13. It is further ordered, that the NAB petition (RM-2667) IS GRANTED to the extent consistent herewith, and is otherwise denied. It is further ordered, that the proposal of CPB and PBS to make the 6425-6525 MHz band available for fixed BAS use (STL and intercity relay) is denied, and that the proposal by M/A-Com and NCTA to make this frequency available for cars is dismissed without prejudice. It is further ordered, that this proceeding is terminated.

14. Contact Maureen Cesaitis at (202) 653-8164 regarding questions on matters covered in this document.

(Secs. 4, 303, 307, 48 Stat., as amended, 1066, 1082, 1083; 47 U.S.C. 154, 303, 307)

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix A

Comments

National Association of Broadcasters (NAB)
CBS, Inc. (CBS)
American Broadcasting Companies, Inc. (ABC)
National Broadcasting Company, Inc. (NBC)
Broadcast News Service, Inc. (BNSI)
Corporation for Public Broadcasting (CPB)
Boston Broadcasters, Inc. (BBI)
M/A-Com, Inc. (M/A-Com)
National Cable Television Association, Inc. (NCTA)
American Telephone and Telegraph Company (AT&T)
Midwestern Relay Company (Midwestern)

Replies

National Association of Broadcasters
American Broadcasting Companies, Inc.
American Telephone and Telegraph Company

Appendix B

Parts 2, 21 and 74 of Chapter I of Title 47 of the Code of Federal Regulations are amended as follows:

PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS GENERAL RULES AND REGULATIONS

In § 2.106, the Table of Frequency Allocations is amended by adding new footnote designator NG122 in column 7 to the band 6425-6525 MHz and by adding the text of footnote NG122, in proper numerical sequence, following the Table, as shown below:

§ 2.106 Table of frequency allocations.

FEDERAL COMMUNICATIONS COMMISSION

7	8	9	10	-11
Band (MHz)	Service	Class of station	Frequency	Nature of service of station
*	*	* * *	*	*
6425-6525 (NG122).	MOBILE....................	Common Carrier Land, Common Carrier Mobile * *.		
*	*	* * *	*	*

NG122 Television Pickup stations may be authorized in the 6425-6525 MHz band on a secondary basis to stations operating in accordance with the Table of Frequency Allocations.

PART 21—DOMESTIC PUBLIC FIXED RADIO SERVICE (OTHER THAN MARITIME MOBILE)

The § 21.801 is amended by adding footnote 6 to paragraph (a) as follows:

§ 21.801 Frequencies.

(a) Frequencies in the following bands are available for assignment to television pickup and television non-broadcast pickup stations in this service:

6425-6525 MHz[6]
11,700-12,200 MHz[3]
13,200-13,250 MHz[1]
21,200-22,000 MHz[1 2 4 5]
22,000-23,600 MHz[1 2 5]

* * * * *

[6] This frequency band is shared with television pickup stations licensed under Part 74 of the Commission's Rules. However, Part 74 licensees are secondary to Part 21 licensees in this band (see § 2.105(e)(3) for definition of "Primary" and "Secondary")

PART 74—EXPERIMENTAL, AUXILIARY, AND SPECIAL BROADCAST, AND OTHER PROGRAM DISTRIBUTION SERVICE

In § 74.602, paragraph (a) is amended by adding four new channels to "B" the column entitled "Band B", and by adding footnote 3, as follows:

§ 74.602 Frequency assignment.

(a) * * *

Band B MHz
6425-6450[3]
6450-6475[3]
6475-6500[3]
6500-6525[3]
6875-6900
6900-6925
6925-6950
6950-6975
6975-7000
7000-7025
7025-7050
7075-7100

[3] This frequency may be assigned to television pickup stations only and on a secondary basis to the Local Television Transmission Service licensed under Part 21 of the Commission's rules.

[FR Doc. 82-395 Filed 1-7-82; 8:45 am]

BILLING CODE 6712-01-M

Proposed Rules

Federal Register
Vol. 47, No. 5
Friday, January 8, 1982

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 352

Reemployment Rights After Service With the Panama Canal Commission

AGENCY: Office of Personnel Management.

ACTION: Proposed rulemaking.

SUMMARY: Pursuant to the Panama Canal Act of 1979, the Office of Personnel Management is proposing regulations to provide reemployment rights for Federal employees who are detailed or transferred to the Panama Canal Commission in the Republic of Panama. These regulations are intended to define the scope of the reemployment rights and to prescribe conditions under which they may be exercised.

DATE: Written comments will be considered if received no later than March 9, 1982.

ADDRESS: Send or deliver written comments to Chief, Office of Policy Analysis and Development, Staffing Services, Office of Personnel Management, Room 6526, 1900 E Street, NW., Washington, D.C. 20415

FOR FURTHER INFORMATION CONTACT: Leota Shelkey, 202-632-6817.

SUPPLEMENTARY INFORMATION: Highlights of the proposed regulations are:

- Detail or transfer to the Commission with reemployment rights may not exceed five years unless approved by the agency and Commission.
- The Commission may separate an employee at the conclusion of the agreed upon term of employment without regard to grievance rights or procedures for reduction in force, adverse action, or action based on unacceptable performance.
- Employees must apply for reemployment within 30 days before the term of employment with the Commission ends or within 30 days after receiving notice of involuntary separation, or may apply at any time with the consent of the Commission.
- The former agency must reemploy promptly but no later than 30 days after receipt of application or on termination of the tour of duty with the Commission, whichever is later.
- Reemployment rights terminate if the person fails to apply within the time limits, resigns without the Commission's consent, or refuses a proper offer of reemployment.
- An applicant may appeal to the Merit Systems Protection Board if denied reemployment. An employee may appeal to the Board or file a grievance if he or she believes that the reemployment or return from detail was not proper.

These regulations will be supplemented by further guidance developed by the Office of Personnel Management and issued through the Federal Personnel Manual. The Panama Canal Commission is responsible for issuing regulations which govern employment with the Commission.

E.O. 12291 Federal Regulation

OPM has determined that this is not a major rule for the purpose of E.O. 12291, Federal Regulation, because it will not result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities, including small business, small organizational units and small governmental jurisdictions.

Office of Personnel Management.
Donald J. Devine,
Director.

Accordingly, the Office of Personnel Management proposes to add Subpart I to Part 352, Title 5, Code of Federal Regulations, to read as follows:

PART 352—REEMPLOYMENT RIGHTS

* * * * *

Subpart I—Reemployment Rights After Service with the Panama Canal Commission

Sec.
352.901 Purpose.
352.902 Definitions.
352.903 Coverage.
352.904 Effecting a detail or transfer.
352.905 Eligibility.
352.906 Personnel actions.
352.907 Termination of detail or transfer.
352.908 Exercise or termination of reemployment rights.
352.909 Agency obligation.
352.910 Appeals.

Authority: Section 1203 of the Panama Canal Act of 1979 (Pub. L. 96-70, 22 U.S.C. 3643).

Subpart I—Reemployment Rights After Service With the Panama Canal Commission

§ 352.901 Purpose.

This subpart implements section 1203 of the Panama Canal Act of 1979 which provides for the detail or transfer of Federal employees to the Panama Canal Commission with reemployment rights in the former agency.

§ 352.902 Definitions.

In this subpart:

"Act" means the Panama Canal Act of 1979 (22 U.S.C. 3601 et seq.);

"Agency" means an Executive agency, the United States Postal Service, and the Smithsonian Institution;

"Commission" means the Panama Canal Commission as established by section 1101 of the Act;

"Competitive area" is defined in § 351.402 of Part 351 of this chapter;

"Competitive level" is defined in § 351.403(a) of Part 351 of this chapter;

"Detail" is the assignment or loan of an employee to the Commission without the employee's transfer. The employee remains an employee of the agency and the incumbent of the position from which detailed;

"Term of employment" means the period of employment with the Commission specified at time of consent to a transfer or extension of transfer; and

"Transfer" means the change in appointment of an employee from an agency to a new appointment with the Commission.

§ 352.903 Coverage.

This subpart covers only those employees transferred or detailed to Commission positions with duty stations in the Republic of Panama.

§ 352.904 Effecting a detail or transfer.

(a) *Authority to approve.* The head of an agency may enter into written agreements for the detail or voluntary transfer of employees to the Commission with the rights provided for in, and in accordance with, section 3643 of title 22, United States Code, and this subpart. Refusal by the head of the agency to agree to a detail or transfer or extension of detail or transfer is not reviewable by the Office of Personnel Management or appealable.

(b) *Maximum period.* A detail, transfer, and extension of detail or transfer with reemployment rights shall be for set periods of time. A detail, transfer, or series of details and/or transfers with reemployment rights may not exceed five years in the aggregate unless approved by both the agency head and the Commission Administrator.

§ 352.905 Eligibility.

(a) *Employees eligible.* Except as provided in paragraph (b) of this section, an employee serving in a position in an agency under one of the following types of appointment may be granted rights under this subpart:

(1) An appointment with career or career-conditional tenure in the competitive service;

(2) An appointment without a specific time limit in the excepted service; or

(3) A career appointment in the Senior Executive Service.

(b) *Employees not eligible.* The following employees are not eligible under this subpart:

(1) An employee who is serving a trial period or probationary period for initial appointment to the competitive service or Senior Executive Service;

(2) An employee who has received a proposed notice of involuntary separation (e.g. based on reduction in force, adverse action, or performance).

(3) An employee who is serving in a position excepted from the competitive service under Schedule C of Part 213 of this chapter, in a position authorized to be filled by noncareer executive assignment under Part 305 of this chapter, or under Presidential appointment; or

(4) An employee whose resignation has been accepted for reasons other than to accept employment with the Commission.

§ 352.906 Personnel actions.

(a) An agency shall consider each employee detailed or transferred to the Commission for all promotions for which he or she would be considered if not absent. A promotion of a transferred employee based on this consideration is subject to reemployment of the employee.

(b) An employee detailed to the Commission is subject to the same conditions of employment at his or her employing agency as if he or she had not been detailed.

(c) A position to which promoted or assigned under this section is to be considered the employee's last or former position for purposes of § 352.909.

§ 352.907 Termination of detail or transfer.

(a) The Commission and the employing agency shall arrange for the termination of a detail and the return of the employee without a break in service of one workday or more to his or her former position or an equivalent one as provided in § 352.909(b).

(b) At the conclusion of a term of employment agreed upon as provided in § 352.904, employment with the Commission may be terminated without regard to Parts 351, 432, 752, or 771 of this chapter.

§ 352.908 Exercise or termination of reemployment rights.

(a) *Exercise.* An individual who has been transferred under this subpart to the Commission and wishes to be reemployed must apply in writing to the former employing agency. The time limits for application for reemployment are:

(1) Within 30 calendar days before the expiration of the term of employment with the Commission;

(2) Within 30 calendar days after receipt of notice of involuntary separation; or

(3) At any time before the expiration of the term of employment with the Commission with the written consent of the Commission.

(b) *Termination.* Reemployment rights terminate if the individual:

(1) Fails to apply within the time limits stated in paragraph (a) of this section;

(2) Resigns without the written consent of the Commission; or

(3) Within 10 calendar days, fails to accept an offer of reemployment made under § 352.909 which is determined to be a proper offer of reemployment by the reemploying agency or by the Merit Systems Protection Board on appeal.

§ 352.909 Agency obligation.

(a) *Time limits.* An employee is to be reemployed by the reemploying agency as promptly as possible, but not later than 30 calendar days after receipt of his or her application or on termination of the term of employment with the Commission, whichever is later.

(b) *Conditions.* An employee shall be reemployed in or returned from detail to his or her former position or an equivalent one in the same agency but without loss of pay, seniority, or other rights or benefits to which the employee would have been entitled had he or she not been transferred or detailed. An employee in the Senior Executive Service shall be reemployed or returned at not less than the pay level at which the employee was being paid immediately prior to the transfer or detail. An employee who is reemployed is not eligible for grade or pay retention under Part 536 of this chapter based on a grade or rate of pay attained while employed by the Commission. If the function with which the employee's former position was identified has been transferred, the employee's right is in the gaining agency or activity.

(c) *Reemployment in a different position.*

(1) When an employee's right is to a position in the Senior Executive Service, reemployment or return may be to any position in the Senior Executive Service in the former agency for which the employee is qualified. For other employees, reemployment or return must be to a position at the same grade or level and in the same competitive area as the position last held in the former agency except if the former position has been transferred to another agency or activity. If the reemployment would cause the separation or demotion of another employee, the applicant should then be considered an employee for the purpose of applying the reduction-in-force regulations to determine to what, if any, position the employee is entitled.

(2) If the employee is not placed under paragraph (c)(1) of this section, the agency must extend consideration beyond the competitive area. Responsibility for reemploying an employee is agency wide.

(d) *Higher grade.* An employee may be reemployed at a higher grade than that to which entitled if all appropriate standards and requirements are satisfied and this will not cause the displacement of another employee.

(e) *Agency refusal to reemploy.* An agency may refuse to reemploy under this section only when the employee was separated from the Commission for

serious cause evidencing unsuitability for reemployment.

§ 352.910 Appeals.

(a) If an agency denies reemployment to an applicant who claims reemployment rights under this subpart, the agency shall notify the person of that denial, and the reasons therefor, by a written notice. In the same notice, the agency shall inform the applicant of the right to appeal to the Merit Systems Protection Board under the provisions of the Board's regulations. The agency shall comply with the provisions of § 1201.21 of this title.

(b)(1) When an agency has reemployed or returned an employee, it shall advise the employee of the right of appeal if he or she considers the reemployment or return not to be in accordance with the Act and this subpart.

(2) An employee in a bargaining unit covered by a negotiated grievance procedure that does not exclude this matter must use the negotiated grievance procedure.

(3) An employee to whom paragraph (b)(2) does not apply is entitled to appeal to the Merit Systems Protection Board under the provisions of the Board's regulations. The agency shall comply with the provisions of § 1201.21 of this title.

[FR Doc. 82-459 Filed 1-7-82; 8:45 am]

BILLING CODE 6325-01-M

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5 CFR Parts 550 and 610

Pay Administration (General) and Hours of Duty

AGENCY: Office of Personnel Management.

ACTION: Proposed rule.

SUMMARY: The Office of Personnel Management proposes to revise the regulations pertaining to an agency's responsibility to establish regularly scheduled workweeks for its employees and the regulations pertaining to an employee's entitlement to premium pay for regularly scheduled work at night, on Sunday, or on a holiday, or for overtime work outside his or her regularly scheduled basic workweek. Over the years, the Comptroller General and the courts have greatly expanded the original meaning of the term "regularly scheduled" as it is used in the regulations. The proposed revision will clarify the definition of the term "regularly scheduled" and will clarify the relationship originally intended between an agency's requirement to establish workweeks for its employees and an employee's entitlement to premium pay for that work.

DATE: Comments must be submitted on or before March 9, 1982.

ADDRESSES: Comments may be mailed to Craig B. Pettibone, Director, Office of Pay and Benefits Policy, P.O. Box 57, Compensation Group, Office of Personnel Management, Washington, D.C. 20044, or delivered to Room 4351, Office of Personnel Management, 1900 E Street, N.W., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Dwight W. Brown, 202-632-4634.

SUPPLEMENTARY INFORMATION: The terms "regularly scheduled" and "irregular or occasional" are used repeatedly throughout the premium pay provisions in Subchapter V of Chapter 55 of Title 5, United States Code, and the hours of work provisions of Chapter 61 of Title 5, United States Code.

Legislative History

The terms "regularly scheduled" and "irregular or occasional" have their origin in the Federal Employees Pay Act of 1945. In the Act, Congress intended to—

(1) Establish a 40-hour workweek for full-time employees;

(2) Provide basic pay for a 40-hour workweek; and

(3) Provide premium pay for overtime work (work in excess of 40 hours) and premium pay for work at night or on a holiday.

The Act required Federal agencies to establish regular workweeks for their employees. It included requirements that an agency establish an administrative workweek of 7 days for pay administration purposes, a basic workweek of 40 hours for full-time employees, and a regularly scheduled administrative workweek that included the basic 40-hour workweek plus regularly scheduled overtime work, if such work were required.

The Act established the following pay entitlements for employees:

(1) Basic pay for their basic 40-hour workweek.

(2) Night pay for regularly scheduled nightwork.

(3) Holiday pay for work on a holiday.

(4) Overtime pay for work performed outside their basic 40-hour workweek.

(5) Compensatory time off, in lieu of overtime pay, for irregular or occasional overtime work under certain conditions.

In addition, the Act established the method for computing an hourly basic rate of pay (per annum salary divided by 2080 hours), established biweekly pay periods of two administrative workweeks, and established 26 pay periods per year.

The Federal Employees Pay Act of 1945 was amended in 1946, 1954, and 1966. The amendments provided for annual premium pay for regularly scheduled standby duty; annual premium pay for administratively uncontrollable work (irregular, unscheduled overtime work); overtime pay for time spent traveling during regularly scheduled overtime hours or under other specific conditions; call-back overtime pay for unscheduled overtime work; and Sunday pay for regularly scheduled work on Sunday.

In 1966 the provisions were codified in Title 5, United States Code. The basic pay provisions are contained in chapter 53, the premium pay provisons are contained in subchapter V of chapter 55, and the hours of work provisions are contained in chapter 61.

Problem

The Federal Employees Pay Act of 1945 provided the basis for the relationship between the hours of work and premium pay provisions currently contained in chapters 61 and 55 of title 5, United States Code. Amendments to the Act, passed by Congress in 1946, 1954, and 1966, clarify this relationship. However, in the statutes themselves and in their respective legislative histories, there was no express definition of the term "regularly scheduled."

As a result, the Comptroller General, through a number of decisions over a span of 30 years, has improvised a definition of the term "regularly scheduled" that gives effect to the following assumptions:

(1) The word "regular" in the term "regularly scheduled" connotes work that is recurring, pattern-like, or uniform in nature.

(2) For entitlement to night pay, it must be the work, and not the employee, that is regularly scheduled.

The courts, when faced with the problem of defining the phrase "regularly scheduled," have rendered conflicting decisions in cases where the facts and circumstances have been almost identical. The common thread in these decisions, however, has been equitable pay treatment for affected employees.

In 1979, the Comptroller General issued a decision involving payment of night pay for nightwork performed during overtime hours. This decision recapitulates all the decisions by the Comptroller General and the courts concerning this issue over the past 30 years.

It outlines three conditions under which night pay is due for nightwork during overtime hours:

(1) When employees perform overtime work during a scheduled night shift, not necessarily their own tour of duty.

(2) When employees habitually and recurrently perform overtime work at night due to the inherent nature of their employment.

(3) When the overtime work is considered "regularly scheduled" work—that is, the work is "duly authorized in advance (at least 1 day) and scheduled to recur on successive days or after specified intervals."

This decision reiterates the meaning of the term "regularly scheduled" as defined by the Comptroller General and the courts. Further, it reiterates the assumption that it is the work and not the employee that must be regularly scheduled for night pay entitlement.

Because the term "regularly scheduled" has been given various interpretations over a period of years, agencies are unsure how to handle the hours of work and the premium pay of their employees. As a result, premium pay entitlements have been extended to employees in situations not originally intended by Congress. On the other hand, it is conceivable that some employees have not been receiving premium payments to which they have been entitled.

Solution

Early in 1980, OPM conducted a study of the meaning of the term "regularly scheduled" and its relationship to premium pay administration. The study analyzed the decisions of the Comptroller General and the courts; reviewed Congressional intent as evidenced in the Federal Employees Pay Act of 1945, the amendments of 1946, 1954, and 1966, and their legislative histories; and reviewed the executive files for Civil Service Commission (now OPM) regulations from 1954 through the present.

The study found that the intended meaning of the term "regularly scheduled" is implicit in the use of this term, and related terms, in the Federal Employees Pay Act of 1945, as amended, and implementing Civil Service Commission regulations. Further, it found that the term "regularly scheduled" was intended to encompass the concept of the relationship between—

(1) An agency's responsibility to establish workweeks for its employees in accordance with standardized procedures specified in chapter 61 of title 5, United States Code, and Part 610 of Title 5, Code of Federal Regulations; and

(2) An employee's entitlement to premium pay for such work under subchapter V of chapter 55 of title 5, United States Code, and Part 550 of Title 5, Code of Federal Regulations.

The study concluded that the word "regular" in the term "regularly scheduled" means "according to standardized procedures," and not necessarily that the employee performed the work on a recurring or pattern-like basis.

Thus, the study proposed that the term "regularly scheduled" be clarified to mean:

(1) Scheduled in advance of and to include at least one administrative workweek, and

(2) Scheduled in accordance with an agency's procedures as required by chapter 61 of title 5, United States Code.

The study also proposed clarifying definitions for the phrases "regularly scheduled administrative workweek" and "irregular or occasional overtime work."

In addition, the study proposed that OPM promulgate a regulation to require an agency to schedule its employees to meet the work requirements of the agency. This would require an agency to change the regularly scheduled administrative workweek of its employees if the work requirements would be different in an ensuing administrative workweek.

OPM submitted the study to the Comptroller General for review and discussion between our respective staffs. OPM proposed that the meaning of the term "regularly scheduled," and related terms, as defined by the study be promulgated in OPM regulations. The Comptroller General in his reply to OPM (B-201039, March 16, 1981) indicated that he had no objection to OPM's proposal to issue such regulations.

Proposed Regulations

Accordingly, OPM proposes to issue regulations—

(1) To clarify the meaning of the term "regularly scheduled," and

(2) To clarify the relationship between an agency's responsibility to establish workweeks under chapter 61 of title 5, United States Code, and an employee's entitlement to premium pay for that work under subchapter V of chapter 55 of title 5, United States Code.

In the process, OPM proposes to clarify the definitions of the terms "regularly scheduled administrative workweek," "tour of duty," "regular overtime work," and "irregular or occasional overtime work." OPM also proposes to add definitions for "nightwork" and "holiday work."

In accordance with the recommendation of the study and the Comptroller General's comments, OPM is proposing to issue regulations to require an agency to schedule its employees to meet recognized work needs. If an agency fails to schedule its employees in a manner that realistically reflects the agency's actual work requirements, the failure to schedule will constitute a violation of regulations warranting payment of premium pay for "regularly scheduled" work.

Summary

The scheduling structure outlined in chapter 61 of title 5, United States Code, constitutes the framework by which an employee's premium pay entitlements are to be determined under subchapter V of chapter 55 of title 5, United States Code. OPM's authority to regulate is contained in sections 6101 and 5548 of the respective chapters.

Thus, agency established workweeks have a direct effect on an employee's pay entitlements:

(1) An employee is entitled to basic pay for work performed during his or her basic 40-hour workweek.

(2) If an employee's basic workweek includes work on Sunday or a holiday, he or she is entitled to premium pay for Sunday work or holiday work, respectively.

(3) If an employee performs work outside the basic 40-hour workweek, he or she is entitled to premium pay for overtime work.

(4) If an employee's regularly scheduled administrative workweek (including regularly scheduled overtime hours) includes nightwork, he or she is entitled to premium pay for such work at night. However, an employee who performs overtime work during night hours on an irregular basis is not entitled to night pay for such work, even if the employee performs it during a night shift for other employees.

(5) For an employee in receipt of AUO pay, all overtime work scheduled in advance of the administrative workweek is "regularly scheduled" overtime work for which the employee is entitled to overtime pay at time and one-half of his or her basic rate of pay. All other overtime work performed during the workweek is irregular overtime work and is paid for by receipt of AUO pay.

We believe the proposed definitions of the term "regularly scheduled," and related terms, will clarify the relationship between the scheduling structure and the premium pay structure contained in title 5, United States Code. This, in turn, will ensure that an employee receives proper premium payments for scheduled work and, thereby, preserve equitable pay

treatment for all employees. We also believe this will improve understanding of the premium pay structure by managers and employees.

This regulatory proposal is one of several actions being taken by OPM to improve Federal policy on premium pay.

E.O. 12291, Federal Regulation

OPM has determined that this is not a major rule for the purposes of E.O. 12291, Federal Regulation, because it will not result in—

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Regulatory Flexibility Act

The Director, Office of Personnel Management, certifies that this regulation will not have a significant economic impact on a substantial number of small entities, including small businesses, small organizational units and small governmental jurisdictions.

Office of Personnel Management.

Donald J. Devine,

Director.

Accordingly, OPM proposes to amend Parts 550 and 610 of Title 5 of the Code of Federal Regulations as follows:

PART 550—PAY ADMINISTRATION (GENERAL)

1. Section 550.103 is amended by revising paragraphs (e), (f), (g), (k), and (n), and adding paragraphs (p) and (q) to read as follows:

§ 550.103 Definitions.

* * * * *

(e) "Nightwork" has the meaning given that term in § 550.121, and includes any nightwork performed by an employee as part of his or her regularly scheduled administrative workweek.

(f) "Irregular or occasional overtime work" means overtime work that is not part of an employee's regularly scheduled administrative workweek.

(g) "Regular overtime work" means overtime work that is part of an employee's regularly scheduled administrative workweek.

* * * * *

(k) "Tour of duty" means the hours of a day (a daily tour of duty) and the days of an administrative workweek (a weekly tour of duty) that constitute an employee's regularly scheduled administrative workweek.

* * * * *

(n) "Regularly scheduled administrative workweek," for full-time employees, means the period within an administrative workweek, established in accordance with § 610.111 of this chapter, within which these employees are regularly scheduled to work. For part-time employees, it means the officially prescribed days and hours within an administrative workweek during which these employees are regularly scheduled to work.

* * * * *

(p) "Regularly scheduled" work means work that is scheduled in advance of an administrative workweek under an agency's procedures for establishing workweeks in accordance with § 610.111 of this chapter.

(q) "Holiday work" means nonovertime work performed by an employee during a regularly scheduled tour of duty on a holiday.

2. In § 550.112, paragraph (d) is revised to read as follows:

§ 550.112 Computation of overtime work.

* * * * *

(d) *Night, Sunday, or holiday work.* Hours of night, Sunday, or holiday work are included in determining for overtime pay purposes the total number of hours of work in an administrative workweek.

* * * * *

3. In § 550.122, paragraphs (c) and (d) are revised to read as follows:

§ 550.122 Computation of night pay differential.

* * * * *

(c) *Relation to overtime, Sunday, and holiday pay.* Night pay differential is in addition to overtime, Sunday, or holiday pay payable under this subpart and it is not included in the rate of basic pay used to compute the overtime, Sunday, or holiday pay.

(d) *Temporary assignment to different tour of duty.* An employee is entitled to a night pay differential when he or she is assigned temporarily to a tour of duty that includes nightwork.

4. In § 550.131, paragraph (a) is revised to read as follows:

§ 550.131 Authorization of pay for holiday work.

(a) Except as otherwise provided in this subpart, an employee who performs holiday work is entitled to pay at his or her rate of basic pay plus premium pay at a rate equal to his or her rate of basic pay for that holiday work that is not—

(1) In excees of 8 hours; or

(2) Overtime work.

* * * * *

PART 610—HOURS OF DUTY

1. Section 610.102 is amended by revising paragraph (b) and adding paragraph (g) and (h) to read as follows:

§ 610.102 Definitions.

* * * * *

(b) "Regularly scheduled administrative workweek," for fulltime employees, means the period within an administrative workweek, established in accordance with § 610.111, within which these employees are regularly scheduled to work. For part-time employees, it means the officially prescribed days and hours within an administrative workweek during which these employees are regularly scheduled to work.

* * * * *

(g) "Regularly scheduled" work means work that is scheduled in advance of an administrative workweek under an agency's procedures for establishing workweeks in accordance with § 610.111.

(h) "Tour of duty" means the hours of a day (a daily tour of duty) and the days of an administrative workweek (a weekly tour of duty) that constitute an employee's regularly scheduled administrative workweek.

2. Section 610.121 is revised to read as follows:

§ 610.121 Establishment of work schedules.

(a) Except when the head of an agency determines that the agency would be seriously handicapped in carrying out its functions or that costs would be substantially increased, he or she shall provide that—

(1) Assignments to tours of duty are scheduled in advance of the administrative workweek over periods of not less than 1 week;

(2) The basic 40-hour workweek is scheduled on 5 days, Monday through Friday when possible, and the 2 days outside the basic workweek are consecutive;

(3) The working hours in each day in the basic workweek are the same;

(4) The basic nonovertime workday may not exceed 8 hours;

(5) The occurrence of holidays may not affect the designation of the basic workweek; and

(6) Breaks in working hours of more than 1 hour may not be scheduled in a basic workday.

(b) The head of an agency shall establish the work schedules of his or

her employees to accomplish the mission of the agency. The head of an agency shall schedule an employee's regularly scheduled administrative workweek so that it corresponds with the employee's actual work requirements. When the head of an agency knows in advance of an administrative workweek that an employee's work requirements for that administrative workweek will differ from the work requirements in the current administrative workweek, he or she shall establish the employee's regularly scheduled administrative workweek to meet those different work requirements in that administrative workweek.

(5 U.S.C. 5548 and 5 U.S.C. 6101)

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5 CFR Part 890

Federal Employees Health Benefits Program

AGENCY: Office of Personnel Management.

ACTION: Proposed rulemaking.

SUMMARY: The Office of Personnel Management proposes to extend the circumstances under which an employee or annuitant can change his or her Federal Employees Health Benefits (FEHB) enrollment from high option to low option coverage to include eligibility for CHAMPUS.

DATE: Comments must be received on or before February 8, 1982.

ADDRESS: Send or deliver written comments to Craig B. Pettibone, Director, Office of Pay and Benefits Policy, Compensation Group, Office of Personnel Management, Room 4351, Washington, D.C. 20415.

FOR FURTHER INFORMATION CONTACT: Mary Ann Mercer, (202) 632-4634.

SUPPLEMENTARY INFORMATION: CHAMPUS (the Civilian Health and Medical Program of the Uniformed Services), a part of the Uniformed Services Health Benefits Program (USHBP), ensures that authorized health services will be available if they cannot be obtained from a Uniformed Services facility. Generally, CHAMPUS will share the cost of any medical procedure or type of medical care which is medically necessary and not specifically excluded by law or regulation. Dependents of active duty members, retired members and their dependents, and surviving dependents of deceased active or retired members are eligible for this coverage. (Parents and parents-in-law are not considered dependents under CHAMPUS.)

There are a number of instances in which a person who becomes eligible for CHAMPUS coverage may also be a Federal employee or annuitant enrolled in the Federal Employees Health Benefits Program. for example, Members and Technicians in the National Guard and retired military reservists are eligible for military benefits, including CHAMPUS, upon reaching age 60; the spouse of an active duty serviceman becomes eligible for CHAMPUS at time of marriage; and the spouse and dependents of regular military retired personnel become eligible upon the member's eligibility for CHAMPUS. Any of these individuals may be a Federal employee at the time of eligibility for CHAMPUS, and it is quite possible that he or she may also be enrolled in the FEHB Program. Because CHAMPUS and high option FEHB offer similar benefits, a Federal employee with FEHB coverage who becomes eligible for CHAMPUS would normally not need a high option FEHB plan. To continue the high option plan would be an unnecessary expense for both the employee and the government.

Under current regulations, an employee who becomes eligible for CHAMPUS may not change his or her high option FEHB coverage to low option until the next open season. He or she may, however, cancel the high option enrollment and wait until the next open season to enroll in a low option plan, taking the risk of being under-insured during the interim period. Permitting an enrollment change from high to low option at the time of eligibility for CHAMPUS would alleviate the problem of paying for coverage that is not needed (i.e., by continuing high option until the next open season) or being under-insured (i.e., dropping enrollment until the next open season).

It is important to note, however, that should the employee drop FEHB coverage under either the existing or amended regulations, the individual would not lose entitlement to FEHB coverage during retirement because periods of coverage under CHAMPUS are creditable toward the years of service requirement set out in the Federal Employees Health Benefits law codified at 5 U.S.C. 8905(b).

As a matter of precedent for the proposed amendment, a change from high to low option FEHB coverage was authorized in 1968 for employees who become eligible for Medicare. A parallel can be drawn between eligibility for Medicare and eligibility for CHAMPUS. Related to the subject of Medicare is the fact that CHAMPUS enrollees lose their eligibility for CHAMPUS at age 65 if they are eligible for Medicare. If the employee has CHAMPUS and a low option FEHB enrollment, he or she would continue to have two coverages, Medicare and low option FEHB. While the employee would not be able to enroll in a high option FEHB plan until the next open season, Medicare combined with low option FEHB coverage, in most cases, provides excellent protection.

The Director finds that good cause exists for reducing the comment period of this proposed rulemaking from sixty to thirty days. The comment period is reduced in order to realize enrollee and goverment cost savings which would result from prompt implementation of the regulations.

E.O. 12291, Federal Regulation

OPM has determined that this is not a major rule for the purposes of E.O. 12291, Federal Regulation, because it will not result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities, including small business, small organizational units and small governmental jurisdictions.

Office of Personnel Management.

Donald J. Devine,

Director.

PART 890—FEDERAL EMPLOYEES HEALTH BENEFITS PROGRAM

Accordingly, the Office of Personnel Management proposes to add § 890.301(x) to Title 5, Code of Federal Regulations, to read as follows:

§ 890.301 Opportunities to register to enroll or change enrollment.

* * * * *

(x) *On becoming eligible for coverage under the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS).* An enrolled employee or annuitant with a high option enrollment may register, at any time after the 31st