The Commission is aware that it may have been very difficult for many affected industry members to prepare their labels and fact sheets in time to distribute and affix them to products manufactured on or after May 19, 1980. The Commission recognizes that this difficulty may have arisen as a result of the delay in final publication of the ranges of comparability.

The Commission, therefore has decided to issue this enforcement policy statement in an effort to clarify and remedy this situation.

By Direction of the Commission.

Carol M. Thomas,

Secretary.

[FR Doc. 80-18198 Filed 6-16-80; 8:45 am]

BILLING CODE 6750-01-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 200

[Release Nos. 33-6212; 34-16829; 35-21586; 39-567; IC-11181; IA-722]

Comprehensive Revision of Regulation Concerning Conduct of Members and Employees and Former Members and Employees; Correction

AGENCY: Securities and Exchange Commission.

ACTION: Final rules; correction.

SUMMARY: This document corrects FR Doc. 16315 appearing at page 36063 in the **Federal Register** of May 29, 1980. On page 36066, in the second column, par. (iii), the reference should be to (ii) above; in footnote 7 the reference should be to paragraph (5) of this section. On page 36067, in the second column, in footnote 11 the reference should be to paragraph (b)(2)(v)(B) of § 200.735-3; in the third column, par. (B), the reference should be to paragraph (b)(6)(vi)(A) of this section. On page 36070, in the third column, in § 200.735-6 the reference should be to § 200.735-3 (7) and (8). On page 36072, in the third column, in footnote 25 the reference should be to Rule 5.

FOR FURTHER INFORMATION CONTACT:

Myrna Siegel, Ethics Counsel, Securities and Exchange Commission, Washington, D.C. 20549 (202) 272-2430.

George A. Fitzsimmons

Secretary.

June 9, 1980.

[FR Doc. 80-18190 Filed 6-16-80; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 103 and 171

[T.D. 80-160]

Availability of Information; Fines, Penalties, and Forfeitures

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: The guidelines used by Customs for mitigation of claims for monetary penalties assessed pursuant to section 592, Tariff Act of 1930, as amended, were recently approved by the Treasury Department. This document advises the public that the mitigation guidelines are available, upon request, from Customs. The fact that the mitigation guidelines are available is also incorporated in the Customs Regulations.

EFFECTIVE DATE: June 17, 1980.

FOR FURTHER INFORMATION CONTACT:

Marilyn Morrison, Entry Procedures and Penalties Division, U.S. Customs Service, 1301 Constitution Avenue, N.W., Washington, D.C. 20229 (202-566-8317).

SUPPLEMENTARY INFORMATION:

Background

The Customs Procedural Reform and Simplification Act of 1978 (Pub. L. 95-410), approved October 3, 1978 (the "Act"), made numerous amendments to statutes administered by Customs which relate to fines, penalties, forfeitures, and liquidated damages for violations of customs and navigation laws. Under the Act, section 592, Tariff Act of 1930 (19 U.S.C. 1592), relating to entry of merchandise by fraud or negligence, was amended.

New Procedures were adopted for the imposition of a monetary penalty or, in limited circumstances, for the seizure of merchandise, for a violation of 19 U.S.C. 1592 in a document published as Treasury Decision 79-160 in the **Federal Register** on June 4, 1979 (44 FR 31950). Guidelines used by Customs for the mitigation of claims for monetary penalties assessed pursuant to 19 U.S.C. 1592 were recently approved by the Treasury Department. This document advises the public that the mitigation guidelines are available upon request from Customs and amends the Customs Regulations as set forth below.

Notice of Availability of Mitigation Guidelines

The guidelines for mitigation by Customs of claims for monetary penalties assessed pursuant to section 592, Tariff Act of 1930, as amended, as approved by the Treasury Department on March 7, 1980, are available upon written request to the Commissioner of Customs, Attention: Office of Regulations and Rulings, 1301 Constitution Avenue, N.W., Washington, D.C. 20229, in accordance with Part 103, Customs Regulations (19 CFR Part 103), relating to the availability of information.

Amendments to the Regulations

Parts 103 and 171, Customs Regulations (19 CFR Parts 103, 171), are amended as set forth below:

PART 103—AVAILABILITY OF INFORMATION

§ 103.7 [Amended]

Section 103.7, Customs Regulations, is amended by inserting "Guidelines for Mitigation of Claims for Monetary Penalties Assessed Pursuant to Section 592, Tariff Act of 1930, as amended", in appropriate alphabetical order in the listing of documents in the section.

(R.S. 251, as amended, sec. 624, 46 Stat. 759 (19 U.S.C. 66, 1624))

PART 171—FINES, PENALTIES AND FORFEITURES

Subpart C of Part 171, Customs Regulations, is amended by adding a new § 171.23 to read as follows:

§ 171.23 Availability of mitigation guidelines for monetary penalties assessed pursuant to section 592, Tariff Act of 1930, as amended.

The guidelines used by the Customs Service for the mitigation of claims for monetary penalties assessed pursuant to section 592, Tariff Act of 1930, as amended, are available upon written request to the Commissioner of Customs, Attention: Office of Regulations and Rulings, 1301 Constitution Avenue, N.W., Washington, D.C. 20229.

(R.S. 251, as amended, sec. 624, 46 Stat. 759 (19 U.S.C. 66, 1624))

Inapplicability of Public Notice Requirement and Delayed Effective Date

Because the subject matter of this document does not constitute a departure from established policy or procedures, and is totally informational in nature, pursuant to 5 U.S.C. 553(b)(B), notice and public procedure thereon are unnecessary and contrary to the public interest. Further, for the same reasons, good cause exists for dispensing with the delayed effective date provisions of 5 U.S.C. 553(d).

Regulation Determined to be Nonsignificant

In the directive implementing Executive Order 12044, the Treasury Department stated that it considers each regulation or amendment to an existing regulation published in the **Federal Register** and codified in the Code of Federal Regulations to be "significant". However, regulations which are nonsubstantive, are essentially procedural, do not materially change existing or establish new policy, and do not impose substantial additional requirements or costs on, or substantially alter the legal rights or obligations of, those affected, may, with Secretarial approval, be determined not to be significant. Accordingly, it has been determined that this document does not meet the Treasury Department criteria in the directive for "significant" regulations.

Drafting Information

The principal author of this document was John E. Elkins, Regulations and Research Division, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

William T. Archey,
Acting Commissioner of Customs.

Approved: June 6, 1980.

Richard J. Davis,
Assistant Secretary of the Treasury.

[FR Doc. 80-18197 Filed 6-16-80; 8:45 am]
BILLING CODE 4810-22-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Ch. I

Redesignation of the Department of Health, Education, and Welfare as the Department of Health and Human Services

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The agency is amending Chapter I of Title 21 of the Code of Federal Regulations to reflect the redesignation of the Department of Health, Education, and Welfare as the Department of Health and Human Services.

EFFECTIVE DATE: May 4, 1980.

FOR FURTHER INFORMATION CONTACT: Agnes B. Black, Federal Register Writer's Office (HFC-11), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-2994.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of May 5, 1980 (45 FR 29642), the Department of Health and Human Services announced the redesignation of the Department of Health, Education, and Welfare as the Department of Health and Human Services, in accordance with the Department of Education Organization Act of 1979 (Pub. L. 96-88), effective May 4, 1980.

In accordance with the redesignation, FDA is amending Chapter I of Title 21 of the Code of Federal Regulations to reflect the name change.

Parts 1-1299 [Amended]

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 701(a), 52 Stat. 1055 (21 U.S.C. 371(a))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.1), Chapter I of Title 21 of the Code of Federal Regulations is amended in Parts 1 through 1299 by changing "Department of Health, Education, and Welfare" to read "Department of Health and Human Services" and "HEW" to read "HHS" wherever they appear.

Effective date: May 4, 1980.

Dated: June 9, 1980.

William F. Randolph,
Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-17999 Filed 6-16-80; 8:45 am]
BILLING CODE 4110-03-M

21 CFR Part 1000

[Docket No. 79N-0086]

General; Dental Radiographs

AGENCY: Food and Drug Administration, HHS.

ACTION: Final recommendation.

SUMMARY: The agency is issuing a recommendation that insurance carriers and other remote parties refrain from requiring administrative dental x-ray examinations. Administrative dental x-ray examinations are those required by a remote third party (other than a patient's dentist or physician) for reasons not related to the patient's immediate dental needs. These dental x-ray examinations may result in unnecessary radiation exposure to the patient. This recommendation is a part of the agency's effort to minimize unnecessary exposure of the public to ionizing radiation.

DATE: This final recommendation shall become effective June 17, 1980.

FOR FURTHER INFORMATION CONTACT: Raymond F. Coakley, Jr., Bureau of Radiological Health (HFX-460), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3426.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of July 17, 1979 (44 FR 41486), the Food and Drug Administration (FDA) proposed to add new § 1000.60 (21 CFR 1000.60) to Subpart C—Radiation Protection Recommendations, Part 1000 of Chapter I of Title 21 of the Code of Federal Regulations. The proposal recommended that post-treatment dental x-ray examinations not be taken solely for monitoring treatment claims for reimbursement by insurance carriers.

Twelve dentists, 4 educational institutions, 5 insurance carriers, 10 professional societies, 1 government agency, and 1 public interest group submitted substantive comments. These comments and the agency's response to them follow.

1. Four comments wanted to word the recommendation positively: three said radiographs are justified only to provide a health care benefit to the patient; the other comment, emphasizing the limits of the statement in the proposed recommendation that post-treatment radiographs should not be "taken solely for use by third-party carriers," preferred a recommendation for the radiographs according to good clinical practice and pointed out that some post-treatment radiographs are essential to good clinical practice for some treatments. In general, the idea implicit in these comments was to change the recommendation from the prohibition of a "bad" practice to the promotion of a "good" practice.

The agency agrees that the recommendation should be worded positively. The recommendation has been revised to emphasize good clinical practice.

2. Three comments wanted the recommendation to be extended from radiographs taken for insurance carriers to any administrative dental radiographs, that is, radiographs taken solely or exclusively for any reason not related to the patient's immediate dental needs. One comment said the principle of taking radiographs only when the dentist believes there will be a direct benefit to the patient should be applied uniformly and not restricted to third party insurance carriers. In support of this view, the comment noted that many State board examinations and some dental schools require post-treatment radiographs for the evaluation of training, competence, and qualification

of practitioners and others, rather than for the direct benefit of the patient. In a slightly different view, an insurance carrier agreed that administrative post-treatment radiographs should not be "routinely" required, but maintained that they could be occasionally required for certain purposes. A State society wanted the record to show that it believed "very strongly that x-rays done purely for administrative purposes simply do not justify the benefit to be gained."

These comments argue for a general prohibition of administrative radiographs, not just those taken for the benefit of insurance carriers. The agency agrees that dental x-ray examinations performed for other than diagnostic reasons are generally inappropriate. Because radiation exposure is potentially harmful, as a general principle, its use is warranted only when there is a corresponding benefit to the patient exposed. Thus, the recommendation has been extended to any administratively required dental x-ray examination, whether required by insurance carriers or other remote parties. In response to the comments, the final recommendation identifies some examples of administrative purposes for dental radiographs where a direct patient benefit has not been demonstrated. These examples include dental x-ray examinations taken for third parties solely:

1. To monitor insurance claims or detect fraud;
2. To satisfy a prerequisite for reimbursement;
3. To provide training or experience;
4. To certify qualifications or competence.

Because administrative uses of radiographs taken during the normal course of treatment should not be limited in any way by the recommendation, a sentence has been added to make this intention clear. However, the request by any third party for radiographs the dentist believes unnecessary for the patient's health care adds a needless radiation insult to the patient.

3. Two comments raised an issue not addressed in the proposal, namely, administrative radiographs required before treatment. One comment calls this "the more serious problem of unnecessary pretreatment radiographs, taken solely to comply with various preauthorization requirements commonly included in dental insurance contracts." Administrative radiographs would include redundant radiographs made solely for the insurance carrier. An insurance carrier, however, makes the point that insurance companies and their consultants have a professional responsibility to require a treating dentist to submit adequate numbers of x-rays of good diagnostic quality for evaluation before determining coverage.

The agency believes that administrative requirements for radiographs are inappropriate whether for pre-treatment or post-treatment purposes. The recommendation reflects this concept. Redundant radiographic procedures, whether before or after treatment, are also inappropriate because they represent an additional radiation exposure to the patient with no added benefit. To provide duplicate films, there are less costly and easier methods that do not involve additional radiation exposure to the patient. The practitioner, not a remote third party, can best determine the necessity for a dental x-ray examination.

4. Five comments addressed the question of who should determine the need for radiographs. All these statements argue that licensed practitioners can best decide when radiographs are necessary.

The agency agrees with this argument and has addressed it in the recommendation by specifying that dentists and physicians determine the need for x-ray examinations.

5. Five comments discussed the benefits possible from post-treatment radiographs. These mention that some post-treatment radiographs are necessary, useful, and beneficial to the patient.

The agency agrees that some post-treatment radiographs are generally recognized as part of proper dental care and has generalized the recommendation to reflect this.

6. Five comments addressed the problem of assessing treatment. A dental professor, after strongly endorsing the proposal, stated that "the use of radiation for a non-health care activity cannot be condoned * * *. Noninvasive methods to assess post-treatment status should be implemented, but unnecessary risk to patients as represented through use of diagnostic radiation is totally beyond reason." Another dentist notes that "physicians have not been forced to endanger their patients with unnecessary radiation in the past and dental patients deserve the same protection. Let the carriers resort to other means that are not medically dangerous to prevent fraud or incompetence." A professional association points out that even though an alternative may be inconvenient to the dentist, the consumer, and the insurance company, it eliminates one source of excessive radiation exposure. Another society calls for cheap, accurate, and safe alternatives and suggests evidence such as a satisfaction statement signed by the patient or photographs of the study models with the denture in place or of the mouth's interior. Two comments suggested the use of dual film packs to obtain duplicate radiographs. Another comment suggests a visual exam by the consultant or a review of dental records and of previous radiographs. All comments expressed the belief that radiation is not appropriate solely for administrative reasons.

These comments present a variety of viable alternatives. The agency believes, however, that it should not endorse any particular means to assess treatment status.

7. Five comments indicated that post-treatment dental radiographs do not provide insurance carriers with complete proof of treatment. However, a sixth comment stated that in those cases where post-treatment radiographs are essential to good clinical practice and a dentist opts not to order x-rays of this type, third party payers should have the right to require them.

The practice of ordering radiographs solely on the direction of a remote third party is not conducive to good health care, whether or not such a practice is effective for other objectives. Hence, the agency believes no change in the recommendation is necessary.

8. Three comments related occasions upon which post-treatment radiographs have been required. One dentist writes, "I often receive requests from insurance companies for radiographs to substantiate conditions for which there is no need to expose the patient to radiation. The insurance companies refuse to pay for treatment if the radiographs are not taken and sent to them."

Another writer complains that a certain carrier "still refuses to compensate patients for the cost of treatment unless post-treatment radiographs are sent to them to verify the claim. Patients are therefore being subjected to unnecessary radiation solely to satisfy the company's monitoring requirements." A specialist in endodontics relates that for several years he has been making efforts to convince two carriers of the impropriety of taking post-treatment radiographs in his area of dental practice, against the carrier's contention that their requirement protects the patient from unnecessary or fraudulent treatment.

All three comments demonstrate that administrative requirements for post-treatment dental x-ray examinations still exist and the recommendation continues to be needed. This

recommendation should help dissuade third parties from continuing unnecessary radiographic requirements.

9. Two comments from professional organizations cited another source of excessive radiation exposure, namely, the poor techniques used by inadequately trained personnel. One expressed alarm at the potential dangers to which a dental patient and dental auxiliary are exposed as a result of x radiation. Many of these hazards, they went on, "result from overexposure or unnecessary exposure to radiation frequently resulting from the improper and/or inadequate radiographic techniques of untrained and/or unqualified dental auxiliaries * * *. Model national standards for qualifications of medical radiation technologists (including dental auxiliaries) are essential for the adequate protection of the public."

The agency recognizes the problem of inadequately trained medical radiation technologists. For a number of years, the agency has been concerned with the qualifications of those individuals operating medical radiation-emitting equipment. To obtain the advice and assistance of other interested individuals and groups, the agency published a Notice of Intent on National Standards for Qualifications of Medical Radiation Technologists in the **Federal Register** of March 13, 1979 (44 FR 14637). If analysis of the numerous comments obtained in response to this notice indicates that this approach is the most effective, the agency will develop and propose a voluntary national standard for qualification of these technologists, as a preliminary step toward the desired goal. The problem of inadequately trained medical radiation technologists is, however, a separate issue and therefore no change in this recommendation is necessary.

10. Three comments extended the concept of the health cost of unnecessary radiographs to include their monetary cost. One insurance carrier stated that its policy has been not "to require post-treatment radiographs both because of the excess radiation exposure to which the patient must be subjected, and the increased cost implications of taking additional, otherwise unnecessary, radiographs." A public interest group, expressing concern over the increasing cost of health care and insurance, notes that excessive x-rays have been frequently cited in medical and legal literature as a potentially unnecessary cost of medical insurance without a matching benefit for the patient. Not only should unnecessary exposures be immediately halted, but also measures should be enacted to reduce the amount of radiation received from necessary medical x-rays. Both comments reflect the concern for the lowest cost (in health and dollars) with the least risk. On this topic, another insurance carrier points out that the proposed recommendation does not address what it calls the most serious problem of all, that of "radiographs taken primarily to gain third party reimbursement." Their reviewers continually discover x-rays that have little or no diagnostic value and that are of poor quality.

The first two comments mention an important additional reason to eliminate radiographs taken solely for administrative purposes. Radiographs taken solely to obtain third party reimbursement can never be justified. The reduction of unnecessary radiation is a common objective of all those who are concerned with the health care benefit of the patient. The agency considers that an additional phrase mentioning radiographs taken solely for monetary gain is not warranted in this recommendation.

11. Several comments appeared to misunderstand the role of an FDA recommendation. They urged the agency to prohibit administrative requirements for post-treatment dental x-ray examinations.

The agency, under the Radiation Control for Health and Safety Act of 1968 (Pub. L. 90–602), can regulate the manufacture of electronic radiation products. The agency cannot, under this law, regulate how these products should be used in the practice of medicine. The agency can, however, make recommendations about the appropriate use of electronic products and publish such recommendations in the **Federal Register**, for codification in Chapter 21 of the Code of Federal Regulations (21 CFR). The agency cannot prohibit by regulation the practices addressed by this document. This recommendation will, however, provide guidance to dentists and physicians, organizations responsible for administering dental care, and third party carriers responsible for reimbursing the providers of dental care.

This recommendation is consistent with the Presidential Directive, "Radiation Protection Guidance to Federal Agencies for Diagnostic X Rays," published in the **Federal Register** of February 1, 1978 (43 FR 4377) and with "Recommendations in Radiographic Practices—March 1978," published by the Council on Dental Materials and Devices of the American Dental Association (JADA, Vol. 96, p. 485 (March 1978)).

Therefore, under the Public Health Service Act, as amended by the Radiation Control for Health and Safety Act of 1968 (sec. 356, 82 Stat. 1174–1175 (42 U.S.C. 263d)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.1), Part 1000 is amended in Subpart C by adding new § 1000.60 to read as follows:

§ 1000.60 Recommendation on administratively required dental x-ray examinations.

(a) The Food and Drug Administration recommends that dental x-ray examinations be performed only after careful consideration of the dental or other health needs of the patient, that is, when the patient's dentist or physician judges them to be necessary for diagnosis, treatment, or prevention of disease. Administratively required dental x-ray examinations are those required by a remote third party for reasons not related to the patient's immediate dental needs. These x-ray examinations are usually a source of unnecessary radiation exposure to the patient. Because any unnecessary radiation exposure should be avoided, third parties should not require dental x-ray examinations unless they can demonstrate that such examinations provide a direct clinical benefit to the patient, and the patient's dentist or physician agrees with that assessment.

(b) Some examples of administrative x-ray examinations that should not be required by third parties are those intended solely:

(1) To monitor insurance claims or detect fraud;

(2) To satisfy a prerequisite for reimbursement;

(3) To provide training or experience;

(4) To certify qualifications or competence.

(c) This recommendation is not intended to preclude dental x-ray examinations ordered by the attending practitioner, based on the patient's history or physical examination, or those performed on selected populations shown to have significant yields of previously undiagnosed disease. This recommendation is also not intended to preclude the administrative use by third parties of dental radiographs that are taken on the order of the patient's dentist or physician as a necessary part of the patient's clinical care.

Effective date. This recommendation shall become effective July 17, 1980. However, interested persons may at any time submit written comments on the recommendation to the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857. The

comments will be considered in determining whether further amendments to or revisions of the recommendation are warranted. Comments should be in four copies (except that individuals may submit single copies), identified with the Hearing Clerk docket number found in brackets in the heading of this document. Received comments may be seen in the Hearing Clerk's office between 9 a.m. and 4 p.m., Monday through Friday.

(Sec. 356, 82 Stat. 1174–1175 (42 U.S.C. 263d))

Dated: June 9, 1980.

Jere E. Goyan,

Commissioner of Food and Drugs.

[FR Doc. 80-17998 Filed 6-16-80; 8:45 am]

BILLING CODE 4110-03-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 7703]

Income Tax; Taxable Years Beginning after December 31, 1953; Elapsed Time Method of Crediting Service of Employees Under Qualified Plans

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document provides final regulations relating to the elapsed time method of crediting service of employees under qualified plans. Changes in the applicable tax law were made by the Employee Retirement Income Security Act of 1974. These regulations provide necessary guidance to the public for compliance with the law, and affect all qualified plans which elect to use the elapsed time method of crediting service of employees.

DATE: The regulations have varying effective dates, the earliest of which, for plans not in existence on January 1, 1974, is plan years beginning after September 2, 1974.

FOR FURTHER INFORMATION CONTACT: Kirk F. Maldonado of the Employee Plans and Exempt Organizations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224 (Attention: CC:LR:T) (202–566–3430) (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On December 28, 1976, the Department of Labor published in the **Federal Register** a proposed amendment to the Minimum Standards for Employee Pension Benefit Plans (29 CFR 2530.200b–9) under sections 202, 203, and 204 of the Employee Retirement Income Security Act of 1974 (ERISA) (88 Stat. 853). Section 2530.200b–9 was published both as a temporary regulation effective immediately, and as a proposed regulation on which public comments were solicited.

Section 101 of the Reorganization Plan No. 4 of 1978 (43 FR 47713) transferred jurisdiction over the subject matter of this regulation from the Secretary of Labor to the Secretary of the Treasury.

Section 106 of the Reorganization Plan requires that the Secretary of the Treasury notify the Secretary of Labor before any regulations are issued on certain subject matters, listed therein, if the regulations would significantly impact on or substantially affect collectively bargained plans. This Treasury decision affects sections 410(a)(3) and 411(a) (5) and (6) of the Code, which are subject matters listed in section 106. The Secretary of the Treasury is also prohibited from issuing such regulations unless, within 100 calendar days after this notice is given, the Secretary of Labor certifies that he has no objection or fails to respond. These requirements of section 106 have been satisfied.

Although numerous comments were submitted on this regulation, a public hearing was neither requested nor held. After consideration of all the comments submitted regarding the proposed amendment, the amendment is adopted as revised by this Treasury decision.

Overview

The elapsed time method is an alternative method of crediting the service of employees for purposes of determining eligibility to participate, vesting, and benefit accrual. Under the elapsed time method, the amount of service to be credited to an individual is not determined by the number of hours worked in a particular year, but rather, with reference to the total period of time which elapses while that individual is employed by the employer or employers maintaining the plan. Accordingly, the rules regarding breaks in service contained in Code sections 410(a)(5) and 411(a)(6) are recast in this regulation in a manner compatible with the elapsed time concepts.

Transfers Between Methods of Crediting Service

Section 1.410(a)–7(f)(1) provides the rules for plans using the general method of crediting service for some classes of employees, and the elapsed time method of crediting service for other classes of employees. This provision has been changed as a result of comments so that employees transferring from the general method class to the elapsed time method class will receive the greater of the credit they would receive under the elapsed time method for the entire year in which the transfer occurs, or the service they were credited with under the general method as of the date of the transfer.

Section 1.410(a)–7(f)(2) provides the rules applicable when an employee transfers from a plan using either the general method of crediting service or the elapsed time method, to a plan using the other method. This provision has been changed as a result of comments so that an employee's service required to be credited under the transferee plan will be determined under the rules for transfers within a plan that uses different methods of crediting service for different classes of employees.

Some of the plans in existence may be required to be amended to conform with the new rules of the final regulations. Those plans which may have to be amended are those which use the elapsed time method for crediting the service of some classes of employees and the general method for other classes. Also such plans are required to be amended only if they provide for partial years of service for purposes of benefit accrual.

Because the changes in the final regulations may require plan amendments, a transitional rule is provided for the provisions of paragraph (f) of § 1.410(a)–7. For plans in existence on June 17, 1980, the provisions of paragraph (f) apply to plan years beginning after December 31, 1983.

Miscellaneous

Certain changes of a clerical nature and for the purpose of clarity are made in these final regulations. No substantive change is intended by the deletion in the final regulations of the citations to the "mirror image" provisions of Title I of ERISA. Also, certain conforming changes to the Income Tax Regulations are made on account of this regulation.

Drafting Information

The principal author of these regulations is Kirk F. Maldonado of the Employee Plans and Exempt Organizations Division of the Office of the Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing this regulation, both on matters of substance and style.