be mailed in duplicate to: Federal Aviation Administration, Office of the Regional Counsel, Attention: Rules Docket No. SW003, Fort Worth, Texas 76193-0007 or deliver in duplicate to the Office of the Regional Counsel at 2601 Meacham Blvd., Fort Worth, Texas 76137. Comments must be marked: Rules Docket No. SW003. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 8:30 a.m. and 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: Robert McCallister, FAA, Rotorcraft Directorate, Regulations Group, Fort Worth, Texas 76193-0111; telephone 817-222-5121, fax 817-222-5961.

SUPPLEMENTARY INFORMATION: The FAA has determined that notice and opportunity for prior public comment hereon are impracticable because these procedures would significantly delay issuance of the approval design and thus delivery of the affected aircraft. In addition, notice and opportunity for prior public comment are unnecessary since the substance of this special condition has been subject to the public comment process in several prior instances with no substantive comments received. The FAA therefore finds that good cause exists for making this special condition effective upon issuance.

Comments Invited

Interested persons are invited to submit such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or special condition number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator. The special condition may be changed in light of the comments received. All comments received will be available in the Rules Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Commenters wishing the FAA to

acknowledge receipt of their comments submitted in response to this special condition must include a self-addressed, stamped postcard on which the following statement is made: "Comments to Rules Docket No. SW003." The postcard will be date stamped and returned to the commenter.

Background

On February 25, 1998, American Eurocopter announced their intent to amend, under their Designated Airworthiness Authority (DAS), the Supplemental Type Certificate (STC) SH7714AW-D to add electronic flight instruments, including an Attitude Display Instrument. This amendment and the original STC are effective for the Models AS-355 E, F, F1, F2, N "Ecureuil II/Twinstar" helicopters. These are normal category five-passenger helicopters powered by two Allison 250-C20 engines for the Model AS-355 E, F, F1, F2 helicopters and by two Turbomeca Arrius 1A engines for the Model AS-355 N helicopters.

Type Certification Basis

Under the provisions of 14 CFR 21.101, Eurocopter must show that the Model AS-355 E, F, F1, F2, N "Ecureuil II/Twinstar" helicopters meet the applicable provisions of the regulations incorporated by reference in Type Certificate Data Sheet (TCDS) No. H11EU or the applicable regulations in effect on the date of notification of intent to change the Models AS-355 E, F, F1, F2, N. The regulations incorporated by reference in the type certificate are commonly referred to as the "original type certification basis." The regulations incorporated by reference in H11EU are as follows: § 21.29 and, for Models AS-355 E, F, F1, F2, 14 CFR part 27, effective February 1, 1965 plus Amendments 27-1 through 27-16; for Model AS-355 N, part 27, effective February 1, 1965, plus Amendments 27-1 through 27-20, and the following sections of Amendment 27-1: 27.21, 27.45, 27.71, 27.79, 27.143, 27.151, 27.161, 27.173, 27.175, 27.177, 27.672, 27.673, 27.729, 27.735, 27.779, 27.807, 27.1329, 27.1413, 27.1519, 27.1525, 27.1555, 27.1585, and 27.1587. In addition, the certification basis includes certain other special conditions.

If the Administrator finds that the applicable airworthiness regulations do not contain adequate or appropriate safety standards for these helicopters because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.