fringe benefits. Differences in the application of fringe benefit plans which are based upon sex-based actuarial studies cannot be justified as based on ''any other factor other than sex.''

(c) Where an employer conditions benefits available to employees and their spouses and families on whether the employee is the ''head of the household'' or ''principal wage earner'' in the family unit, the overall implementation of the plan will be closely scrutinized.

(d) It is unlawful for an employer to make available benefits for the spouses or families of employees of one gender where the same benefits are not made available for the spouses or families of opposite gender employees.

(e) It shall not be a defense under the EPA to a charge of sex discrimination in benefits that the cost of such benefits is greater with respect to one sex than the other.

(f) It is unlawful for an employer to have a pension or retirement plan which, with respect to benefits, establishes different optional or compulsory retirement ages based on sex or which otherwise differentiates in benefits on the basis of sex.

[51 FR 29816, Aug. 20, 1986; 51 FR 32636, Sept. 15, 1986]

§ 1620.12 Wage "rate."

(a) The term wage ''rate,'' as used in the EPA, refers to the standard or measure by which an employee's wage is determined and is considered to encompass all rates of wages whether calculated on a time, commission, piece, job incentive, profit sharing, bonus, or other basis. The term includes the rate at which overtime compensation or other special remuneration is paid as well as the rate at which straight time compensation for ordinary work is paid. It further includes the rate at which a draw, advance, or guarantee is paid against a commission settlement.

(b) Where a higher wage rate is paid to one gender than the other for the performance of equal work, the higher rate serves as a wage standard. When a violation of the Act is established, the higher rate paid for equal work is the standard to which the lower rate must be raised to remedy a violation of the Act.

§ 1620.13 "Equal Work"—What it means.

(a) *In general.* The EPA prohibits discrimination by employers on the basis of sex in the wages paid for ''equal work on jobs the performance of which requires equal skill, effort and responsibility and which are performed under similar working conditions * * *.'' The word ''requires'' does not connote that an employer must formally assign the equal work to the employee; the EPA applies if the employer knowingly allows the employee to perform the equal work. The equal work standard does not require that compared jobs be identical, only that they be substantially equal.

(b) *''Male jobs'' and ''female jobs.''* (1) Wage classification systems which designate certain jobs as ''male jobs'' and other jobs as ''female jobs'' frequently specify markedly lower rates for the ''females jobs.'' Such practices indicate a pay practice of discrimination based on sex. It should also be noted that it is an unlawful employment practice under title VII of the Civil Rights Act of 1964 to classify a job as ''male'' or ''female'' unless sex is a bona fide occupational qualification for the job.

(2) The EPA prohibits discrimination on the basis of sex in the payment of wages to employees for work on jobs which are equal under the standards which the Act provides. For example, where an employee of one sex is hired or assigned to a particular job to replace an employee of the opposite sex but receives a lower rate of pay than the person replaced, a prima facie violation of the EPA exists. When a prima facie violation of the EPA exists, it is incumbent on the employer to show that the wage differential is justified under one or more of the Act's four affirmative defenses.

(3) The EPA applies when all employees of one sex are removed from a particular job (by transfer or discharge) so as to retain employees of only one sex in a job previously performed interchangeably or concurrently by employees of both sexes. If a prohibited sex-based wage differential had been established or maintained in violation of the EPA when the job was being performed by employees of both sexes, the employer's obligation to pay the higher