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]

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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.

Adoption of Amendments to the Regulations

Accordingly, the proposed amendment to 29 CFR Part 2530, § 2530.200b–9, is redesignated as an amendment to 26 CFR Part 1, § 1.410 (a)–7, and is hereby adopted as set forth below:

Paragraph 1. Section 1.410 (a)–1 is amended by redesignating paragraph (b) (7) and (b) (8) as (b) (8) and (b) (9), respectively, and by adding a new paragraph (b) (7) to read as follows:

§ 1.410 (a)–1 Minimum participation standards; general rules.

* * * * *

(b) *Organization of regulations relating to minimum participation standards.* * * *

(7) *Elapsed time.* Section 1.410 (a)–7 provides rules under sections 410 and 411 relating to the elapsed time method of crediting years of service.

* * * * *

§ 1.410 (a)–4 [Amended]

Par. 2. Section 1.410 (a)–4 (b) (1) is revised by deleting "Department of Labor Regulations" and inserting in lieu thereof "§ 1.410 (a)–7".

§ 1.410 (a)–5 [Amended]

Par. 3. Section 1.410 (a)–5 (a) is revised by deleting from the second sentence "elapsed time,".

Par. 4. Section 1.410 (a)–7 is added at the appropriate place to read as follows:

§ 1.410 (a)–7 Elapsed time.

(a) *In general*—(1) *Introduction to elapsed time method of crediting service.* (i) 29 CFR § 2530.200b–2 sets forth the general method of crediting service for an employee. The general method is based upon the actual counting of hours of service during the applicable 12-consecutive-month computation period. The equivalencies set forth in 29 CFR § 2530.200b–3 are also methods for crediting hours of service during computaton periods. Under the general method and the equivalencies an employee receives a year's credit (in units of years of service or years of participation) for a computation period during which the employee is credited with a specified number of hours of service. In general, an employee's statutory entitlement with respect to eligibility to participate, vesting and benefit accrual is determined by totalling the number of years' credit to which an employee is entitled.

(ii) Under the alternative method set forth in this section, by contrast, an employee's statutory entitlement with respect to eligibility to participate, vesting and benefit accrual is not based upon the actual completion of a specified number of hours of service during a 12-consecutive-month period. Instead, such entitlement is determined generally with reference to the total period of time which elapses while the employee is employed (i.e., while the employment relationship exists) with the employer or employers maintaining the plan. The alternative method set forth in this section is designed to enable a plan to lessen the administrative burdens associated with the maintenance of records of an employee's hours of service by permitting each employee to be credited with his or her total period of service with the employer or employers maintaining the plan, irrespective of the actual hours of service completed in any 12-consecutive-month period.

(2) *Overview of the operation of the elapsed time method.* (i) Under the elapsed time method of crediting service, a plan is generally required to take into account the period of time which elapses while the employee is employed (*i.e.*, while the employment relationship exists) with the employer or employers maintaining the plan, regardless of the actual number of hours he or she completes during such period. Under this alternative method of crediting service, an employee's service is required to be taken into account for purposes of eligibility to participate and vesting as of the date he or she first performs an hour of service within the meaning of 29 CFR 2530.200b–2 (a) (1) for the employer or employers maintaining the plan. Service is required to be taken into account for the period of time from the date the employee first performs such an hour of service until the date he or she severs from service with the employer or employers maintaining the plan.

(ii) The date the employee severs from service is the earlier of the date the employee quits, is discharged, retires or dies, or the first anniversary of the date the employee is absent from service for any other reason (*e.g.*, disability, vacation, leave of absence, layoff, etc.). Thus, for example, if an employee quits, the severance from service date is the date the employee quits. On the other hand, if an employee is granted a leave of absence (and if no intervening event occurs), the severance from service date will occur one year after the date the employee was first absent on leave, and this one year of absence is required to be taken into account as service for the employer or employers maintaining the plan. Because the severance from service date occurs on the earlier of two possible dates (*i.e.*, quit, discharge, retirement or death *or* the first anniversary of an absence from service for any other reason), a quit, discharge, retirement or death within the year after the beginning of an absence for any other reason results in an immediate severance from service. Thus, for example, if an employee dies at the end of a four-week absence resulting from illness, the severance from service date is the date of death, rather than the first anniversary date of the first day of absence for illness.

(iii) In addition, for purposes of eligibility to participate and vesting under the elapsed time method of crediting service, an employee who has severed from service by reason of a quit, discharge or retirement may be entitled to have a period of time of 12 months or less taken into account by the employer or employers maintaining the plan if the employee returns to service within a certain period of time and performs an hour of service within the meaning of 29 CFR 2530.200b–2 (a) (1). In general, the period of time during which the employee must return to service begins on the date the employee severs from service as a result of a quit, discharge or retirement and ends on the first anniversary of such date. However, if the employee is absent for any other reason (*e.g.*, layoff) and then quits, is discharged or retires, the period of time during which the employee may return and receive credit begins on the severance from service date and ends one year after the first day of absence (*e.g.*, first day of layoff). As a result of the operation of these rules, a severance from service (*e.g.*, a quit), or an absence (*e.g.*, layoff) followed by a severance from service, never results in a period of time of more than one year being required to be taken into account after an employee severs from service or is absent from service.

(iv) For purposes of benefit accrual under the elapsed time method of crediting service, an employee is entitled to have his or her service taken into account from the date he or she begins to participate in the plan until the severance from service date. Periods of severance under any circumstances are not required to be taken into account. For example, a participant who is discharged on December 14, 1980 and rehired on October 14, 1981 is not required to be credited with the 10 month period of severance for benefit accrual purposes.

(3) *Overview of certain concepts relating to the elapsed time method*—(i) *In general.* The rules with respect to the elapsed time method of crediting service

are based on certain concepts which are defined in paragraph (b) of this section. These concepts are applied in the substantive rules contained in paragraphs (c), (d), (e), (f) and (g) of this section. The purpose of this subparagraph is to summarize these concepts.

(ii) *Employment commencement date.* (A) A concept which is necessary in order to credit service accurately under any service crediting method is the establishment of a starting point for crediting service. The employment commencement date, which is the date on which an employee first performs an hour of service within the meaning of 29 CFR 2530.200b–2 (a) (1) for the employer or employers maintaining the plan, is used to establish the date upon which an employee must begin to receive credit for certain purposes (*e.g.*, eligibility to participate and vesting).

(B) In order to credit accurately an employee's total service with an employer or employers maintaining the plan, a plan also may provide for an "adjusted" employment commencement date (*i.e.*, a recalculation of the employment commencement date to reflect noncreditable periods of severance) or a reemployment commencement date as defined in paragraph (b) (3) of this section. Fundamentally, all three concepts rely upon the performance of an hour of service to provide a starting point for crediting service. One purpose of these three concepts is to enable plans to satisfy the requirements of this section in a variety of ways.

(C) The fundamental rule with respect to these concepts is that any plan provision is permissible so long as it satisfies the minimum standards. Thus, for example, although the rules of this section provide that credit must begin on the employment commencement date, a plan is permitted to "adjust" the employment commencement date to reflect periods of time for which service is not required to be credited. Similarly, a plan may wish to credit service under the elapsed time method as discrete periods of service and provide for a reemployment commencement date. Certain plans may wish to provide for both concepts, although it is not a requirement of this section that plans so provide.

(iii) *Severance from service date.* Another fundamental concept of the elapsed time method of crediting service is the severance from service date, which is defined as the earlier of the date on which an employee quits, retires, is discharged or dies, or the first anniversary of the first date of absence for any other reason. One purpose of the severance from service date is to provide the endpoint for crediting service under the elapsed time method. As a general proposition, service is credited from the employment commencement date (*i.e.*, the starting point) until the severance from service date (*i.e.*, the endpoint). A complementary purpose of the severance from service date is to establish the starting point for measuring a period of severance from service in order to determine a "break in service" (see paragraph (a)(3)(v) of this section). A third purpose of such date is to establish the starting point for measuring the period of time which may be required to be taken into account under the service spanning rules (see paragraph (a)(3)(vi) of this section).

(iv) *Period of service.* A third elapsed time concept is the use of the "period of service" rather than the "year of service" in determining service to be taken into account for purposes of eligibility to participate, vesting and benefit accrual. For purposes of eligibility to participate and vesting, the period of service runs from the employment commencement date or reemployment commencement date until the severance from service date. For purposes of benefit accrual, a period of service runs from the date that a participant commences participation under the plan until the severance from service date. Because the endpoint of the period of service is marked by the severance from service date, an employee is credited with the period of time which runs during any absence from service (other than for reason of a quit, retirement, discharge or death) which is 12 months or less. Thus, for example, a three week absence for vacation is taken into account as part of a period of service and does not trigger a severance from service date.

(v) *Period of severance.* A period of severance begins on the severance from service date and ends when an employee returns to service with the employer or employers maintaining the plan. The purpose of the period of severance is to apply the statutory "break in service" rules to an elapsed time method of crediting service.

(vi) *Service spanning.* Under the elapsed time method of crediting service, a plan is required to credit periods of service and, under the service spanning rules, certain periods of severance of 12 months or less for purposes of eligibility to participate and vesting. Under the first service spanning rule, if an employee severs from service as a result of quit, discharge or retirement and then returns to service within 12 months, the period of severance is required to be taken into account. Also, a situation may arise in which an employee is absent from service for any reason other than quit, discharge, retirement or death and during the absence a quit, discharge or retirement occurs. The second service spanning rule provides in that set of circumstances that a plan is required to take into account the period of time between the severance from service date (*i.e.*, the date of quit, discharge or retirement) and the first anniversary of the date on which the employee was first absent, if the employee returns to service on or before such first anniversary date.

(4) *Organization and applicability.* (i) The substantive rules for crediting service under the elapsed time method with respect to eligibility to participate are contained in paragraph (c), the rules with respect to vesting are contained in subparagraph (d), and the rules with respect to benefit accrual are contained in paragraph (e). The format of the rules is designed to enable a plan to use the elapsed time method of crediting service either for all purposes or for any one or combination of purposes under sections 410 and 411. Thus, for example, a plan may credit service for eligibility to participate purposes by the use of the general method of crediting service set forth in 29 CFR 2530.200b–2 or by the use of any of the equivalences set forth in 29 CFR 2530.200b–3, while the plan may credit service for vesting and benefit accrual purposes by the use of the elapsed time method of crediting service.

(ii) A plan using the elapsed time method of crediting service for one or more classifications of employees covered under the plan may use the general method of crediting service set forth in 29 CFR 2530.200b–2 or any of the equivalencies set forth in 29 CFR 2530.200b–3 for other classifications of employees, provided that such classifications are reasonable and are consistently applied. Thus, for example, a plan may provide that part-time employees are credited under the general method of crediting service set forth in 29 CFR 2530.200b–2 and full-time employees are credited under the elapsed time method. A classification, however, will not be deemed to be reasonable or consistently applied if such classification is designed with an intent to preclude an employee or employees from attaining his or her statutory entitlement with respect to eligibility to participate, vesting or benefit accrual. For example, a classification applied so that any full-

time employee credited with less than 1,000 hours of service during a given 12-consecutive-month period would be considered part-time and subject to the general method of crediting service rather than the elapsed time method would not be reasonable.

(iii) Notwithstanding paragraph (a) (4) (i) and (ii) of this section, the use of the elapsed time method for some purposes or the use of the elapsed time method for some employees may, under certain circumstances, result in discrimination prohibited under section 401(a)(4), even though the use of the elapsed time method for such purposes, and for such employees, is permitted under this section.

(5) *More than one employer plans.* For special rules for computing years of service in the case of a plan maintained by more than one employer, see 29 CFR Part 2530 (Department of Labor regulations relating to minimum standards for employee pension benefit plans).

(b) *Definitions*—(1) *Employment commencement date.* For purposes of this section, the term "employment commencement date" shall mean the date on which the employee first performs an hour of service within the meaning of 29 CFR 2530.200b–2 (a)(1) for the employer or employers maintaining the plan.

(2) *Severance from service date.* For purposes of this section, a "severance from service" shall occur on the earlier of—

(i) The date on which an employee quits, retires, is discharged or dies; or

(ii) The first anniversary of the first date of a period in which an employee remains absent from service (with or without pay) with the employer or employers maintaining the plan for any reason other than quit, retirement, discharge or death, such as vacation, holiday, sickness, disability, leave of absence or layoff.

(3) *Reemployment commencement date.* For purposes of this section, the term "reemployment commencement date" shall mean the first date, following a period of severance from service which is not required to be taken into account under the service spanning rules in paragraphs (c)(2)(iii) and (d)(1)(iii) of this section, on which the employee performs an hour of service within the meaning of 29 CFR 2530.200b–2(a)(1) for the employer or employers maintaining the plan.

(4) *Participation commencement date.* For purposes of this section, the term "participation commencement date" shall mean the date a participant first commences participation under the plan.

(5) *Period of severance.* For purposes of this section, the term "period of severance" shall mean the period of time commencing on the severance from service date and ending on the date on which the employee again performs an hour of service within the meaning of 29 CFR 2530.200b–2(a)(1) for an employer or employers maintaining the plan.

(6) *Period of service*—(i) *General rule.* For purposes of this section, the term "period of service" shall mean a period of service commencing on the employee's employment commencement date or reemployment commencement date, whichever is applicable, and ending on the severance from service date.

(ii) *Aggregation rule.* Unless a plan provides in some manner for an "adjusted" employment commencement date or similar method of consolidating periods of service, periods of service shall be aggregated unless such periods may be disregarded under section 410(a)(5) or 411(a)(4).

(iii) *Other federal law.* Nothing in this section shall be construed to alter, amend, modify, invalidate, impair or supersede any law of the United States or any rule or regulation issued under such law. Thus, for example, nothing in this section shall be construed as denying an employee credit for a "period of service" if credit is required by a separate federal law. Furthermore, the nature and extent of such credit shall be determined under such law.

(c) *Eligibility to participate*—(1) *General rule.* For purposes of section 410(a)(1)(A), a plan generally may not require as a condition of participation in the plan that an employee complete a period of service with the employer or employers maintaining the plan extending beyond the later of—

(i) The date on which the employee attains the age of 25; or

(ii) The date on which the employee completes a one-year period of service. See the regulations under section 410(a) (relating to eligibility to participate).

(2) *Determination of one-year period of service.* (i) For purposes of determining the date on which an employee satisfies the service requirement for initial eligibility to participate under the plan, a plan using the elapsed time method of crediting service shall provide that an employee who completes the 1-year period of service requirement on the first anniversary of his employment commencement date satisfies the minimum service requirement as of such date. In the case of an employee who fails to complete a one-year period of service on the first anniversary of his employment commencement date, a plan which does not contain a provision permitted by section 410(a)(5)(D) (rule of parity) shall provide for the aggregation of periods of service so that a one-year period of service shall be completed as of the date the employee completes 12 months of service (30 days are deemed to be a month in the case of the aggregation of fractional months) or 365 days of service.

(ii) For purposes of section 410(a)(1)(B)(i), a "3-year period of service" shall be deemed to be "3 years of service."

(iii) *Service spanning rules.* In determining a 1-year period of service for purposes of initial eligibility to participate and a period of service for purposes of retention of eligibility to participate, in addition to taking into account an employee's period of service, a plan shall take into account the following periods of severance—

(A) If an employee severs from service by reason of a quit, discharge or retirement and the employee then performs an hour of service within the meaning of 29 CFR 2530.200b–2(a)(1) within 12 months of the severance from service date, the plan is required to take into account the period of severance; and

(B) Notwithstanding paragraph (c)(2)(iii)(A) of this section, if an employee severs from service by reason of a quit, discharge or retirement during an absence from service of 12 months or less for any reason other than a quit, discharge, retirement or death, and then performs an hour of service within the meaning of 29 CFR 2530.200b–2(a)(1) within 12 months of the date on which the employee was first absent from service, the plan is required to take into account the period of severance.

(iv) For purposes of determining an employee's retention of eligibility to participate in the plan, a plan shall take into account an employee's entire period of service unless certain periods of service may be disregarded under section 410(a)(5) of the Code.

(v) *Example.* Employee W, age 31, completed 6 months of service and was laid off. After 2 months of layoff, W quit. Five months later, W returned to service. For purposes of eligibility to participate, W was required to be credited with 13 months of service (8 months of service and 5 months of severance). If, on the other hand, W had not returned to service within the first 10 months of severance (*i.e.*, within 12 months after the first day of layoff), W would be required to be credited with only 8 months of service.

(3) *Entry date requirements*—(i) *General rule.* For purposes of section 410(a)(4), it is necessary for a plan to

provide that any employee who has satisfied the minimum age and service requirements, and who is otherwise entitled to participate in the plan, commences participation in the plan no later than the earlier of—

(A) The first day of the first plan year beginning after the date on which such employee satisfied such requirements, or

(B) The date six months after the date on which he satisfied such requirements, unless such employee was separated from service before the date referred to in subdivision (i) (A) or (B), whichever is applicable. See the regulations under section 410(a) (relating to eligibility to participate).

(ii) *Separation from service*—(A) *Definition.* For purposes of this section, the term "separated from service" includes a severance from service or an absence from service for any reason other than a quit, discharge, retirement or death, regardless of the duration of such absence. Accordingly, if an employee is laid off for a period of six weeks, the employee shall be deemed to be "separated from service" during such period for purposes of the entry date requirements.

(B) *Application.* A period of severance which is taken into account under the service spanning rules in paragraph (c)(2)(iii) of this section or an absence of 12 months or less may result in an employee satisfying the plan's minimum service requirement during such period of time. In addition, once an employee satisfies the plan's minimum service requirement, either before or during such period of time, such period of time may contain an entry date applicable to such employee. In the case of an employee whose period of severance is taken into account and such period contains an entry date applicable to the employee, he or she shall be made a participant in the plan (if otherwise eligible) no later than the date on which he or she ended the period of severance. In the case of an employee whose period of absence contains an entry date applicable to such employee, he or she, no later than the date such absence ended, shall be made a participant in the plan (if otherwise eligible) as of the first applicable entry date which occurred during such absence from service.

(iii) *Examples.* For purposes of the following examples, assume that the plan provides for a minimum age requirement of 25 and a minimum service requirement of one year, and provides for semi-annual entry dates.

(A) Employee A, age 35, worked for 10 months in a job classification covered under the plan, became disabled for nine consecutive months and then returned to service. During the period of absence, A completed a 1-year period of service and passed a semi-annual entry date after satisfying the minimum service requirement. Accordingly, the plan is required to make A a participant no later than his return to service effective as of the applicable entry date.

(B) Employee B, after satisfying the minimum age and service requirements, quit work before the next semi-annual entry date, and then returned to service before incurring a 1-year period of severance, but after such semi-annual entry date. Employee B is entitled to become a participant immediately upon his return to service effective as of the date of his return.

(4) *Break in service.* For purposes of applying the break in service rules under section 410(a)(5) (B) and (C), the term "1-year period of severance" shall be substituted for the term "1-year break in service". A 1-year period of severance shall be determined on the basis of a 12-consecutive-month period beginning on the severance from service date and ending on the first anniversary of such date, provided that the employee during such 12-consecutive-month period does not perform an hour of service within the meaning of 29 CFR 2530.200b–2(a)(1) for the employer or employers maintaining the plan.

(5) *One-year hold-out*—(i) *General rule.* (A) For purposes of section 410(a)(5)(C), in determining the period of service of an employee who has incurred a 1-year period of severance, a plan may disregard the employee's period of service before such period of severance until the employee completes a 1-year period of service after such period of severance.

(B) *Example.* Assume that a plan provides for a minimum service requirement of 1-year and provides for semi-annual entry dates, but does not contain the provisions permitted by section 410(a)(5)(D) (relating to the rule of parity). Employee G, age 40, completed a seven-month period of service, quit and then returned to service 15 months later, thereby incurring a 1-year period of severance. After working four months, G was laid off for nine months and then returned to work again. Although the plan may hold employee G out from participation in the plan until the completion of a 1-year period of service after the 1-year (or greater) period of severance, once the 1-year hold-out is completed, the plan is required to provide the employee with such statutory entitlement as arose during the 1-year hold-out. Accordingly, employee G satisfied the 1-year hold-out requirement as of the eighth month of layoff, and G is entitled to become a participant in the plan immediately upon his return to service after the nine-month layoff effective as of the first applicable entry date occurring after the date on which he satisfied the 1-year of service requirement (*i.e.*, the first applicable entry date after the first month of layoff). See the regulations under section 410 (a) (relating to eligibility to participate).

(6) *Rule of parity*—(i) *General rule.* For purposes of section 410(a)(5)(D), in the case of a participant who does not have any nonforfeitable right under the plan to his accrued benefit derived from employer contributions and who incurs a 1-year period of severance, a plan, in determining an employee's period of service for purposes of section 410(a)(1), may disregard his period of service if his latest period of severance equals or exceeds his prior periods of service, whether or not consecutive, completed before such period of severance. See the regulations under section 410(a) (relating to eligibility to participate).

(ii) In determining whether a completely nonvested employee's service may be disregarded under the rule of parity, a plan is not permitted to apply the rule until the employee incurs a 1-year period of severance. Accordingly, a plan may not disregard a period of service of less than one year until an employee has incurred a period of severance of at least one year.

(iii) *Example.* Assume that a plan provides for a minimum service requirement of one year and provides for the rule of parity. An employee works for three months, quits and then is rehired 10 months later. Such employee is entitled to receive 13 months of credit for purposes of eligibility to participate and vesting (see the service spanning rules). Although the period of severance exceeded the period of service, the three months of service may not be disregarded because no 1-year period of severance occurred.

(d) *Vesting*—(1) *General rule.* (i) For purposes of section 411(a)(2), relating to vesting in accrued benefits derived from employer contributions, a plan which determines service to be taken in account on the basis of elapsed time shall provide that an employee is credited with a number of years of service equal to at least the number of whole years of the employee's period of service, whether or not such periods of service were completed consecutively.

(ii) In order to determine the number of whole years of an employee's period of service, a plan shall provide that non-successive periods of service must be aggregated and that less than whole year periods of service (whether or not consecutive) must be aggregated on the

basis that 12 months of service (30 days are deemed to be a month in the case of the aggregation of fractional months) or 365 days of service equal a whole year of service.

(iii) *Service spanning rules.* In determining a participant's period of service for vesting purposes, a plan shall take into account the following periods of severance—

(A) If an employee severs from service by reason of a quit, discharge or retirement and the employee then performs an hour of service within the meaning of 29 CFR 2530.200b–2(a)(1) within 12 months of the severance from service date, the plan is required to take into account the period of severance; and

(B) Nothwithstanding paragraph (d)(1)(iii)(A) of this section, if an employee severs from service by reason of a quit, discharge or retirement during an absence from service of 12 months or less for any reason other than a quit, discharge, retirement or death, and then performs an hour of service within the meaning of 29 CFR 2530.200b–2(a)(1) within 12 months of the date on which the employee was first absent from service, the plan is required to take into account the period of severance.

(iv) For purposes of determining an employee's nonforfeitable percentage of accrued benefits derived from employer contributions, a plan, after calculating an employee's period of service in the manner prescribed in this paragraph, may disregard any remaining less than whole year, 12-month or 365-day period of service. Thus, for example, if a plan provides for the statutory five to fifteen year graded vesting, an employee with a period (or periods) of service which yield 5 whole year periods of service and an additional 321-day period of service is twenty-five percent vested in his or her employer-derived accrued benefits (based solely on the 5 whole year periods of service).

(2) *Service which may be disregarded.* (i) For purposes of section 411(a)(4), in determining the nonforfeitable percentage of an employee's right to his or her accrued benefits derived from employer contributions, all of an employee's period or periods of service with an employer or employers maintaining the plan shall be taken into account unless such service may be disregarded under paragraph (d)(2)(ii) of this section.

(ii) For purposes of paragraph (d)(2)(i) of this section, the following periods of service may be disregarded—

(A) The period of service completed by an employee before the date on which he attains age 22;

(B) In the case of a plan which requires mandatory employee contributions, the period of service which falls within the period of time to which a particular employee contribution relates, if the employee had the opportunity to make a contribution for such period of time and failed to do so;

(C) The period of service during any period for which the employer did not maintain the plan or a predecessor plan;

(D) The period of service which is not required to be taken into account by reason of a period of severance which constitutes a break in service within the meaning of paragraph (d)(4) of this section;

(E) The period of service completed by an employee prior to January 1, 1971, unless the employee completes a period of service of at least 3 years at any time after December 31, 1970; and

(F) The period of service completed before the first plan year for which this section applies to the plan, if such service would have been disregarded under the plan rules relating to breaks in service in effect at that time. See the regulations under section 411(a) (relating to vesting).

(3) *Seasonal industry.* [Reserved.]

(4) *Break in service.* For purposes of applying the break in service rules, the term "1-year period of severance" shall be substituted for the term "1-year break in service". A 1-year period of severance shall be a 12-consecutive-month period beginning on the severance from service date and ending on the first anniversary of such date, provided that the employee during such 12-consecutive-month period fails to perform an hour of service within the meaning of 29 CFR 2530.200b–2(a)(1) for an employer or employers maintaining the plan.

(5) *One-year hold-out.* For purposes of section 411(a)(6)(B), in determining the nonforfeitable percentage of the right to accrued benefits derived from employer contributions of an employee who has incurred a 1-year period of severance, the period of service completed before such period of severance is not required to be taken into account until the employee has completed a 1-year period of service after his return to service. See the regulations under section 411(a) (relating to vesting).

(6) *Vesting in pre-break accruals.* For purposes of section 411(a)(6)(C), a "1-year period of severance" shall be deemed to constitute a "1-year break in service." See the regulations under section 411(a) (relating to vesting).

(7) *Rule of partity*—(i) *General rule.* For purposes of section 411(a)(6)(D), in the case of an employee who is a nonvested participant in employer-derived benefits at the time he incurs a 1-year period of severance, the period of service completed by such participant before such period of severance is not required to be taken into account for purposes of determining the vested percentage of his or her right to employer-derived benefits if at such time the consecutive period of severance equals or exceeds his prior periods of service, whether or not consecutive, completed before such period of severance. See the regulations under section 411(a) (relating to vesting).

(e) *Benefit accrual.* (1) For purposes of section 411(b), a plan may provide that a participant's service with an employer or employers maintaining the plan shall be determined on the basis of the participant's total period of service beginning on the participation commencement date and ending on the severance from service date.

(2) Under section 411(b)(3)(A), a defined benefit pension plan may determine an employee's service for purposes of benefit accrual on any basis which is reasonable and consistent and which takes into account all service during the employee's participation in the plan which is included in a period of service required to be taken into account under section 410(a)(5) (relating to service which must be taken into account for purposes of determining an employee's eligibility to participate). A plan which provides for the determination of an employee's service with an employer or employers maintaining the plan on the basis permitted under paragraph (e)(1) of this section will be deemed to meet the requirements of section 411(b)(3)(A), provided that the plan meets the requirements of 29 CFR 2530.204–3, relating to plans which determine an employee's service for purposes of benefit accrual on a basis other than computation periods. Specifically, under 29 CFR § 2530.204–3, it must be possible to prove that, despite the fact that benefit accrual under such a plan is not based on computation periods, the plan's provisions meet at least one of the three benefit accrual rules of section 411(b)(1) under all circumstances. Further, 29 CFR § 2530.204–3 prohibits such a plan from disregarding service under section 411(b)(3)(C) (which would otherwise permit a plan to disregard service performed by an employee during a computation period in which the employee is credited with less than 1,000 hours). See the regulations under section 411(b) (relating to benefit accrual).

(f) *Transfers between methods of crediting service*—(1) *Single plan.* A

plan may provide that an employee's service for purposes of eligibility to participate, vesting or benefit accrual shall be determined on the basis of computation periods under the general method set forth in 29 CFR 2530.200b–2 for certain classes of employees but under the alternative method permitted under this section for other classes of employees if the plan provides as follows—

(i) In the case of an employee who transfers from a class of employees whose service is determined on the basis of computation periods to a class of employees whose service is determined on the alternative basis permitted under this section, the employee shall receive credit for a period of service consisting of—

(A) A number of years equal to the number of years of service credited to the employee before the computation period during which the transfer occurs; and

(B) The greater of *(1)* the period of service that would be credited to the employee under the elapsed time method for his service during the entire computation period in which the transfer occurs or *(2)* the service taken into account under the computation periods method as of the date of the transfer.

In addition, the employee shall receive credit for service subsequent to the transfer commencing on the day after the last day of the computation period in which the transfer occurs.

(ii) In the case of an employee who transfers from a class of employees whose service is determined on the alternative basis permitted under this section to a class of employees whose service is determined on the basis of computation periods—

(A) The employee shall receive credit, as of the date of the transfer, for a number of years of service equal to the number of 1-year periods of service credited to the employee as of the date of the transfer, and

(B) The employee shall receive credit, in the computation period which includes the date of the transfer, for a number of hours of service determined by applying one of the equivalencies set forth in 29 CFR 2530.200b–3 (e) (1) to any fractional part of a year credited to the employee under this section as of the date of the transfer. Such equivalency shall be set forth in the plan and shall apply to all similarly situated employees.

(2) *More than one plan.* In the case of an employee who transfers from a plan using either the general method of determining service on the basis of computation periods set forth in 29 CFR 2530.200b–2 or the method of determining service permitted under this section to a plan using the other method of determining service, all service required to be credited under the plan to which the employee transfers shall be determined by applying the rules of paragraph (f)(1) of this section.

(g) *Amendments to change method of crediting service.* A plan may be amended to change the method of crediting service for any purpose or for any class of employees between the general method set forth in 29 CFR 2530.200–2 and the method permitted under this section, if such amendment contains provisions under which each employee with respect to whom the method of crediting service is changed is treated in the same manner as an employee who transfers from one class of employees to another under paragraph (f)(1) of this section.

(h) *Transitional rule.* For plans in existence on [insert the date of the publication of this document], the provisions of paragraph (f) of this section are effective for plan years beginning after December 31, 1983.

§ 1.411(a)–5 [Amended]

Par. 5. Section 1.411 (a)–5 (b) is revised by deleting from subparagraphs (1)(iii) and (2) "Department of Labor regulations" and inserting in lieu thereof "§ 1.410 (a)–7".

§ 1.411(a)–6 [Amended]

Par. 6. Section 1.411 (a)–6 (c)(1)(iii) is revised by deleting from the second sentence "Department of Labor Regulations" and inserting in lieu thereof "§ 1.410 (a)–7".

This Treasury decision is issued under the authority contained in section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805).

Jerome Kurtz,

Commissioner of Internal Revenue.

Approved: June 2, 1980.

Donald C. Lubick,

Assistant Secretary of the Treasury.

[FR Doc. 80–18202 Filed 6–16–80; 8:45 am]

BILLING CODE 4830–01–M

DEPARTMENT OF LABOR

Office of the Secretary

29 CFR Part 40

Farm Labor Contractor Registration; Documents Acceptable as Evidence of a Bona Fide Inquiry of Employability Status

Correction

In FR Doc. 80–16181 appearing on page 35323 in the issue for Tuesday, May 27, 1980, make the following correction:

On page 35325, in § 40.51 (p)(1)(xi)(A), change ". . . number such (voluntary) . . ." to read ". . . number (voluntary) . . .".

BILLING CODE: 1505–01–M

Wage and Hour Division, Employment Standards Administration

29 CFR Part 697

Industries in American Samoa; Wage Order

Note.—This document originally appeared in the **Federal Register** for Monday, June 16, 1980. It is reprinted in this issue to meet requirements for publication on the Tuesday–Friday schedule assigned to the Department of Labor.

AGENCY: Wage and Hour Division, Labor.

ACTION: Final rule.

SUMMARY: Under the Fair Labor Standards Act, minimum wage rates in American Samoa are set by a special industry committee appointed by the Secretary of Labor. After such a committee has investigated conditions in American Samoa, it recommends minimum wage rates which must be published in the **Federal Register** and which become the new wage rates. Industry Committee No. 14 for American Samoa has completed its review and established new minimum wage rates, which are published herewith.

EFFECTIVE DATE: July 1, 1980.

FOR FURTHER INFORMATION CONTACT: Anthony J. Ponturiero, Director, Division of Government Contract Wage Determinations, Wage and Hour Division, U.S. Department of Labor, 200 Constitution Avenue, N.W.—Room S–3012, Washington, D.C. 20210, Phone: 202–523–7455.

SUPPLEMENTARY INFORMATION: Pursuant to sections 5, 6, and 8 of the Fair Labor Standards Act of 1938 (52 Stat. 1062, 1064, as amended (29 U.S.C. 205, 206, 208)) and Reorganization Plan No. 6 of 1950 (3 CFR 1949–53 Comp., p. 1004), and by means of Administrative Order No. 655 (44 F.R. 76888), the Secretary of Labor appointed and convened Industry Committee No. 14 for Industries in American Samoa, referred to the Committee the question of the minimum rate or rates of wages to be paid under section 6 of the act to such employees, and gave notice of a hearing to be held by the Committee.

Subsequent to an investigation and a hearing conducted pursuant to the notice, the Committee has filed with the Administrator of the Wage and Hour Division of the Department of Labor a report containing its findings of fact and recommendations with respect to the matters referred to it.

Accordingly, as authorized and required by section 8 of the Fair Labor Standards Act of 1938, Reorganization Plan No. 6 of 1950, and 29 CFR 511.18, the recommendations of Industry Committee No. 14 are hereby published, revising § 697.1 and 697.3 of Part 697, Title 29, Code of Federal Regulations.

The wage rates for government employees apply only to employees of the Government of American Samoa and its political subdivisions who are engaged in nontraditional activities. In *National League of Cities* v. *Usery*, 426 U.S. 833 (1976), the Supreme Court held that the minimum wage and overtime provisions of the Fair Labor Standards Act are not constitutionally applicable to the integral operations of the States and their political subdivisions in areas of traditional governmental functions. According to the Court, such functions include, among others, schools and hospitals, fire prevention, police protection, sanitation, public health, and parks and recreation. Nontraditional functions, however, continue to be covered by the Fair Labor Standards Act. While this decision dealt with the 50 States and their political subdivisions, it is apparent, as a matter of statutory interpretation, that the restrictions imposed by *National League of Cities* should be the same in American Samoa.

Determinations of whether particular functions are traditional or nontraditional will be made by the Courts or by the U.S. Department of Labor on a case-by-case basis. Determinations that particular functions are nontraditional will be published in the **Federal Register** in the form of amendments to Title 29 CFR, § 775.3. A determination was issued by the Wage and Hour Division of the Department of Labor on August 14, 1979, that American Samoa Government's communication system, electric utility, marine railway and liquor store should be considered nontraditional activities since these operations appear to be essentially no different from regular commercial operations in the United States. The amendment to Regulations Part 775.3 incorporating these earlier decisions was published in the **Federal Register** on December 21, 1979.

The rates set forth herein for government workers apply only to such activities as are determined to be nontraditional. This document was prepared under the direction and control of Henry T. White, Jr., Deputy Administrator, Wage and Hour Division.

PART 697—INDUSTRIES IN AMERICAN SAMOA

Part 697 of title 29 CFR is amended as follows:

1. Section 697.1(a), (b), (c), (d), (e), (1), (f), (g), (1), (h), (1), (h), (1), (i), (1), (j), (1), (k), (1), (l), (m), and (n) is amended to read as follows:

§ 697.1 Wage rates and industry definitions.

* * * * *

(a) *Fish canning and processing and can manufacturing industry.* (1) the minimum wage for this industry is $2.16 an hour for a period of 1 year following the effective date specified in § 697.3 and $2.33 an hour thereafter.

(2) This industry shall include the canning, freezing, preserving, and other processing of any kind of fish, shellfish, and other aquatic forms of animal life, the manufacture of any byproduct thereof, and the manufacture of cans and related activities.

(b) *Shipping and transportation industry.* (1) The minimum wage for classification A, stevedoring, lighterage and maritime shipping agency activities, is $2.15 an hour for a period of 1 year following the effective date specified in § 697.3 and $2.32 an hour thereafter. The minimum wage for classification B, all other activities, is $2.08 an hour for a period of 1 year following the effective date specified in § 697.3 and $2.21 an hour thereafter. (2) This industry shall include the transportation of passengers and cargo by water or by air and all activities in connection therewith, including storage and lighterage operations: *Provided, however,* That this industry shall not include the operation of tourist bureaus and of travel and ticket agencies: *Provided, further;* That this industry shall not include bunkering of petroleum products or activities engaged in by seamen in American vessels which are documented or numbered under the Laws of the United States, which operate exclusively between points in the Samoan Islands, and which are not in excess of 350 tons net capacity. Within this industry there shall be two classifications:

(i) Classification A: *Stevedoring, lighterage and maritime shipping agency activities.* This classification shall include all employees of employers who engage in each of the following three services: Stevedoring, lighterage and maritime shipping agency activities.

(ii) Classification B: *All other activities.* All other activities in the shipping and transportation industry.

(c) *Tour and travel service industry.* (1) The minimum wage for this industry is $1.76 an hour for a period of 1 year following the effective date specified in § 697.3 and $1.88 an hour thereafter. (2) This industry shall include the operation of tourist bureaus and of travel and passenger ticket services and agencies: *Provided, however.* That this industry shall not include the operation of a freight shipping agency.

(d) *Petroleum marketing industry.* (1) The minimum wage for this industry is $2.15 an hour for a period of 1 year following the effective date specified in § 697.3 and $2.32 an hour thereafter. (2) This industry shall include the wholesale marketing and distribution of gasoline, kerosene, lubricating oils, diesel and marine fuels, and other petroleum products, bunkering operations in connection therewith, and repair and maintenance of petroleum storage facilities.

(e) *Construction industry.* (1) The minimum wage for this industry is $1.75 an hour for a period of 1 year following the effective date specified in § 697.3 and $1.85 an hour thereafter.

* * * * *

(f) *Hotel industry.* (1) The minimum wage for this industry is $1.40 an hour for a period of 1 year following the effective date specified in § 697.3 and $1.50 an hour thereafter. (2) This industry shall include all activities in connection with the operation of hotels, motels, apartment hotels, and tourist courts engaged in providing lodging, with or without meals, for the general public, including such activities as are engaged in by a hotel or motel or other lodging facility on its own linens or on garments of its guests.

(g) *Retailing, wholesaling and warehousing industry.* (1) The minimum wage for this industry is $1.57 an hour for a period of 1 year following the effective date specified in § 697.3 and $1.65 an hour thereafter.

* * * * *

(h) *Laundry and dry cleaning industry.* (1) The minimum wage for this industry is $1.15 an hour for a period of 1 year following the effective date specified in § 697.3 and $1.20 an hour thereafter.

* * * * *

(i) *Bottling and dairy products industry.* (1) The minimum wage for this

industry is $1.49 an hour for a period of 1 year following the effective date specified in § 697.3 and $1.59 an hour thereafter.

* * * * *

(j) *Printing and publishing industry.* (1) The minimum wage for this industry is $1.72 an hour for a period ending 1 year from the date specified in § 697.3 and $1.84 an hour thereafter.

* * * * *

(k) *Finance and insurance industry.* (1) The minimum wage for this industry is $1.93 an hour for a period ending 1 year from the date specified in § 697.3 and $2.05 an hour thereafter.

* * * * *

(l) *Private hospital and educational institutions industry.* (1) The minimum wage for this industry is $1.48 an hour for the period ending 1 year from the date specified in § 697.3 and $1.54 an hour thereafter. (2) This industry shall include all activities performed in connection with the operation of private hospitals, nursing homes and related institutions primarily engaged in the care of the sick, the aged or the mentally ill or defective who reside on the premises of such institutions, private schools for the mentally or physically handicapped or for gifted children, preschools, elementary or secondary schools, or institutions of higher education: *Provided, however,* That this industry shall not include employees of the Government of American Samoa or employees of any agency or corporation of the Government of American Samoa.

(m) *Government employees industry (nontraditional activities).* (1) The minimum wage for this industry is $1.60 an hour for the period ending 1 year from the date specified in § 697.3 and $1.70 an hour thereafter. (2) This industry is defined as the nontraditional governmental activities of an employee of the Government of American Samoa. The Administrator of the Wage and Hour Division of the United States Department of Labor has included within the definitions of nontraditional governmental activities of the Government of American Samoa all employees engaged in:

(i) Communication activity, including the installation, repair and maintenance of tele-communication equipment.

(ii) Electric utility operations including the production and distribution of electric energy and installation, repair and maintenance of such production and distribution facilities and equipment.

(iii) Operation, repair and maintenance of the Marine Railway, including structural ship and motor repairs and all other activities in connection therewith.

(iv) All activities in connection with the operation of the liquor store.

Provided, however, That this industry shall not include any employee of the United States or its agencies.

(n) *Miscellaneous activities industry.* (1) The minimum wage for this industry is $1.43 an hour for the period ending 1 year from the date specified in § 697.3 and $1.50 an hour thereafter. (2) This industry shall include every activity not included in any other industry defined herein.

* * * * *

2. Section 697.3 is revised to read as follows:

§ 697.3 Effective date.

The wage rates specified in § 697.1 shall be effective July 1, 1980.

(Secs. 5, 6, 8, 52 Stat. 1062, 1064; 29 U.S.C. 205, 206, 208.)

Signed at Washington, D.C. this 12th day of June 1980.

Henry T. White, Jr.,

Deputy Administrator, Wage and Hour Division, U.S. Department of Labor.

[FR Doc. 80-18209 Filed 6-13-80; 8:45 am]

BILLING CODE 4510-27-M

Pension and Welfare Benefit Programs

29 CFR Part 2530

Deletion of Regulation Relating to the Elapsed Time Method of Crediting Service of Employees

AGENCY: U.S. Department of Labor.

ACTION: Deletion of regulation.

SUMMARY: On December 28, 1976 the Department of Labor published a regulation on the elapsed time method of crediting service of employees (29 CFR 2530.200b-9) for purposes of sections 202, 203, and 204 of the Employee Retirement Income Security Act of 1974. Section 2530.200b-9 was published both as a temporary regulation effective immediately upon publication 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 section 2530.200b-9 from the Secretary of Labor to the Secretary of the Treasury. Elsewhere in this issue of the **Federal Register**, the Secretary of the Treasury has published final regulations on the elapsed time method of crediting service of employees under qualified plans (26 CFR 1.410(a)-7).

FOR FURTHER INFORMATION CONTACT:

J. Scott Galloway, Esq., Plan Benefits Security Division, Office of the Solicitor, U.S. Department of Labor, Washington, D.C. 20216, 202-523-8658 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Department of Labor, therefore, hereby amends 29 CFR Part 2530 by deleting 29 CFR 2530.200b-9.

Signed at Washington, D.C., this 11th day of June 1980.

Ian D. Lanoff,

Administrator, Pension and Welfare Benefit Programs, Labor-Management Services Administration, U.S. Department of Labor.

[FR Doc. 80-18099 Filed 6-16-80; 8:45 am]

BILLING CODE 4510-26-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL 1517-1]

Approval and Promulgation of Implementation Plans; Massachusetts Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving three revisions to the Massachusetts Implementation Plan. Amendments to the Sulfur-in-fuel regulation allow use of higher sulfur fuel oil at two sources in Fitchburg on a year-round basis. Amendments to the Open Burning regulation allow brush burning in certain areas of the State from January 15 to May 1 of each year. Finally, the provisions of the Fuel Oil Viscosity regulation, which requires installation of automatic viscosity controllers, are varied for the Cambridge Electric Light Company.

EFFECTIVE DATE: June 17, 1980.

FOR FURTHER INFORMATION CONTACT:

Margaret McDonough, Air Branch, EPA Region I, Room 1903, JFK Federal Building, Boston, Massachusetts 02203, (617) 223-5609.

SUPPLEMENTARY INFORMATION: On January 21, 1980 (45 FR 3928) the Regional Administrator published a Notice of Proposed Rulemaking in the **Federal Register**, proposing approval of three revisions to the Massachusetts State Implementation Plan (SIP). These revisions, which were submitted by the Commissioner of the Massachusetts Department of Environmental Quality Engineering (the DEQE), are not part of an attainment plan under Part D of the Clean Air Act, as amended. The SIP revisions amend Regulations 310 CMR

7.05(1) and 7.07, and vary the provisions of Regulation 7.04(5).

Amendments to Regulation 310 CMR 7.05(1), Sulfur Content of Fuels and Control Thereof, were submitted on September 28, 1979. This regulation presently allows the use of 2.2% sulfur residual fuel oil at approved sources in the Central Massachusetts Air Pollution Control District (CMAPCD) which are larger than 100 million Btu/hour heat input. Sources smaller than 100 million Btu/hour heat input and all remaining sources larger than 100 million Btu/hour heat input are limited to 1.0% sulfur residual fuel oil. However, a special provision limits the use of 2.2% sulfur fuel at the two approved large sources in Fitchburg to seven months of the year. April through October; during the rest of the year, November through March, these sources must burn 1.0% sulfur fuel. The revision removes the seasonal restrictions for these two sources which are

Fitchburg Paper Company (55 meter stacks only) and James River-Massachusetts. The other two large sources in Fitchburg are General Electric and Fitchburg Gas and Electric, and the boilers vented by the 23 meter stacks at Fitchburg Paper remain limited to 1.0% sulfur fuel oil at all times.

Technical support for this revision shows compliance with the National Ambient Air Quality Standards (NAAQS) and Prevention of Significant Deterioration (PSD) increments for sulfur dioxide (SO_2). Accordingly, EPA proposed to approve the revision to Regulation 310 CMR 7.05(1) to allow the year-round use of 2.2% sulfur residual fuel oil at James River Massachusetts, Fitchburg, and in the boilers vented by the 55 meter stacks at Fitchburg Paper Company, Fitchburg. All other sources in Fitchburg must continue to burn 1.0% sulfur oil, including the boilers vented by the 23 meter stacks at Fitchburg Paper.

Amendments to Regulation 310 CMR 7.07, Open Burning, were submitted on September 28, 1979. The present regulation permits open burning for cooking; for training or research in fire protection or prevention; for combating or backfiring an existing fire; for agricultural purposes, agricultural land clearing, and disposal of fungus-infested elm wood; for operation of blowtorches and welding torches; for disposal of combustible material for which no suitable alternative is available; and for reduction of brush, cane, driftwood, and forestry debris under certain conditions during two months of each year.

The SIP revision extends the time allowed for open burning of brush, cane, driftwood, and forestry debris. The months during which brush burning presently is permitted are March 1 to May 1 in the Berkshire APCD and January 15 to March 15 in the other APCD's. The revision allows a uniform period throughout the State, from January 15 to May 1 of each year. The conditions under which brush burning is allowed remain unchanged, including the condition that no open burning be conducted in cities and towns which show recorded or potential violations of the NAAQS for Total Suspended Particulates (TSP).

The technical support for this revision states that it is being proposed merely as a uniform administrative tool which will allow a longer period of time each year to dispose of essentially the same amount of brush, cane driftwood and forestry debris as is presently burned. Therefore no increase in annual particulate emission will occur.

Furthermore, the DEQE's approach minimizes potential impacts of open burning emissions on TSP levels by prohibiting brush burning in those cities and towns where particulate NAAQS had been or were likely to be exceeded, and by setting conditions on brush burning which are designed to ensure that the dispersive capacity of the atmosphere is fully utilized. EPA proposed to approve the revision to Regulation 310 CMR 7.07, which will allow open burning of brush from January 15 to May 1 of each year. Emissions resulting from the revision are not expected to impact TSP levels in non-attainment areas, and any impacts elsewhere will be minimized by the safeguards contained in the regulation.

A SIP revision to vary the provisions of Regulation 310 CMR 7.04(5), Fuel Oil Viscosity, was submitted on December 28, 1978. The regulation requires the installation and use of automatic viscosity controllers at fossil fuel utilization facilities of over 250 million Btu/hour heat input, effective July 1, 1978. The proposed revision varies the provisions of Regulation 7.04(5) as it applies to two plants owned and operated by the Cambridge Electric Light Company, Kendall Station, First Street, Cambridge, and Blackstone Station, Blackstone Street, Cambridge. Both plants utilize residual fuel oil of not more than 0.5 percent sulfur content.

Cambridge Electric's request to continue to operate without installing automatic viscosity controllers was supported by fuel and operational data submitted to the DEQE and presented at the public hearing. Cambridge Electric showed that compliance with the particulate emission limitation and opacity requirements has not been a problem at the plants in question, and in this particular case, continued compliance is not dependent on installation and use of automatic viscosity controllers. Instead, use of low sulfur residual oil which consistently meets tight specifications is an effective particulate control measure.

EPA proposed to approve the variance to Regulation 310 CMR 7.04(5) for Cambridge Electric's Kendall and Blackstone Stations in Cambridge, which will allow these two plants to operate without installing automatic viscosity controllers. Approval of this SIP revision is not expected to result in increased particulate emissions and should therefore have no impact on ambient air quality standards or on the PSD increments.

No comments were received during the public comment period.

After evaluation of the DEQE's submittals, the Administrator has determined that the Massachusetts revisions meet the requirements of the Clean Air Act and 40 CFR Part 51. Accordingly, these revisions are approved as revisions to the Massachusetts Implementation Plan. The Agency finds that good cause exists for making this action immediately effective because these revisions are already in effect under state law and EPA approval imposes no additional regulatory burdens.

(Section 110(a) of the Clean Air Act, as amended, 42 U.S.C. 7401)

Dated: June 10, 1980.

Douglas M. Costle,

Administrator.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Part 52 of Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

Subpart W—Massachusetts

§ 52.1120 [Amended]

1. In Section 52.1120, paragraph (c)(24) is amended by adding a phrase at the end, to read "and a revision removing the seasonal restriction in Fitchburg for Fitchburg Paper Company (55 meter stacks only) and James River-Massachusetts submitted on September 28, 1979 by the Commissioner."

2. Section 52.1120, paragraph (c) is amended by adding subparagraphs (27) and (28), as follows:

§ 52.1120 Identification of plan.

* * * * *

(c) * * *

(27) Revisions to Regulation 310 CMR 7.07, Open Burning, submitted on September 28, 1979 by the Commissioner

of the Massachusetts Department of Environmental Quality Engineering.

(28) A revision varying the provisions of Regulation 310 CMR 7.04(5), Fuel Oil Viscosity, for Cambridge Electric Light Company's Kendall Station, First Street, Cambridge, and Blackstone Station, Blackstone Street, Cambridge, submitted on December 28, 1978 by the Commissioner of the Massachusetts Department of Environmental Quality Engineering.

[FR Doc. 80-18136 Filed 6-16-80; 8:45 am]
BILLING CODE 6560-01-M

Proposed Rules

Federal Register
Vol. 45, No. 118
Tuesday, June 17, 1980

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 536

Grade and Pay Retention

AGENCY: Office of Personnel Management.

ACTION: Proposed rulemaking.

SUMMARY: The Office of Personnel Management (OPM) is proposing revised regulations to implement the grade and pay retention provisions of the Civil Service Reform Act of 1978. Title VIII of the Act provides that certain employees who are placed in a lower grade as a result of reduction-in-force procedures, or whose positions are reduced in grade as a result of reclassification of the positions, are entitled to retain for a period of 2 years the grade held immediately before that placement or reduction. It also provides the authority for granting certain employees indefinite pay retention.

DATE: Comments must be received on or before August 18, 1980.

ADDRESS: Send or deliver written comments to Mr. Craig B. Pettibone, Office of Pay and Benefits Policy, Compensation Group, Office of Personnel Management, P.O. Box 57, Washington, D.C. 20044.

FOR FURTHER INFORMATION CONTACT: Larry Holman (202) 632-5604.

SUPPLEMENTARY INFORMATION: Interim regulations, effective on the first day of the first applicable pay period beginning on or after January 11, 1979, were published in the **Federal Register** on March 2, 1979 (44 FR 11741-11745). The interim regulations were specific in the area of grade retention entitlement with all other extensions being determined by OPM upon agency request for an exception. The most significant mandatory extension of grade retention in the interim regulations was the addition of transfers of function outside the commuting area. Pay retention included several specific mandatory extensions with a general redelegation of authority to the agency head to grant further extensions.

As a result of comments received from agencies and labor organizations concerning these interim regulations, OPM is proposing modifications to those regulations. Because of the significance of the changes, OPM is publishing the revised regulations as proposed regulations, allowing for another period of public comment.

Generally, the comments received concerned the circumstances which should or should not warrant the mandatory extension of grade retention. Several agencies disputed the inclusion of transfers of function as a mandatory extension of grade retention. They suggested that this extension would serve as a disincentive for people to move with the function. The majority of commenters, however, supported its inclusion as a natural extension very similar to those covered by the law.

Additionally, since the publication of the interim regulations, OPM has received several requests for extending grade retention to individuals in circumstances very similar to those covered by the law. The difference of opinion regarding the inclusion of transfers of function as a grade retention extension and the exceptions requested by agencies demonstrates a problem with OPM's mandatorily extending grade retention as a Government-wide policy. Any action of this nature would work well in some circumstances and poorly in others.

We recognize that our identification of additional circumstances which might warrant grade retention might compromise the need of agency management to deal with situations in a manner that only they can determine is efficient. OPM, therefore, is proposing to revise the interim regulations to remove transfer of function as a mandatory extension and to allow agency heads to determine those circumstances (including transfers of function) in a reorganization or reclassification effort which will warrant grade retention. The proposed redelegation of this authority is particularly in keeping with the purpose of the grade and pay retention provisions of the Civil Service Reform Act. It provides management a tool to help reorganize or reclassify within its organization while lessening the normal adverse impact of these actions on its employees.

Similar to the redelegation of authority to extend grade retention and for basically the same reasons, OPM is proposing to revise the interim regulations in the area of pay retention. OPM proposes to remove some of the more minor extensions of the interim regulations and allow agency heads to determine those circumstances which warrant pay retention. The extensions which are still specified are generally those for which major commitments were made in the legislative process. The proposed regulation would only limit this authority to situations either beyond the employee's control or to further the mission of the agency.

As a result of comments received concerning the interim regulations and issues raised since their publication, OPM is also proposing the following revisions:

1. § 536.105—Employees who are being placed in another position for not satisfactorily completing the probationary period required of a new supervisor or manager would be excluded from grade and pay retention eligibility.

2. § 536.205—Would require that a reasonable offer inform the employee that any entitlement to grade or pay retention will be terminated if the offer is declined.

3. § 536.206, 536.207, and 536.208—Would establish the time period during which employees may elect to terminate eligibility for grade or pay retention entitlement prior to the beginning of the grade or pay retention period.

4. § 536.206—Circumstances in addition to those listed in the law for terminating grade retention would be added to terminate eligibility or entitlement to grade retention in situations outside those called for in the law.

5. § 536.302—The time period for filing an appeal of a termination of benefits because of the declination of a reasonable offer would be changed to 15 days after the employee has been notified that grade or pay retention benefits have been terminated.

Although no revision was involved, an issue was raised concerning the appeal of the termination of benefits because of the declination of a reasonable offer. The interim regulations provided for appeal only through the grievance

procedure of a negotiated labor-management agreement for affected employees of an exclusively recognized bargaining unit if the agreement provided for this review. OPM received comments that this appeared to be contrary to the law but, unless specifically excepted from 5 U.S.C. 7121, it is mandated by law. No change, therefore, has been made in this regulation.

OPM received comments on several other areas of the interim regulations which were designed primarily to add detail for clarification purposes. OPM intends to use several of these suggestions when preparing the guidance of Federal Personnel Manual Supplement 990–2, Book 536. The suggested changes were, in most cases, not appropriate for inclusion in regulation.

OPM is reserving a section in these regulations for dealing with merit pay and grade retention. OPM anticipates little or no need for regulation in this area. Employees under merit pay schedules will generally be considered in the same manner as employees under the General Schedule. Some minor regulation may be necessary. OPM is continuing to study the situation to identify potential problems in the area of merit pay.

OPM has determined that this is a significant regulation for the purposes of E.O. 12044.

Office of Personnel Management.

Kathryn Anderson Fetzer,

Assistant Issuance System Manager.

Accordingly, the Office of Personnel Management proposes to revise Part 536 of Title 5, Code of Federal Regulations, to read as follows:

PART 536—GRADE AND PAY RETENTION

Subpart A—Definitions; Coverage and Applicability

Sec.

Subpart B—Determination of Retained Grade and Rate of Basic Pay; Loss of, or Termination of, Eligibility

Sec.

Subpart C—Miscellaneous Provisions

Authority: 5 U.S.C. 5361–5366, Pub. L. 95–454.

Subpart A—Definitions; Coverage and Applicability

§ 536.101 General.

(a) Title VIII of Pub. L. 95–454 (The Civil Service Reform Act of 1978) provides that certain employees who are placed in a lower grade as a result of reduction-in-force procedures, or whose positions are reduced in grade as a result of reclassification of the positions, are entitled to retain for a period of 2 years the grade held immediately before that placement or reduction. It also provides the authority for granting certain employees indefinite pay retention. In addition to specifying criteria and conditions for the application of the grade and pay retention provisions, the law authorizes the Office of Personnel Management to extend the application of these provisions to other individuals and situations to which they would not otherwise apply.

(b) This part contains the regulations—including extensions, conditions, criteria, and procedures—which the Office of Personnel Management has prescribed for the administration of the grade and pay retention benefit. This part supplements and implements the provisions of 5 U.S.C. 5361–5366, and section 801(b) of Pub. L. 95–454, and must be read together with those sections of law.

§ 536.102 Definitions.

For the purposes of this part:

"Demotion at an employee's request" means a demotion:

(a) Which is initiated by the employee for his or her benefit, convenience or personal advantage, including consent to a demotion in lieu of one for personal cause, and

(b) Which is not predicated on an announced management-initiated action which, in turn, may result in a negative impact on the employee.

"Demotion for personal cause" means a demotion action based on the conduct, character, or unacceptable performance of an employee.

"Employee" means an employee as defined in 5 U.S.C. 5361 and also an individual who is moved from a position which is not under a covered pay schedule to a position which is under a covered pay schedule provided that the individual's employment immediately prior to the move was on other than a temporary or term basis.

"Employment on a temporary or term basis" means employment under an appointment having a definite time limitation or designated as temporary or term.

"Rate of basic pay" means, in addition to the definition in 5 U.S.C. 5361, the rate of pay fixed by law or administrative action for the position held by an employee before any deductions and exclusive of additional pay of any kind.

"Representative rate" means:

(a) The fourth rate of the grade in the case of a position under the General Schedule, or the single rate of GS–18;

(b) The fourth rate of the corresponding grade of the General Schedule in the case of a position under the merit pay system established by chapter 54 of title 5, United States Code;

(c) The second rate of the grade of a position under a regular prevailing rate schedule established under subchapter IV of chapter 53, United States Code, or in the case of a position with a single rate, the single rate of that position; or

(d) The rate designated as representative of the position by the agency responsible for establishing and adjusting the special schedule in the case of a position under a special prevailing rate schedule established under 5 U.S.C. 5343.

"Temporary promotion" means a promotion with a definite time limitation, and one which the individual is informed in advance is temporary and would normally require that the individual return to his or her permanent grade at the expiration of that promotion.

"Temporary reassignment" means a reassignment with a definite time limitation, and one which the individual is informed in advance is temporary and would normally require that the individual return to his or her permanent position at the expiration of that reassignment.

§ 536.103 Coverage and applicability of grade retention.

(a) Grade retention shall apply to an employee who moves to a position in a covered pay schedule which is lower graded than the position held immediately prior to the demotion in the following circumstances:

(1) As a result of reduction-in-force procedures; or

(2) As a result of a reclassification process.

(b) Except as excluded by § 536.105 of this part, the head of the agency may provide grade retention to eligible employees downgraded in circumstances similar to those set forth in paragraph (a) of this section, which, except for grade retention, have resulted in or may result in a negative impact on the affected employee as a consequence of a management-initiated action over which the employee has no control, for example, a transfer of function outside of the commuting area. The specific management-initiated action must be a part of, or a result of, a reorganization or reclassification effort which is formally announced prior to the effective date of actions which trigger entitlement to benefits under this part.

(c)(1) An employee who, immediately prior to being placed in a lower graded position as a result of reduction-in-force procedures, is in a position under a covered pay schedule, is eligible for grade retention only if the employee has served for 52 consecutive weeks or more in position(s) under a covered pay schedule at a grade(s) higher than the position to which the employee moves.

(2) An employee is eligible for grade retention when his or her position has been reclassified at a lower grade only if the position which is being reduced had been classified at a higher grade(s) for a continuous period of a leat 1 year immediately before the reduction.

(3) In situations other than those covered in paragraphs (c)(1) and (c)(2) of this section, an employee is eligible for grade retention if he or she has served in a position in any pay schedule for 52 weeks immediately prior to being placed in the lower grade, provided such service was in an agency as defined in 5 U.S.C. 5361 at a grade(s) higher than the position to which the employee moves.

§ 536.104 Coverage and applicability of pay retention.

(a) Pay retention shall apply to any employee whose rate of basic pay would otherwise be reduced:

(1) As the result of the expiration of the 2-year period of grade retention; or

(2) As a result of the reduction or elimination of scheduled rates, except those reflecting a decrease in the level of prevailing rates as determined by a wage survey, or the reduction or elimination of special schedules or special rates; or

(3) As a result of the placement in a position in a lower wage area or in a position in a different pay schedule; or

(4) As a result of the placement of the employee in a formal employee development program generally utilized Governmentwide: Upward Mobility, Apprenticeship, and Career Intern Programs.

(b) Except as excluded under § 536.105 of this part, the head of the agency may provide pay retention to eligible individuals whose rates of basic pay would otherwise be reduced as a result of management-initiated actions.

(c) An employee who is entitled to continue to receive a retained rate of basic pay under 5 U.S.C. 5337 or 5345, as provided in section 801(a)(4)(B) of Pub. L. 95–454, is entitled, at the same time, to pay retention under this section, if, as a result of an action covered under this section, that employee's rate of basic pay would be reduced, were it not for the entitlement under 5 U.S.C. 5337 or 5345.

§ 536.105 Exclusions.

(a) Grade and pay retention shall not apply to any employee who:

(1) Moves from a position which is not in an agency as defined in 5 U.S.C. 5361; or

(2) Moves from a nonappropriated fund position, if the individual is not already covered by law; or

(3) Is reduced in grade or pay for personal cause or at the employee's request; or

(4) Does not satisfactorily complete the probationary period prescribed by 5 U.S.C. 3321(a)(2), and, as a result, is moved out of his or her supervisory or managerial position.

(b) An employee serving under a temporary promotion or temporary reassignment may not retain a grade or rate of basic pay held during the temporary promotion or temporary reassignment. However, an employee's entitlement to grade or pay retention will not be affected as a result of a temporary promotion or temporary reassignment.

Subpart B—Determination of Retained Grade and Rate of Basic Pay; Loss of, or Termination of, Eligibility

§ 536.201 Period of grade retention.

(a) An employee entitled to grade retention is entitled to retain that grade for 2 years beginning on the date the employee is placed in the lower graded position.

(b) If, during a 2-year period of grade retention, an employee is further reduced in grade under circumstances also entitling the employee to grade retention, the employee shall continue to retain the previous retained grade for the remainder of the previous 2-year retention period. At the end of that period, the employee shall be entitled to retain the grade of the position from which the further reduction in grade was made, until 2 years have passed from the date of the further reduction in grade.

§ 536.202 Determination of retained grade.

(a) For the purpose of determining whether the grade of a position is equal to, higher than, or lower than the grade of another position in movements between pay schedules, the representative rates of the positions will be compared.

(b) An employee who is in a position under a covered pay schedule immediately prior to the action which entitles him or her to grade retention shall retain the grade held immediately prior to that action.

(c) An employee who is in a position not under a covered pay schedule immediately prior to the action which entitles him or her to grade retention shall retain:

(1) The lowest grade of the covered pay schedule in which placed which has a representative rate equal to or higher than the representative rate, as designated by the agency, of the grade held immediately prior to that placement; or

(2) The highest grade of the covered pay schedule in which placed, if there is no grade in the covered pay schedule with a representative rate equal to or higher than the representative rate held immediately prior to that placement.

§ 536.203 Determination of applicable pay schedule.

(a) When an employee entitled to grade retention is placed in a different geographical area, the pay schedule which applies to the employee is the schedule in the new geographical area.

(b) When an employee entitled to grade retention is placed in, or his or he position is changed to, a different occupational series, the pay schedule which applies to the individual is the pay schedule for the new occupational series.

§ 536.204 Determination of rate of basic pay.

(a) When an employee becomes entitled to grade retention, or moves to another position during a period of grade retention and continues the grade retention entitlement, the employee is entitled to the greater of:

(1) His or her rate of basic pay before the movement, or

(2) The rate of basic pay from the applicable pay schedule for the grade

and step held by the employee before the movement, or

(3) The lowest rate of basic pay from the applicable pay schedule for the retained grade which equals or exceeds the employee's rate of basic pay before the movement.

(b)(1) When an employee becomes entitled to pay retention, or moves to another position while receiving pay retention, the employee's current rate of basic pay shall be compared with the range of rates of basic pay for the new grade.

(2) The employee is entitled to the lowest rate of basic pay in the new grade which equals or exceeds his or her current rate of basic pay. If the current rate of basic pay can be accommodated in the rate range of the new grade, pay retention does not apply.

(3) If the employee's current rate of basic pay, when he or she becomes entitled to pay retention, exceeds the maximum rate of the new grade, the employee is entitled to the lower of:

(i) The rate of basic pay payable to the employee immediately before the reduction in pay; or

(ii) 150 percent of the maximum rate of basic pay payable for the new grade.

(c) When, as a result of an increase in the scheduled rates(s) of the grade of the employee's position, an employee's retained rate of basic pay becomes equal to or lower than the maximum rate of that grade, the employee is entitled to the lowest rate of the grade of his or her position which is equal to or higher than the retained rate and pay retention ceases.

(d) An employee who is serving on a temporary promotion at the time he or she becomes eligible for pay retention is entitled to retain the rate of basic pay which he or she would have been receiving at that time had the temporary promotion not occurred.

(e) When an employee's entitlement to grade or pay retention terminates, the employee's rate of basic pay may be set at any rate of his or her grade in accordance with the provisions of Subpart B, Part 531 of this title and Federal Personnel Manual Supplement 532–1 unless:

(1) Grade retention is being terminated as a result of the expiration of the 2-year retention period; or

(2) The employee is moved to a grade equal to or greater than the retained grade; or

(3) The employee is entitled to a rate of basic pay under paragraphs (b) or (c) of this section.

§ 536.205 Criteria for a "reasonable offer".

For the purposes of this part, an offer of a position, in order to be considered a reasonable one, must fulfill, as a minimum, the following conditions:

(a) The offer must be in writing, must include an official position description of the offered position, and must inform the individual that any entitlement to grade or pay retention will be terminated if the offer is declined; and

(b) The offered position must be of tenure equal to or greater than that of the position from which the employee is coming and one for which the employee meets the established qualification requirements; and

(c) The offered position must be in an agency, as defined in 5 U.S.C. 5361, although not necessarily in the same agency in which the employee is serving at the time of the offer; and

(d) The offered position must be full-time, unless the employee's position immediately before the change creating entitlement to grade or pay retention was less than full-time, in which case the offered position must have a work schedule of no less time than the position held before the change; and

(e) The offered position must be in the same commuting area as the employee's position immediately before the offer, unless the employee is subject to a mobility agreement or a published agency policy which requires employee mobility.

§ 536.206 Loss of eligibility for grade retention.

(a) Eligibility for grade retention as a result of entitlement under § 536.103(a) of this part ceases if any of the following conditions occurs at any time after the employee receives official notice of the downgrading action, but before the commencement of the 2-year period of grade retention:

(1) The employee has a break in service of one workday or more; or

(2) The employee is demoted for personal cause or at the employee's request; or

(3) The employee is placed in, or declines a reasonable offer of, a position the grade of which is equal to or higher than the retained grade; or

(4) The employee elects in writing to have the benefits of grade retention terminate.

(b) Eligibility for grade retention as a result of entitlement under § 536.103(b) of this part ceases if any of the following conditions occurs at any time after the employees is made aware by management of an impending management action which will or could result in downgrading, but before the commencement of the 2-year period of grade retention:

(1) Any of the conditions listed in paragraph (a) of this section; or

(2) The employee refuses to enroll in a program providing priority consideration for placement.

§ 536.207 Termination of grade retention.

(a) Grade retention terminates if any of the conditions listed in § 536.206(a) occurs after commencement of the 2-year period of grade retention.

(b) Grade retention as provided by § 536.103(b) also terminates if any of the conditions listed in § 536.206(b) occur after the commencement of the 2-year period of grade retention.

(c) The effective date of termination of grade retention benefits is:

(1) The date before placement if the termination is the result of the employee's placement in another position; or

(2) At the end of the last day of the pay period in which the employee:

(i) Declines a reasonable offer; or

(ii) Elects to waive grade retention benefits; or

(iii) Refuses to enroll in a program providing priority consideration for placement.

§ 536.208 Loss of eligibility for, or termination of, pay retention.

(a) Eligibility for pay retention, or actual retention of pay, ceases if any of the following conditions occurs at any time after the employee has received written notification that his or her pay is to be reduced:

(1) The employee has a break in service of one workday or more; or

(2) The employee is entitled to a rate of basic pay which is equal to or higher than, or declines a reasonable offer of a position the rate of basic pay for which is equal to or higher than, the rate to which the employee is entitled under pay retention; or

(3) The employee is demoted for personal cause or at the employee's request.

(b) The effective date of termination of pay retention benefits is:

(1) The date before placement if the termination is the result of the employee's placement in another position; or

(2) The end of the last day of the pay period in which the employee declines a reasonable offer.

Subpart C—Miscellaneous Provisions

§ 536.301 Grade and pay retention under the Merit Pay System [Reserved].

§ 536.302 Appeal of termination of benefits because of reasonable offer.

(a) Except as provided for in paragraph (e) of this section, an employee whose grade or pay retention benefits are terminated on the grounds the employee declined a reasonable offer of a position the grade or pay of which is equal to or greater than his or her retained grade or pay may appeal the termination to the Office of Personnel Management.

(b) An employee who appeals under this section shall file the appeal in writing with the Office of Personnel Management not later than 15 calendar days after being notified that his or her grade or pay retention benefits have been terminated, and shall state in the appeal the reasons why the employee believes the offer of a position was not a reasonable offer.

(c) The Office of Personnel Management may conduct any investigation or hearing it determines necessary to ascertain the facts of the case.

(d) If a decision by the Office of Personnel Management on an appeal under this section requires corrective action by an agency, including the retroactive or prospective restoration of grade or pay retention benefits, the agency shall take that corrective action.

(e) Termination of benefits based on a declination of a reasonable offer by an employee in an exclusively recognized bargaining unit may be reviewed under negotiated grievance and arbitration procedures in accordance with chapter 71 of title 5, United States Code, and the terms of any applicable collective bargaining agreement. An employee in an exclusively recognized bargaining unit may not appeal a termination of benefits to the Office of Personnel Management if the grievance procedure of the agreement by which he or she is covered provides for such review.

(f) Decisions issued by the Office of Personnel Management shall be considered final decisions. OPM may, at its discretion, reconsider an original appellate decision when information is presented, in writing, by the employee or the agency, which establishes a reasonable doubt as to the appropriateness of the original decision. A request for reconsideration of an original appeal decision must be submitted to OPM within 30 calendar days of the date of the original decision.

§ 536.303 Documentation.

The application of the provisions of this part shall be documented in writing as a permanent part of the employee's Official Personnel Folder. The documentation shall include a complete description of the circumstances warranting grade or pay retention.

§ 536.304 Issuance of employee letters.

When an employee is entitled to grade and/or pay retention, the employing agency shall give to the employee, with a copy of the Notification of Personnel Action (SF–50) documenting entitlement to grade and/or pay retention, a letter explaining the action and the nature of the grade or pay retention entitlement.

§ 536.305 Effect of grade retention on quota spaces.

For the purpose of determining the number of positions at GS–16, –17 and –18, or the equivalent, including positions in the Senior Executive Service, authorized by an Act of Congress, the grades (or SES levels) of the positions occupied, rather than the retained grades, are to be used.

§ 536.306 Retroactive entitlement.

Employees who are eligible for grade retention as provided by § 536.103(a) except that the reduction in grade took place on or after January 1, 1977, and before the first day of the first pay period beginning on or after January 11, 1979, shall be entitled to pay and benefits as provided in section 801(b) of the Civil Service Reform Act of 1978 under procedures and instructions issued by the Office of Personnel Management.

[FR Doc. 80-18315 Filed 6-16-80; 8:45 am]

BILLING CODE 6325-01-M

CIVIL AERONAUTICS BOARD

14 CFR Part 399

[Policy Statements Docket 37982; PSDR-66A]

Domestic Passenger Fare Flexibility

Dated: June 11, 1980.

AGENCY: Civil Aeronautics Board.

ACTION: Supplemental notice of proposed rulemaking.

SUMMARY: In PS–94, also adopted today, the CAB announced an interim policy of broadened flexibility for airlines to set domestic passenger fares. This issuance requests comments on that subject, in response to a Motion for Reconsideration filed by 11 U.S. Senators.

DATES: Comments by: July 17, 1980; Reply comments by: August 1, 1980.

Comments and other relevant information received after these dates will be considered by the Board only to the extent practicable.

ADDRESSES: Twenty copies of comments should sent to Docket 37982, Civil Aeronautics Board, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428. Individuals may submit their views as consumers without filing multiple copies. Copies may be examined in Room 711, Civil Aeronautics Board, 1825 Connecticut Avenue, N.W., Washington, D.C. as soon as they are received.

FOR FURTHER INFORMATION CONTACT: Julien R. Schrenk, Chief, Domestic Fares and Rates Division, Bureau of Domestic Aviation, Civil Aeronautics Board, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428; 202–673–5298.

SUPPLEMENTARY INFORMATION: For the reasons set forth in PS–94, also adopted today, the Board will reconsider the interim policy on domestic passenger fares that is announced in that issuance.

Accordingly, the Board requests comments on the interim policy set forth in PS–94.

By the Civil Aeronautics Board.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 80-18195 Filed 6-16-80; 8:45 am]

BILLING CODE 6320-01-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

14 CFR Part 1252

Nondiscrimination on the Basis of Age in Programs and Activities Receiving Federal Financial Asssitance

AGENCY: National Aeronautics and Space Administration.

ACTION: Proposed regulations

SUMMARY: The National Aeronautics and Space Administration (NASA) proposed specific regulations to carry out its responsibilities under the Age Discrimination Act of 1975, 42 U.S.C. 6101 et seq, and the government-wide regulations published in the **Federal Register** June 12, 1979, 44 FR 33768 (1979). The Age Discrimination Act prohibits discrimination on the basis of age in programs and activities receiving Federal financial assistance. The Act contains exceptions which permit, under certain circumstances, continued use of age distinctions or factors other than age that may have adisproportionate effect on a particular age group. The Act excludes from its coverage most employment practices except for