managers and State and local governments on whom the notice was filed, and on any other person designated by the Board. The proof of service shall include the names and addresses of all persons served.

(c) Objectors are strongly urged to include in their objections facts to support the suggested level of essential air transportation (e.g., traffic and enplanement data, other market studies, facts descriptive of the point's isolation or dependence on air transportation).

9. Section 323.14(b) is amended by adding a second sentence to read:

§ 323.14 Temporary suspension authority for involuntary interruption of service.

* * * * *

(b) In the case of an interruption of service caused by a strike, the carrier shall give immediate notice of the interruption to the Board. Suspension authority under this section due to a strike shall expire 90 days after employees return to work.

* * * * *

[Sec. 204, 401, 416, 419, Federal Aviation Act of 1958, as amended, 72 Stat. 743, 92 Stat. 1710, 1731, 1732, (49 U.S.C. 1324, 1371, 1386, 1389)]

By the Civil Aeronautics Board.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 80-9267 Filed 3-26-80; 8:45 am]

BILLING CODE 6320-01-M

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14 CFR Part 399

[Reg. PS-91, Amdt. No. 68 to Part 399; Docket No. 36202]

Special Tariff Permission To File on Less Than Statutory Notice

AGENCY: Civil Aeronautics Board.

ACTION: Final rule.

SUMMARY: The CAB liberalizes its policies on allowing airlines to file tariffs on shorter notice than the 30 or 60 days that would otherwise be required by statute. Supplementary information about this rule appears in ER-1171,[1] also adopted today.

DATES: Adopted: March 20, 1980. Effective: March 20, 1980.

FOR FURTHER INFORMATION CONTACT: Mark Schwimmer, Office of the General Counsel, 202-673-5442; or Robert Klothe, Bureau of Domestic Aviation, 202-673-6064, Civil Aeronautics Board, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428.

[1] See FR Doc. 80-9254, 14 CFR Part 221 also published in the Rules section of this issue.

The Civil Aeronautics Board amends 14 CFR Part 399, *Statements of General Policy*, as follows:

1. In the Table of Contents, a new § 399.35 is inserted in Subpart C, to read:

* * * * *

Subpart C—Policies Relating to Rates and Tariffs

* * * * *

Sec.
399.35 Special tariff permission.

* * * * *

2. A new § 399.35 is added, to read:

§ 399.35 Special Tariff Permission.

(a) As used in this section "to grant STP" means to approve a carrier's application for Special Tariff Permission to file a tariff on less than the statutory notice set forth in § 221.160(a) of this chapter.

(b) *Lower fares, rates, and charges.* It is the policy of the Board to grant STP for tariffs that state lower fares, rates, or charges and any rules affecting only those lower fares, rates, or charges, except that:

(1) The Board will not grant STP to match a tariff filed on statutory notice; and

(2) The Board will not grant STP if the proposed fares, rates, charges, or rules raise significant questions of lawfulness, that is, could reasonably be expected to be found unjust or unreasonable, unjustly discriminatory, unduly preferential, unduly prejudicial, or predatory, under current statutory or Board guidelines. In these situations, if the carrier files the tariff on statutory notice and at the same time applies for STP to advance the tariff's effective date, the Board will use its best efforts to act within 15 days to grant or deny STP.

(c) *Higher fares.* For tariffs that state higher passenger fares, and any rules affecting only those fares, the Board's policy on STP is, except in unusual or emergency circumstances:

(1) To grant STP if the resulting fares are within a statutory or Board-established zone of presumed lawfulness; and

(2) Otherwise, to deny STP.

[Secs. 204, 403, 416, 1002, Federal Aviation Act of 1958, as amended, 72 Stat. 743, 758, 771, and 788, as amended, (49 U.S.C. 1324, 1373, 1386, and 1482)]

By the Civil Aeronautics Board.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 80-9255 Filed 3-26-80; 8:45 am]

BILLING CODE 6320-01-M

DEPARTMENT OF COMMERCE

International Trade Administration

15 CFR Part 379

Interpretation of Technical Data Regulations

AGENCY: Office of Export Administration, International Trade Administration, U.S. Department of Commerce.

ACTION: Interpretation.

SUMMARY: Suspension of validated export licenses for the USSR has amplified the need for interpretations of the Technical Data regulations to assure that parties to transactions understand the limits of general licenses.

EFFECTIVE DATE: March 24, 1980.

ADDRESS: Written comments (six copies when possible) should be sent to: Richard J. Isadore, Acting Director, Operations Division, Office of Export Administration, U.S. Department of Commerce, Room 1617M, Washington, D.C. 20230.

FOR FURTHER INFORMATION CONTACT: Mr. Archie Andrews, Director, Exporters' Service Staff, Office of Export Administration, Department of Commerce, Washington, D.C. 20230 (Telephone: (202) 377-5247 or 377-4811).

SUPPLEMENTAL INFORMATION: The suspension of all outstanding licenses and other authorizations for exports to the USSR announced in 45 FR 3027 (January 16, 1980) resulted in numerous inquiries from exporters who were having difficulties in understanding when technical data and repair parts may be exported under general licenses and when a validated license is required. To respond to these inquiries, a set of questions and answers has been added to Supplement No. 1 to Part 379. These questions and answers do not change the regulations in any way. Their sole purpose is to interpret and inform.

Public comments on these interpretations are solicited on a continuing basis.

Accordingly, the *Export Administration Regulations* (15 CFR Parts 368-399) are amended by adding the following to Supplement No. 1 to Part 379:

2. Distinction between General and Validated License Requirements for Shipment to QWY Destinations of Technical Data and Replacement Parts.

A number of exporters have recently asked where the line is drawn between general license and validated license exports to QWY destinations of technical data related to equipment exports.

The export of technical data under validated license is authorized only to the extent specifically indicated on the face of the license. The only data related to equipment exports that can be provided under general license is the publicly available data authorized by General License GTDA, or the assembly, installation, maintenance, repair, and operation data authorized by General License GTDR.

The following questions and answers are intended to further clarify this matter, as well as related problems involving other general licenses. These are clarifications only. Their issuance in no way affects the suspension of validated licenses for exports to the USSR of Jan. 11, 1980 (45 FR 3027).

Question: Can we send technicians to repair equipment even though we can no longer supply parts due to suspension or revocation of our validated export license?

Answer: You can make repairs only to the extent the technical know-how utilized by the technicians does not exceed that contained in the manuals and instructions provided with the equipment under GTDR. Under GTDR, the technical data must be transmitted within one year of shipment of the equipment. Once the GTDR data is transmitted, subsequent service visits can be made at any time and are not restricted to the first year after shipment, but the services performed must be based solely on the data provided under GTDR.

Question: Must we continue to fulfill visitation and reporting requirements imposed by our suspended (or revoked) validated export licenses even though we can no longer provide parts for repairs we have normally made during these visits?

Answer: Every effort must be made to continue visitations. If your technicians are not permitted to visit the site or are otherwise prevented from fulfilling your visitation and reporting obligations, you should present evidence of this with your visitation report.

Question: We have completed a plant, fully utilizing the licenses we were issued for technical data and equipment. For contractual and warranty reasons, our technicians remain on site. Can they continue to assist and advise the customer even though we no longer have a valid export license?

Answer: They may advise and assist, but only to the extent permitted by GTDA or GTDR. If the consignee has been furnished information on installation, operation, maintenance, or repair of equipment, your technicians can repeat that information or perform the needed work, provided they do not exceed the GTDR limitations. Your technicians can, for instance, monitor the operation of machines to assure that they are not misused in any way that could result in unfounded warranty claims and possible arbitration. However, your personnel may not perform plant operations or repair functions utilizing technical data requiring a validated license.

Question: We have been setting up a turnkey plant. The equipment is there but needs to be installed. Can we install the machines and teach the customer how to run them even though our license has been suspended (or revoked)?

Answer: Individual machines may be installed and put into operating order, but only to the extent permitted by GTDR. Instruction or assistance in combining the individual machines to perform the process for which the plant was intended, however, is not covered by the general license and this service cannot be performed while the requisite validated license for technical data is suspended.

In determining what constitutes an individual machine, exporters should consider as separate machines each of the basic pieces of equipment that join to provide a manufacturing process, but need not separate items such as machine tool/controller combinations or computer mainframe/peripheral systems designed and sold as functional units.

Question: If a validated export license is suspended, can a U.S. manufacturer have its field technicians install a product that was exported prior to the suspension?

Answer: If installation of the product involves no more knowledge than could be absorbed by a competent technician from manuals, instructions, and drawings that normally are delivered with the product under GTDR (i.e., necessary for assembly, installation, maintenance, repair, or operation) then the manufacturer's field technicians may install the product. If the field engineers would have to exceed this limitation to install the equipment, then they may not do so. In no case can the field engineers go beyond installation of individual machines to reveal how machines relate to each other to perform a manufacturing process, since process technology is subject to validated license.

Question: We applied for a license to export equipment, received a license, and shipped. Subsequently, all validated licenses for that destination were suspended. In our formal application, we described a list of activities that would be required to complete this consolidated business transaction, such as:

Detailed training schedule for the customer's technical personnel, for maintenance and operation of the equipment;

Direct support by our engineers for a period of several years to assure proper procedures and use of the equipment;

A contract for back-up maintenance and repair of equipment, until the customer's engineers gained sufficient experience to handle the job; and

A contract for study and analysis and design of their total plant (or a particular department) equipment requirements.

When we got the license for the export of equipment we understood that the license covered the total transaction and permitted the undertaking of the various ancilliary activities as represented in our application.

We have just started these activities, and are obliged under our contract to continue performance even though the license is suspended.

How does the suspension order affect our continued performance, where the equipment is already at the customer's facility waiting for our engineers to begin work and also train the customer's personnel?

Answer: In the situation you describe, it is not entirely clear how much of your work performance and training is covered by the suspension of your license. It seems likely that a good portion of the work should have been subject to a separate validated technical data license, which would be subject to the general suspension of validated licenses. As you did not approach the transaction (from a licensing procedure viewpoint) in this manner, we will need to review the case to determine what activities are directly related to the provision of technical data under GTDR (i.e. required for installation, assembly, maintenance, repair, and operation of the equipment shipped) and which activities go beyond this definition and will require a separate technical data approval for you to continue work.

Question: Our engineers sometimes provide technical advice on repair situations by telephone from a Western country to the customer in a country where our validated licenses have been suspended (or revoked). This is particularly likely to occur in difficult situations, where the customer will describe his problem in technical detail to our engineer, and our engineer tells him, based on experience and access to more complete equipment history information, where to look for the error. This is an exchange of information, where we also gain knowledge of specific problems with the equipment.

Can this procedure be viewed as GTDR information necessary for the repair of installed equipment?

Answer: This is a reasonable activity that may be covered by GTDR, subject to the restriction that it may not involve technical information beyond the scope provided in the manuals and instructions originally given to the customer: *i.e.* the exchange of information must have as its base of reference the knowledge as provided in those manuals and instructions. The exchange may not, for example, go into detail of component design or engineering of a specific standard part, where the manual does not provide such technical detail.

Provision of such advice may be made at any time, provided it is based solely on GTDR information that was furnished within one year of the equipment export.

The above clarification would not only apply to a telephone call from a Western country, but would also be applicable for on-site service calls where the engineer is at the customer location.

Question: Our customer installation in a country where our validated licenses have been suspended (or revoked) uses certain standard computer programs shipped sometime ago under validated license. The customer normally receives a programming service under warranty-type contract provisions to receive error corrections for these programs. When he has a problem, he identifies it to us (often via a magnetic tape) and a correction (revised program instruction) is sent back to the customer. This exchange is usually mutually advantageous, as we gain from customer experiences and he receives assistance in "fixing" his problem.

Can these exchanges be made under a general license? Can periodic updates (consolidated correction of errors) be provided to the customer?

Answer: Provided this is routine error correction with no new facilities or

performance enhancements provided above the original program specifications, it can be provided either under GLR (e.g. a "faulty" tape sent to the U.S. and corrected tape sent back to the customer), or under GTDR. These general licenses are available only for one year following export of the equipment, unless extended by the Office of Export Administration.

Question: We are required by our contract to provide for our equipment installed in a country where our validated licenses have been suspended (or revoked), even after warranty period, engineering changes based on continuing experience with and improvements to that equipment. These changes are for the purpose of, *e.g.*, assuring operation of the machines to the original equipment specifications, removing a particular error-prone condition, or in some cases for the safety of user or maintenance personnel. The transfer of technical data and in some instances new or exchange parts are involved. We consider some of these changes "mandatory" where safety is concerned.

Can we provide the technical data for this purpose under GTDR if extended beyond the one year limitation period, and can the requisite parts be provided under GLR provisions, where there is no charge to the customer?

Answer: This technical data may be exported provided it does not exceed the limitations of GTDR. However, formal waiver of the one year limitation must be obtained where such continued shipments are foreseen.

The provision of parts under GLR is restricted to warranty situations within one year of export. "Mandatory changes" provided under warranty at no charge are considered an appropriate use of GLR. We would consider waiving the one-year limit for export of parts under GLR based on the merits of the individual case.

To request extension of the time limit under GTDR or GLR, the applicant should submit a letter, in duplicate, to the Director, Operations Division, Office of Export Administration, Room 1617M, U.S. Department of Commerce, Washington, D.C. 20230. The letter should specify the export license number, the date of export of the equipment, the reason the extension is needed, whether GTDR, GLR, or both should be extended, and the period of time for which the extension is desired. Extensions may not exceed one year, but further extensions may be sought if necessary. If approved, OEA will validate the copy of the letter and return it to the applicant.

Question: Our engineers, in installing or repairing equipment, use techniques (experience as well as proprietary knowledge of the internal componentry or specifications of the equipment) that exceed what is provided in the standard manuals or instructions (including training) given to the Soviet customer. In some cases, it is also a condition of the license that such information provided to the customer be constrained to the minimum necessary for normal installation, maintenance and operation situations.

Can we send an engineer (with knowledge and experience) to the customer site to perform the installation or repair, under the provisions of GTDR, if it is understood that he is restricted by our normal business practices to performing the work without imparting the knowledge or technical data to the customer personnel?

Answer: As defined in § 379.1, export of technical data includes release of U.S. origin data in a foreign country, and "release" includes "application to situations abroad of personal knowledge or technical experience acquired in the United States." As the release of technical data in the circumstances described here would exceed that permitted under GTDR, a validated export license would be required even though the technician could apply the data without disclosing it to the customer.

Question: We shipped equipment prior to the suspension (or revocation) of our validated licenses, and had planned according to our normal business practices to train customer engineers to maintain that equipment. The training is contractual in nature, provided for a fee, and is scheduled to take place in part in the customer's facility and in part in the U.S. Can we now proceed with this training at both locations under general license authority?

Answer: Provided that this is your normal training, and involves technical data contained in your manuals and standard instructions for the exported equipment, and meets the other requirements of § 379.4, the training may be provided within the limits of General License GTDR. The location of the training is not significant, as the export occurs at the time and place of the actual transfer or imparting of the technical data to the customer's engineers.

Any training beyond that covered in the GTDR provisions, but specifically represented in your license application as required for this customer installation, and in fact authorized on the face of the license or a separate technical data license, may not be undertaken while the validated license is suspended or revoked.

Question: We have contracted with our customer to provide a "customized" service for a fee (*i.e.*, write a program or an instruction manual for a specific customer requirement), and this was described in detail in our equipment export application. When we received our equipment export license under which we completed shipment and installation, we assumed that this work could commence, being directly related to the equipment and identified by us as necessary for the operation of that equipment for the specific customer.

Can we continue this work, which is already started, or is this impacted by the suspension of our equipment license?

Answer: In the case you have outlined, a separate validated license is required to cover technical data involved in such "specialized, custom service", unless the equipment validated license clearly specifies on its face that it covers the technical data. In any event, if all validated licenses are suspended to your customer's country the work must cease as it cannot be carried out under general license.

Question: In most cases, we ship parts under validated licenses. However, the Regulations do provide for parts shipments for warranty repair situations under the GLR provisions of § 371.17.

If our validated licenses are suspended or revoked, is it permissible to change our previous license procedure and to ship parts on a one-for-one replacement basis where the equipment and parts are under manufacturer's warranty?

Answer: It is permissible to use any general license (G–Dest, GLR, etc) that may apply to a given shipment.

Question: We have shipped equipment to our customer prior to suspension or revocation of our validated licenses, and have scheduled some management consultations with the customer relating to installation and operational planning, organization, and scheduling of the utilization of the exported equipment. The consultations may include meetings with the customer's management, discussion of specific problems, provision of generally available brochures or basic technical manuals, conducting introductory level training for the operations and support staff, etc.

These consultations, meetings, seminars, training sessions, and manuals are provided consistent with our standard business practices at no additional charge to customers, and are for the purpose of advising all customers of the basic management and organizational techniques involved in utilization of the equipment.

We have previously considered the level of technical data involved as generally available GTDA or GTDR, without drawing much precise distinction. Do we need a validated license?

Answer: Generally available published technical data may be provided under GTDA. Also, the provision of manuals and instructions beyond the definition of GTDA is permissible under GTDR, provided that such manuals and instructions are directly required for the installation, assembly, maintenance, repair, or operation of the exported equipment. A seminar, training course, or consultation with the customer based on and restricted to the contents of such GTDA or GTDR manuals, instructions, and materials would be governed by the provisions of those general licenses.

Also, it is recognized that dialogue with the customer involves transfer of technical data, often of a general nature. In such consultations or dialogues (in the context of training sessions, seminars, and working meetings), it is necessary to limit the content of these exchanges to identifiable published material (GTDA), or the manuals and instructions provided together with the equipment under GTDR.

Guidance from OEA should be obtained whenever you are in doubt. Where it is determined necessary by OEA, technical data license applications should be filed for situations where technical data exchange may exceed that clearly within the restrictions of GTDR.

Question: We have shipped computer equipment prior to the suspension or revocation of our validated licenses, but have not yet delivered the basic computer control programs (systems control software) required for the operation of the equipment.

Can we ship these programs, and assist the customer in getting it properly installed and operational?

Answer: Computer software that is not generally available as defined in General License GTDA requires a validated license for export, and thus may not be shipped in these circumstances. However, computer software that is both essential for operation of the system and specific to the application for which the system was licensed may be exported under the provisions of GTDR. This would include also the manuals or instructions necessary for the installation of such software. Assistance by your personnel in installation or use of GTDA or GTDR software is limited to the utilization of the materials provided to the customer and within the standard specifications of the software provided.

Additional training or instruction beyond the standard provisions would be subject to validated license.

Updates (error correction or software warranty services) to the original installed software are permissible under GTDR, provided that there is no enhancement of performance.

(Secs. 5, 6, 21, Pub. L. 96-72, to be codified at 50 U.S.C. App. 2401 *et seq.;* Department Organization Order 10-3, 45 FR 6141 (January 25, 1980); Department Organization Order 41-1, 45 FR 11862 (February 22, 1980)).

Donald A. Furtado,

Acting Under Secretary for International Trade.

[FR Doc. 80-9344 Filed 3-24-80; 3:39 pm]

BILLING CODE 3510-25-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 1

[Docket No. RM80-43; Order No. 71]

Rules of Practice and Procedure

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final rule.

SUMMARY: The amendment to § 1.4(d) of the Commission's regulations will permit the Commission to modify, to the extent permitted by law, its existing *ex parte* and separation of functions regulations by rule or order. The Commission will be issuing new *ex parte* and separation of functions rules of general applicability in the near future. In the interim, the Commission recognizes that it may need to modify its existing *ex parte* and separation of functions rules as they apply in certain proceedings.

DATES: Effective March 17, 1980.

FOR FURTHER INFORMATION CONTACT: June G. Perin, Office of General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426 (202) 357-8473.

Issued March 17, 1980.

Before Commissioners: Charles B. Curtis, Chairman; Georgiana Sheldon, Matthew Holden, Jr., and George R. Hall.

The Federal Energy Regulatory Commission is amending § 1.4(d)(2) of its Rules of Practice and Procedure. The amendment will permit the Commission to modify its existing regulations on *ex parte* and separation of function by rule or order, to the extent permitted by law.

The amendment is merely a codification of the extant authority of the Commission to modify its rules at any time as long as the modification does not prejudice any party to a pending proceeding. As such, the amendment to § 1.4(d)(2) is procedural in nature.

The Commission's present *ex parte* and separation of functions rules are more restrictive than the Administrative Procedure Act would require. In addition, the present rules do not apply to oil pipeline proceedings conducted under the authority transferred to the Commission by virtue of the Department of Energy Organization Act. Existing Interstate Commerce Commission *ex parte* and separation of functions rules presently apply to those proceedings.

The Commission is actively considering and will be issuing new *ex parte* and separation of functions rules of general applicability in the near future. In the interim, the Commission recognizes that it may need to modify its existing *ex parte* and separation of functions rules as they apply to certain proceedings at the Commission, including oil pipeline proceedings. For this reason, the Commission finds that good cause exists to adopt the amendment of § 1.4(d)(2) effective immediately.

(Federal Power Act, *as amended,* 16 U.S.C. 792 *et seq.;* Natural Gas Act, *as amended,* 15 U.S.C. 717 *et seq.;* Interstate Commerce Act, *as amended,* 49 U.S.C. 1 *et seq.;* Department of Energy Organization Act, Pub. L. No. 95-91, 91 Stat. 565, *et seq.,* E.O. 12009, 42 FR 46267; Administrative Procedure Act, 5 U.S.C. §§ 500 *et seq.*)

In consideration of the foregoing, Part 1, Chapter I of Title 18 of the Code of Federal Regulations is amended as set forth below, effective immediately.

By the Commission.

Kenneth F. Plumb,

Secretary.

PART 1—RULES OF PRACTICE AND PROCEDURES

Section 1.4 is amended in paragraph (d)(2) by adding after paragraph (d)(2)(ix) the following:

§ 1.4 Appearances and practice before the Commission.

* * * * *

(d) *Ex parte communications.* * * *

(2) * * *

(x) The Commission may, by rule or order modify, any provision of §§ 1.4(d), 1.30(f) or 49 CFR, Part 1100, Appendix C as it applies to all or part of a proceeding, to the extent permitted by law.

* * * * *

[FR Doc. 80-9274 Filed 3-26-80; 8:45 am]

BILLING CODE 6450-01-M

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Social Security Administration

20 CFR Part 404

Federal Old-Age, Survivors, and Disability Insurance; Employment, Wages, Self-Employment, and Self-Employment Income

AGENCY: Social Security Administration, HEW.

ACTION: Final rule.

SUMMARY: These final regulations restate the rules on the kinds of work and earnings that are included or excluded for purposes of social security coverage. We have rewritten and reorganized the existing regulations to make these regulations clearer and easier for the public to use. We have not changed the substance of our current regulations other than to reflect recent changes in the law. However, to simplify and reduce our regulations, we have deleted most rules that do not apply to current work. We have also eliminated some material about Internal Revenue Service forms and findings where the Internal Revenue Code is the primary basis for the rules.

EFFECTIVE DATE: These amendments are effective March 27, 1980.

FOR FURTHER INFORMATION CONTACT: Dave Smith, Legal Assistant, Room 4234 West High Rise Building, 6401 Security Boulevard, Baltimore, Maryland 21235, Telephone (301) 594-7336.

SUPPLEMENTARY INFORMATION: HEW is revising its regulations as part of Operation Common Sense, which is a Department-wide effort to review, simplify, and reduce HEW's regulations. As part of this effort, we proposed a complete rewrite of Subpart K, Employment, Wages, Self-Employment, and Self-Employment Income. We published our proposed revision of Subpart K in the **Federal Register** with a Notice of Proposed Rule Making on July 16, 1979 (44 FR 41222), with a 60 day comment period. We did not receive any comments.

The Notice of Proposed Rule Making made a few changes in the substance of the existing regulations. The new rule in § 404.1059(i) conforms to section 3 of Pub. L. 95–472 which excludes from wages for social security coverage purposes certain payments under group legal services plans. Section 404.1007 contains a list of factors that tend to show whether a person is an employee under the common-law rules. We have also added a definition of a duly ordained, commissioned, or licensed minister in § 404.1023.

We have included in § 404.1047 on wages and section 404.1096 on self-employment income the amount of the contribution and benefit base for each calendar year from 1975–1981. The base is the amount of earnings that is subject to social security tax and that may be used in figuring social security benefits. The amounts for 1975–1978 were determined by the Secretary of Health, Education, and Welfare under the formula in section 230 of the Act and were appropriately published in the **Federal Register**. The amount of the base was raised by section 103(b) of the Social Security Amendments of 1977 (Pub. L. 95–216) to $22,900 for 1979, $25,900 for 1980, and $29,700 for 1981.

In the final regulations, we have corrected typographical errors made in the notice and have added a reference to a period of disability in the last sentence of § 404.1060(a) which was omitted in the notice.

Accordingly, the final rule is adopted as set forth below.

(Catalog of Federal Domestic Assistance Programs No. 13.803, Social Security-Retirement Insurance)

Dated: February 25, 1980.

William J. Driver,

Commissioner of Social Security.

Approved: March 21, 1980.

Patricia Roberts Harris,

Secretary of Health, Education, and Welfare.

Subpart K of Part 404 of Chapter III of Title 20 of the Code of Federal Regulations is revised to read as follows:

Subpart K—Employment, Wages, Self-Employment, and Self-Employment Income

Sec.
404.1001 Introduction.
404.1002 Definitions.

Employment

404.1003 Employment.
404.1004 What work is covered as employment.
404.1005 Who is an employee.
404.1006 Corporation officer.
404.1007 Common-law employee.
404.1008 Agent-driver or commission-driver, full-time life insurance saleman, home worker, or traveling or city salesman.
404.1009 Who is an employer.
404.1010 Farm crew leader as employer.

Work Excluded From Employment

404.1012 Work excluded from employment.
404.1013 Included—excluded rule.
404.1014 Domestic service by a student for a local college club, fraternity or sorority.
404.1015 Family services.
404.1016 Foreign agricultural workers.
404.1017 Sharefarmers.
404.1018 Work by civilians for the United States Government or its instrumentalities.
404.1019 Work as a member of a uniformed service of the United States.
404.1020 Work for States and their political subdivisions and instrumentalities.
404.1021 Work for the District of Columbia.
404.1022 American Samoa or Guam.
404.1023 Ministers of churches and members of religious orders.
404.1024 Election of coverage by religious orders.
404.1026 Work for religious, charitable, educational, or certain other organizations exempt from income tax.
404.1027 Railroad work.
404.1028 Student working for a school, college, or university.
404.1029 Student nurses.
404.1030 Delivery and distribution or sale of newspapers, shopping news, and magazines.
404.1031 Fishing.
404.1032 Work for a foreign government.
404.1033 Work for a wholly owned instrumentality of a foreign government.
404.1034 Work for an international organization.
404.1035 Work for a communist organization.
404.1036 Certain nonresident aliens.
404.1037 Work on or in connection with a non-American vessel or aircraft.

Wages

404.1041 Wages.
404.1042 Wages when paid and received.
404.1043 Facilities or privileges-meals and lodging.
404.1044 Vacation pay.
404.1045 Employee expenses.
404.1046 Pay for work by certain members of religious orders.
404.1047 Annual wage limitation.
404.1048 Contribution and benefit base after 1981.
404.1049 Payments under an employer plan or system.

Sec.
404.1050 Retirement payments.
404.1051 Payments on account of sickness or accident disability, or related medical or hospitalization expenses, not made under a plan or system.
404.1052 Payments from or to certain tax-exempt trusts.
404.1053 Payments under or into certain annuity plans.
404.1054 Payments under or into certain bond purchase plans.
404.1055 Payments by an employer of employee's tax or employee's contributions under State law.
404.1056 Payments for agricultural labor.
404.1057 Explanation of agricultural labor.
404.1058 Domestic service in the employer's home.
404.1059 Special situations.
404.1060 Deemed wages for certain individuals interned during World War II.

Self-Employment

404.1065 Self-employment coverage.
404.1066 Trade or business in general.
404.1068 Employees who are considered self-employed.
404.1070 Christian Science practitioners.
404.1071 Ministers and members of religious orders.
404.1073 Public office.
404.1074 Farm crew leader who is self-employed.
404.1075 Members of certain religious groups opposed to insurance.
404.1077 Individuals under railroad retirement system.

Self-Employment Income

404.1080 Net earnings from self-employment.
404.1081 General rules for figuring net earnings from self-employment.
404.1082 Rentals from real estate; material participation.
404.1083 Dividends and interest.
404.1084 Gain or loss from disposition of property; capital assets; timber, coal, and iron ore; involuntary conversion.
404.1085 Net operating loss deduction.
404.1086 Community income.
404.1087 Figuring partner's net earnings from self-employment for taxable year which ends as a result of death.
404.1088 Retirement payment to retired partners.
404.1089 Figuring net earnings for residents and nonresidents of Puerto Rico.
404.1090 Personal exemption deduction.
404.1091 Figuring net earnings for ministers and members of religious orders.
404.1092 Figuring net earnings for United States citizens temporarily living outside the United States.
404.1093 Possession of the United States.
404.1094 Options available for figuring net earnings from self-employment.
404.1095 Agricultural trade or business.
404.1096 Self-employment income.

Authority: Secs. 205, 209, 210, 211, 229, 230, 231, and 1102 of the Social Security Act, 53 Stat. 1368, 49 Stat. 625, 64 Stat. 492, 81 Stat. 833, 86 Stat. 416, 86 Stat. 1367, 49 Stat. 647; sec. 5 of Reorganization Plan No. 1 of 1953, 67 Stat. 631; 42 U.S.C. 405, 409, 410, 411, 429, 430, 431, and 1302; and 5 U.S.C. Appendix.

Subpart K—Employment, Wages, Self-Employment, and Self-Employment Income

§ 404.1001 Introduction

(a)(1) In general, your social security benefits are based on your earnings that are on our records. (Subpart I of this part explains how we keep earnings records.) Basically, you receive credit only for earnings that are covered for social security purposes. The earnings are covered only if your work is covered. If you are an employee, your employer files a report of your covered earnings. If you are self-employed, you file a report of your covered earnings. Some work is covered by social security and some work is not. Also, some earnings are covered by social security and some are not. It is important that you are aware of what kinds of work and earnings are covered so that you will know whether your earnings should be on our records.

(2) If you are an employee, your covered work is called "employment." This subpart explains our rules on the kinds of work that are covered as "employment" and the kinds that are not. We also explain who is an employee.

(3) If your work is "employment", your covered earnings are called "wages." This subpart explains our rules on the kinds of earnings that are covered as "wages" and the kinds that are not.

(4) If you work for yourself, you are self-employed. The subpart explains our rules on the kinds of self-employment that are covered and the kinds that are not.

(5) If you are self-employed, your covered earnings are called "self-employment income" which is based on your "net earnings from self-employment" during a taxable year. This subpart explains our rules on the kinds of earnings that are covered as "net earnings from self-employment" and the kinds that are not. We also explain how to figure your "net earnings from self-employment" and determine your "self-employment income" which is the amount that goes on our records.

(b) We include basically only the rules that apply to current work or that the law requires us to publish as regulations. We generally do not include rules that are seldom used or do not apply to current work because of changes in the law.

(c) The Social Security Act and the Internal Revenue Code (Code) have similar provisions on coverage of your earnings because the one law specifies the earnings for which you will receive credit for benefit purposes and the other the earnings on which you must pay social security taxes. Because the Code (Title 26 of the United States Code) has some provisions that are not in the Act but which may affect you, you may need to refer to the Code or the Internal Revenue Service regulations (Title 26 of the Code of Federal Regulations) to get complete information about your social security coverage.

(d) The rules are organized in the following manner:

(1) Sections 404.1003–404.1010 include the rules on employment. We discuss what we mean by employment, what work is covered as employment for social security purposes, and describe the kinds of workers who are considered employees.

(2) In §§ 404.1012—404.1037 we discuss various types of work that are not covered as employment for social security purposes.

(3) The rules on wages are found in §§ 404.1041–404.1060. We describe what we mean by the term "wages", discuss various types of pay that count as wages, and state when the pay counts for social security purposes. We include the explanations of agricultural labor and domestic services under "wages" because the coverage of the services depends on the pay that is received.

(4) Our rules on self-employment and self-employment income are found in §§ 404.1065–404.1096. We discuss what we mean by self-employment, what we mean by a trade or business, what types of activities are considered self-employment, how to determine self-employment income, and how net earnings from self-employment are figured.

§ 404.1002 Definitions.

(a) *General definitions.* As used in this subpart—

The "Act" means the Social Security Act, as amended.

The "Code" means the Internal Revenue Code of 1954, as amended.

"We", "our", or "us" means the Social Security Administration.

"You" or "your" means any person whose earnings from employment or self-employment are included or excluded under social security.

(b) *Other definitions.* For ease of reference, we have placed other definitions in the sections of this subpart in which they are used.

Employment

§ 404.1003 Employment.

Employment means, generally, any service covered by social security performed by an employee for his or her employer. The rules on who is an employee and who is an employer are contained in §§ 404.1005–404.1010. Section 404.1004 states the general rule on the kinds of work covered as employment. Exceptions to the general rule are contained in §§ 404.1012–404.1037 which explain the kinds of work excluded from employment. All of these rules apply to current work unless otherwise indicated.

§ 404.1004 What work is covered as employment.

(a) *General requirements of employment.* Unless otherwise excluded from coverage under §§ 404.1012–404.1037, the work you perform as an employee for your employer is covered as employment under social security if one of the following situations applies:

(1) You perform the work within the United States (whether or not you or your employer are a citizen or resident of the United States).

(2) You perform the work outside the United States and you are a citizen of the United States working for—

(i) An American employer; or

(ii) A foreign subsidiary of a domestic corporation that has in effect an agreement covering your work under section 3121(l) of the Code.

(3) You perform the work on or in connection with an American vessel or American aircraft and the conditions in paragraph (a)(3) (i) and (ii) are met. Your citizenship or residence does not matter. The citizenship or residence of your employer matters only if it affects whether the vessel is an American vessel.

(i) You enter into the contract of employment within the United States or the vessel or aircraft touches at a port or airport within the United States during the performance of your contract of employment on the vessel or aircraft.

(ii) You are employed on and in connection with the vessel or aircraft when outside the United States.

(b) *Explanation of terms used in this section.* (1) "American employer" means—

(i) The United States or any of its instrumentalities;

(ii) A State, a political subdivision of a State, or an instrumentality of any one or more States or political subdivisions of a State;

(iii) An individual who is a resident of the United States;

(iv) A partnership, if at least two-thirds of the partners are residents of the United States;

(v) A trust, if all of the trustees are residents of the United States; or

(vi) A corporation organized under the laws of the United States or of any State.

(2) "American aircraft" means an aircraft registered under the laws of the United States.

(3) "American vessel" means a vessel documented or numbered under the laws of the United States. It also includes a vessel neither documented nor numbered under the laws of the United States, nor documented under the laws of any foreign country, if its crew is employed solely by one or more citizens or residents of the United States, or corporations organized under the laws of the United States or of any State.

(4) "Citizen of the United States" includes a citizen of the Commonwealth of Puerto Rico, the Virgin Islands, Guam or American Samoa.

(5) "Domestic corporation" refers to a corporation as determined under section 7701 of the Code.

(6) "Foreign subsidiary" refers to a foreign subsidiary as defined in section 3121(l) of the Code.

(7) "On and in connection with" refers to the performance of work on a vessel or aircraft which concerns the vessel or aircraft. Examples of this kind of work are the services performed on a vessel by employees as officers or crew members, or as employees of concessionaires, of the vessel.

(8) "On or in connection with" refers to work performed on the vessel or aircraft and to work which concerns the vessel or aircraft but not actually performed on it. For example, shore services in connection with repairing, loading, unloading, or provisioning a vessel performed by employees as officers or crew members, or as employees of concessionaires, of the vessel are included, since this work concerns the vessel though not performed on it.

(9) "State" refers to the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam and American Samoa.

(10) "United States" when used in a geographical sense means the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam and American Samoa.

§ 404.1005 Who is an employee.

You must be an employee for your work to be covered as employment for social security purposes. You are an employee if you are—

(a) A corporation officer as described in § 404.1006;

(b) A common-law employee as described in § 404.1007; or

(c) An agent-driver or commission-driver, a full-time life insurance salesman, a home worker, or a traveling or city salesman as described in § 404.1008.

§ 404.1006 Corporation officer.

If you are an officer of a corporation, you are an employee of the corporation if you are paid or you are entitled to be paid for holding office or performing services. However, if you are a director of a corporation, we consider you to be self-employed when you work as a director.

§ 404.1007 Common-law employee.

(a) *General.* The common-law rules on employer-employee status are the basic test for determining whether you and the person or firm you work for have the relationship of employee and employer. Even though you are considered self-employed under the common-law rules, you may still be an employee for social security purposes under § 404.1006 (relating to corporation officers) or § 404.1008 (relating to workers in four specific jobs). In general, you are a common-law employee if the person you work for may tell you what to do and how, when, and where to do it. The person or firm you work for does not have to give these orders, but needs only the right to do so. Whether or not you are a common-law employee is not always clear. Several aspects of your job arrangement are considered in determining whether you are an employee or are self-employed under the common-law rules.

(b) *Factors that show employee status.* Some aspects of a job arrangement that may show you are an employee are as follows:

(1) The person you work for may fire you.

(2) The person you work for furnishes you with tools or equipment and a place to work.

(3) You receive training from the person you work for or are required to follow that person's instructions.

(4) You must do the work yourself.

(5) You do not hire, supervise, or pay assistants (unless you are employed as a foreman, manager, or supervisor).

(6) The person you work for sets your hours of work, requires you to work full-time, or restricts you from doing work for others.

(7) The person you work for pays your business or traveling expenses.

(8) You are paid by the hour, week or month.

(c) *Factors that show self-employed status.* Some aspects of a job arrangement or business venture that may show you are self-employed are as follows:

(1) You make a profit or suffer a loss.

(2) You are hired to complete a certain job and if you quit before the job is completed you may be liable for damages.

(3) You work for a number of persons or firms at the same time.

(4) You advertise to the general public that you are available to perform services.

(5) You pay your own expenses and have your own equipment and work place.

(d) *Questions about your status.* If there is a question about whether you are working as an employee or are self-employed, we or the Internal Revenue Service will make a determination after examining all of the facts of your case.

§ 404.1008 Agent-driver or commission-driver, full-time life insurance salesman, home worker, or traveling or city salesman.

(a) *General.* In addition to common-law employees and corporation officers, we consider workers in the four types of jobs described in paragraphs (b) through (e) of this section to be employees if their services are performed under the following conditions:

(1) Under the work arrangement the worker is expected to do substantially all of the work personally.

(2) The worker must not have a substantial investment in the facilities used to do the work. Facilities include such things as a place to work, storage space, equipment, machinery and office furniture. However, facilities do not include tools, equipment or clothing of the kind usually provided by employees nor transportation such as a car or truck.

(3) The work must be performed as part of a continuing work relationship between the worker and the person for whom the work is done. The work performed must not be a single transaction. Part-time and regular seasonal work may be performed as part of a continuing work relationship.

(b) *Agent-driver or commission-driver.* This is a driver hired by another person to distribute meat products, vegetable products, fruit products, bakery products, beverages (other than milk), or laundry or dry-cleaning services. We consider you an agent-driver or commission-driver if you are paid a commission based on your sales or the difference between the price you charge your customers and the amount you pay for the goods or services. It makes no difference whether you drive your own truck or the company's truck or whether you solicit the customers you serve.

(c) *Full-time life insurance salesman.* A full-time life insurance salesman's main activity is selling life insurance or

annuity contracts, or both, mostly for one life insurance company. If you are a full-time life insurance salesman, you are probably provided office space, stenographic help, telephone, forms, rate books and advertising materials by the company or general agent, without cost to you.

(d) *Home worker.* A home worker is a person who works away from the place of business of the person he or she works for, usually at home. If you are a home worker and you work according to the instructions of the person you work for, on material or goods furnished by that person, and are required to return the finished product to that person (or another person whom he or she designates), you are an employee.

(e) *Traveling or city salesman.* The main activity of a traveling or city salesman is taking orders for merchandise for another person or firm. The salesman gets orders from wholesalers, retailers, contractors, or operators of hotels, restaurants or other firms whose main business is furnishing food or lodging or both. The salesman sells merchandise to others for resale or for use in their own business. We consider you a traveling or city salesman if most of your work is done for a single person or firm even though you have incidental sideline sales activities. However, you are not an employee under this paragraph as to those sideline sales. If you take orders for a number of persons or firms as a "multiple line" salesman, you are not a traveling or city salesman.

§ 404.1009 Who is an employer.

A person is an employer if he or she employs at least one employee. Sometimes it is not clear who a worker's employer is, since the employer does not always pay the worker's wages. When there is a question about who the employer is, we use the common-law rules to identify the employer (see § 404.1007).

§ 404.1010 Farm crew leader as employer.

A farm crew leader furnishes workers to do agricultural labor for another person, usually a farm operator. If the crew leader pays the workers (the money can be the crew leader's or the farm operator's), the crew leader is deemed to be the employer of the workers and is self-employed. However, the crew leader is not deemed the employer of the workers if there is a written agreement between the crew leader and the farm operator naming the crew leader as an employee. If the crew leader does not have this agreement and does not pay the workers, we use the common-law rules to determine the crew leader's status.

Work Excluded From Employment

§ 404.1012 Work excluded from employment.

Certain kinds of work performed by an employee are excluded from employment. They are described in §§ 404.1014–404.1037 and are exceptions to the general rule in § 404.1004 on the kinds of work that are covered as employment. In general, if the work performed by an employee is excluded from employment, the work is not covered under social security. However, certain kinds of work performed by an employee, even though excluded from employment, are covered as self-employment for social security purposes. In addition, if part of the work performed by an employee for the same employer is included as employment and part is excluded from employment, all the work may be included or all may be excluded as described in § 404.1013.

§ 404.1013 Included-excluded rule.

(a) If part of your work for an employer during a pay period is covered as employment and part excluded, all of your work during that period is considered covered if at least one-half of your time in the pay period is in covered work. If you spend most of your time in a pay period doing work that is excluded, all of your work in that period is excluded.

(b) A "pay period" is the period for which your employer ordinarily pays you. It cannot be more than 31 consecutive days. If the actual period is not always the same, your usual pay period will be used for applying the included-excluded rule.

(c) The included-excluded rule does not apply and your covered work will be counted if—

(1) Part of your work is covered by the Railroad Retirement Tax Act and part by the Social Security Act; or

(2) You have no usual "pay period" of 31 consecutive days or less, or you have separate pay periods for covered and excluded work.

§ 404.1014 Domestic service by a student for a local college club, fraternity or sorority.

(a) *General.* If you are a student and do work of a household nature in or about the club rooms or house of a local college club or local chapter of a college fraternity or sorority, and are enrolled and regularly attending classes at a school, college, or university, your work is not covered as employment.

(b) *Explanation of terms.* (1) "Work of a household nature" means the type of work done by cooks, waiters, butlers, maids, janitors, laundresses, furnacemen, handymen, gardeners, housekeepers and housemothers.

(2) A "local college club or local chapter of a college fraternity or sorority" does not include an alumni club or chapter. Also, if the club rooms or house are used mostly for supplying board or lodging to students or nonstudents as a business, the work done is not excluded by this section.

§ 404.1015 Family services.

(a) *General.* If you work as an employee of a relative, the work is excluded from employment if—

(1) You work as an employee of your spouse;

(2) You work while under age 21 in the employ of your parent;

(3) You do nonbusiness work as an employee of your son or daughter (see § 404.1059(a)(3) for an explanation of nonbusiness work); or

(4) You perform domestic service (as described in § 404.1058(b)) in your son's or daughter's private home as an employee of that son or daughter, unless—

(i) The son or daughter has a child (either natural, adopted or stepchild) living in the home who is under age 18 or, if older, has a mental or physical condition that requires the personal care and supervision of an adult for at least four continuous weeks in the calendar quarter in which the work is done; and

(ii) The son or daughter is a widower or widow, or is divorced and has not remarried, or has a spouse living in the home who, because of a physical or mental condition, is incapable of taking care of the child and the condition is present for at least four continuous weeks in the calendar quarter in which the work is done.

(b) *Family work for other than sole proprietor.* Work for a corporation is not excluded under this section, and work for a partnership is not excluded unless the required family relationship exists between the employee and each of the partners.

§ 404.1016 Foreign agricultural workers.

Farm work done by foreign workers lawfully admitted to the United States on a temporary basis to do farm work is not covered as employment. The excluded work includes any services connected with farm operations.

§ 404.1017 Sharefarmers.

(a) If you are a sharefarmer, your services are not covered as employment, but as self-employment.

(b) You are a sharefarmer if you have an arrangement with the owner or

tenant of the land and the arrangement provides for all of the following:

(1) You will produce agricultural or horticultural commodities on the land.

(2) The commodities you produce or the income from their sale will be divided between you and the person with whom you have the agreement.

(3) The amount of your share depends on the amount of commodities you produce.

(c) If under your agreement you are to receive a specific rate of pay, a fixed sum of money or a specific amount of the commodities not based on your production, you are not a sharefarmer for social security purposes.

§ 404.1018 Work by civilians for the U.S. Government or its instrumentalities.

(a) *General.* If you work as a civilian employee of the United States Government or an instrumentality of the United States, your work is excluded from employment if that work is covered by a retirement system established by law. Your work for an instrumentality that is exempt from social security tax is also excluded. Certain other work for the United States or an instrumentality of the United States is specifically excluded and is described in this section.

(b) *Work covered by a retirement system.* Work you do as an employee of the United States or an instrumentality of the United States is excluded from employment if the work is covered by a retirement system established by a law of the United States. If you have a choice as to whether your work is covered by the retirement system, the work is not covered by that system until you choose that coverage. In order for the exclusion to apply, the work you do, rather than the position you hold, must be covered by the retirement system.

(c) *Work that is specifically excluded.* Work performed by an employee of the United States or an instrumentality of the United States is excluded if it is done—

(1) As the President or Vice President of the United States;

(2) As a Member of the United States Congress, a Delegate to Congress or a Resident Commissioner;

(3) In the legislative branch of the United States Government;

(4) By a student nurse, student dietitian, student physical therapist or student occupational therapist who is assigned or attached to a Federal hospital, clinic, or medical or dental laboratory;

(5) By a person designated as a student employee with the approval of the Office of Personnel Management who is assigned or attached primarily for training purposes to a Federal hospital, clinic, or medical or dental laboratory (other than a medical or dental intern or resident in training);

(6) By an employee serving on a temporary basis in case of fire, storm, earthquake, flood, or other similar emergency;

(7) By a person to whom the Civil Service Retirement Act does not apply because the person's services are subject to another retirement system established by a law of the United States or by the instrumentality of the United States for which the work is done (other than the retirement system established by the Tennessee Valley Authority under the plan approved by the Secretary of Health, Education, and Welfare on December 28, 1956); or

(8) By an inmate of a penal institution of the United States, if the work is done in the penal institution.

(d) *Work for instrumentalities of the United States exempt from employer tax.* (1) Work performed by an employee of an instrumentality of the United States is excluded if—

(i) The instrumentality is exempt from the employer tax imposed by section 3111 of the Code or by section 1410 of the Internal Revenue Code of 1939; and

(ii) The exemption is authorized by another law specifically referring to these sections.

(2) Work performed by an employee of an instrumentality of the United States is excluded if the instrumentality was not on December 31, 1950, subject to the employer tax imposed by section 1410 of the Internal Revenue Code of 1939 and the work is covered by a retirement system established by the instrumentality, unless—

(i) The work is for a corporation wholly owned by the United States;

(ii) The work is for a Federal land bank association, a production credit association, a Federal Reserve Bank, a Federal Credit Union, a Federal land bank, a Federal intermediate credit bank, a bank for cooperatives, or a Federal Home Loan Bank;

(iii) The work is for a State, county, or community committee under the Agriculture Marketing Service and the Commodity Stabilization Service (formerly Production and Marketing Administration); or

(iv) The work is by a civilian, who is not paid from funds appropriated by the Congress, in activities conducted by an instrumentality of the United States subject to the jurisdiction of the Secretary of Defense or Secretary of Transportation at installations intended for the comfort, pleasure, contentment, and mental and physical improvement of personnel of the Defense Department or the Coast Guard, such as—

(A) Army and Air Force Exchange Service;

(B) Army and Air Force Motion Picture Service;

(C) Coast Guard Exchanges;

(D) Navy Ship's Service Stores; and

(E) Marine Corps Post Exchanges.

(3) For purposes of paragraph (d)(2) of this section, if an employee has a choice as to whether his or her work is covered by a retirement system, the work is not covered by that system until he or she chooses that coverage. The work done rather than the position held, must be covered by the retirement system.

(e) *Work as Peace Corps Volunteer.* Work performed as a volunteer or volunteer leader within the meaning of the Peace Corps Act (22 U.S.C. 2501 ff) is covered as employment.

(f) *Work as Job Corps Enrollee.* Work performed as an enrollee in the Job Corps is considered to be performed in the employ of the United States.

(g) *Work by Volunteer in Service to America.* Work performed (including training) as a Volunteer in Service to America is considered to be performed in the employ of the United States if the volunteer in enrolled for a period of service of at least one year. If the enrollment is for less than one year, we use the common-law rules in § 404.1007 to determine the volunteer's status.

§ 404.1019 Work as a member of a uniformed service of the United States.

(a) If you work as a member of a uniformed service of the United States, the work is covered as employment after 1956, unless the work is done while you are on leave without pay or is creditable under the Railroad Retirement Act. The work must be done while you are on active duty or active duty for training as defined in Veterans' Benefits, 38 U.S.C. 101.

(b) You are a "member of a uniformed service" if—

(1) You are appointed, enlisted, or inducted into (or a retired member of)—

(i) One of the armed services (Army, Navy, Air Force, Marine Corps, or Coast Guard); or

(ii) A component of one of the armed services, including any reserve component as defined in Veterans' Benefits, 38 U.S.C. 101 (except the Coast Guard Reserve as a temporary member);

(2) You are a commissioned officer (including a retired commissioned officer) of the National Oceanic and Atmospheric Administration or the Regular or Reserve Corps of the Public Health Service;

(3) You are a member of the Fleet Reserve or Fleet Marine Corps Reserve;

(4) You are a cadet at the United States Military, Coast Guard, or Air Force Academy, or a midshipman at the United States Naval Academy;

(5) You are a member of the Reserve Officers Training Corps, the Naval Reserve Officers Training Corps, or the Air Force Reserve Officers Training Corps, when ordered to annual training duty for 14 days or more including periods of authorized travel to and from that duty; or

(6) You are selected for active military or naval training under the Military Selective Service Act or are provisionally accepted for active duty in the military or naval service and you are ordered or directed to a place for final acceptance or entry upon active duty and are on the way to or from, or at, that place.

§ 404.1020 Work for States and their political subdivisions and instrumentalities.

(a) *General.* If you work as an employee of a State, a political subdivision of a State, or any wholly owned instrumentality of one or more of these, your work is excluded from employment unless—

(1) The work is covered under an agreement under section 218 of the Act (see Subpart M of this part); or

(2) The work is "covered transportation service" as defined in section 210(k) of the Act (see paragraph (b) of this section).

(b) *Covered transportation service.*—(1) *Work for a public transportation system.* If you work for a public transportation system of a State or political subdivision of a State, your work may be covered transportation service if all or part of the system was acquired from private ownership. You must work as an employee of the State or political subdivision in connection with its operation of a public transportation system for your work to be covered transportation service. This paragraph sets out additional conditions that must be met for your work to be covered transportation service. If you work for a public transportation system but your work is not covered transportation service, your work may be covered for social security purposes under an agreement under section 218 of the Act (see Subpart M of this part).

(2) *Transportation system acquired in whole or in part after 1936 and before 1951.* All work after 1950 for a public transportation system is covered transportation service if—

(i) Any part of the transportation system was acquired from private ownership after 1936 and before 1951; and

(ii) No general retirement system covering substantially all work in connection with the operation of the transportation system and guaranteed by the State constitution was in effect on December 31, 1950.

(3) *Transportation system operated on December 31, 1950, no part of which was acquired after 1936 and before 1951.* If no part of a transportation system operated by a State or political subdivision on December 31, 1950, was acquired from private ownership after 1936 and before 1951, work for that public transportation system is not covered transportation service unless performed under conditions described in paragraph (b)(4) of this section.

(4) *Addition after 1950 to existing transportation system.* Work for a public transportation system part of which was acquired from private ownership after 1950 as an addition to an existing transportation system is covered transportation service beginning with the first day of the third calendar quarter following the calendar quarter in which the addition was acquired if—

(i) The work is performed by an employee who—

(A) Worked in employment in connection with the operation of the addition before the addition was acquired by the State or political subdivision; and

(B) Became an employee of the State or political subdivision in connection with and at the time of its acquisition of the addition;

(ii) On that first day, work performed by that employee is—

(A) Not covered by a general retirement system; or

(B) Covered by a general retirement system which contains special provisions that apply only to employees described in paragraph (b)(4)(i)(B) of this section;

(iii) The existing transportation system was operated by the State or political subdivision on December 31, 1950; and

(iv) Work for the existing transportation system was not covered transportation service because—

(A) No part of the system was acquired from private ownership after 1936 and before 1951; or

(B) The general retirement system described in paragraph (b)(2)(ii) of this section was in effect on December 31, 1950.

(5) *Transportation system acquired after 1950.* All work for a public transportation system is covered transportation service if—

(i) The transportation system was not operated by the State or political subdivision before 1951;

(ii) All or part of the transportation system was first acquired from private ownership after 1950; and

(iii) At the time the State or political subdivision first acquired any part of its transportation system from private ownership, it did not have a general retirement system covering substantially all work performed in connection with the operation of the transportation system.

(6) *Definitions.* (i) The term "general retirement system" means any pension, annuity, retirement, or similar fund or system established by a State or by a political subdivision of a State for employees of the State, the political subdivision, or both. The term does not include a fund or system which covers only work performed in positions connected with the operation of the public transportation system.

(ii) A transportation system (or part of a system) is considered to have been acquired from private ownership by a State or political subdivision if—

(A) Before the acquisition, work performed by employees in connection with the operation of the system (or an acquired part) constituted employment under the Act; and

(B) Some of these employees became employees of the State or political subdivision in connection with and at the time of the acquisition.

(iii) The term "political subdivision" includes an instrumentality of a State, of one or more political subdivisions of a State, or of a State and one or more of its political subdivisions.

§ 404.1021 Work for the District of Columbia.

If you work as an employee of the District of Columbia or a wholly owned instrumentality of the District of Columbia, your work is covered as employment unless—

(a) Your work is covered by a retirement system established by a law of the United States; or

(b) You are—

(1) A patient or inmate of a hospital or penal institution and your work is for that hospital or institution;

(2) A student employee (a student nurse, dietitian, or physical or occupational therapist, but not a medical or dental intern or resident in training) of a District of Columbia hospital, clinic, or medical or dental laboratory;

(3) An employee serving temporarily in case of fire, storm, snow, earthquake, flood, or other similar emergency; or

(4) A member of a board, committee, or council of the District of Columbia paid on a per diem, meeting, or other fee basis.

§ 404.1022 American Samoa or Guam.

(a) *Work in American Samoa or Guam.* Work in American Samoa or Guam for a private employer is covered as employment the same as in the 50 States. Work done by a resident of the Republic of the Philippines working in Guam on a temporary basis as a nonimmigrant alien admitted to Guam under section 101(a)(15)(H)(ii) of the Immigration and Nationality Act is excluded from coverage regardless of the employer.

(b) *Work for American Samoa or a political subdivision or wholly owned instrumentality of American Samoa.* Work as an officer or employee (including a member of the legislature) of the government of American Samoa, its political subdivisions, or any wholly owned instrumentality of any one or more of these, is covered as employment (unless the work is covered by a retirement system established by a law of the United States). The officer or employee is not considered as an employee of the United States, an agency of the United States, or an instrumentality of the United States, for purposes of title II of the Act. We consider any pay for this work to have been paid by the government of American Samoa, or the political subdivision or the wholly owned instrumentality of American Samoa.

(c) *Work for Guam or a political subdivision or wholly owned instrumentality of Guam.* Work as an officer or employee (including a member of the legislature) of the government of Guam, its political subdivisions, or any wholly owned instrumentality of any one or more of these, is excluded from coverage as employment. However, the exclusion does not apply to employees classified as temporary or intermittent unless the work is—

(1) Covered by a retirement system established by a law of Guam;

(2) Done by an elected official;

(3) Done by a member of the legislature; or

(4) Done in a hospital or penal institution by a patient or inmate of the hospital or penal institution.

§ 404.1023 Ministers of churches and members of religious orders.

(a) *General.* If you are a duly ordained, commissioned, or licensed minister of a church, the work you do in the exercise of your ministry is excluded from employment. However, it is treated as self-employment for social security purposes. If you are a member of a religious order who has not taken a vow of poverty, the same rule applies to the work you do in the exercise of your duties required by that order. If you are a member of a religious order who has taken a vow of poverty, the work you do in the exercise of duties required by the order (the work may be done for the order or for another employer) is covered as employment only if the order or autonomous subdivision of the order to which you belong has filed an effective election of coverage. The election is made under section 3121(r) of the Code. For the rules on self-employment coverage of ministers and members of religious orders who have not taken vows of poverty, see § 404.1071.

(b) *What is an ordained, commissioned, or licensed minister.* The terms "ordained, commissioned, or licensed" describe the procedures followed by recognized churches or church denominations to vest ministerial status upon qualified individuals. If a church or church denomination has an ordination procedure, the commissioning or licensing of a person as a minister may not make him or her a commissioned or licensed minister for purposes of this subpart. Where there is an ordination procedure, the commissioning or licensing must be recognized as having the same effect as ordination and the person must be fully qualified to exercise all of the ecclesiastical duties of the church or church denomination.

(c) *When is work by a minister in the exercise of the ministry.* (1) A minister is working in the exercise of the ministry when he or she is—

(i) Ministering sacerdotal functions or conducting religious worship (other than as described in paragraph (d)(2) of this section); or

(ii) Working in the control, conduct, and maintenance of a religious organization (including an integral agency of a religious organization) under the authority of a religious body constituting a church or church denomination.

(2) The following rules are used to decide whether a minister's work is in the exercise of the ministry:

(i) Whether the work is the conduct of religious worship or the ministration of sacerdotal functions depends on the tenets and practices of the religious body which is his or her church or church denomination.

(ii) Work in the control, conduct, and maintenance relates to directing, managing, or promoting the activities of the religious organization. Any religious organization is considered to be under the authority of a religious body constituting a church or church denomination if it is organized and dedicated to carrying out the tenets and principles of a faith according to either the requirements or sanctions governing the creation of institutions of the faith. The term "religious organization" has the same meaning and application as is given to the term for income tax purposes under the Code.

(iii) If a minister is working in the conduct of religious worship or the ministration of sacerdotal functions, the work is in the exercise of the ministry whether or not it is performed for a religious organization. (See paragraph (d)(2) of this section for an exception to this rule.)

Example. M, a duly ordained minister, is engaged to work as chaplain at a privately owned university. M spends his entire time working as chaplain. This includes the conduct of religious worship, offering spiritual counsel to the university students, and teaching a class in religion. M is working in the exercise of the ministry.

(iv) If a minister is working for an organization which is operated as an integral agency of a religious organization under the authority of a religious body constituting a church or church denomination, all work by the minister in the conduct of religious worship, in the ministration of sacerdotal functions, or in the control, conduct, and maintenance of the organization is in the exercise of the ministry.

Example. M, a duly ordained minister, is engaged by the N Religious Board as director of one of its departments. M performs no other service. The N Religious Board is an integral agency of O, a religious organization operating under the authority of a religious body constituting a church denomination. M is working in the exercise of the ministry.

(v) If a minister, under an assignment or designation by a religious body constituting a church, works for an organization which is neither a religious organization nor operated as an integral agency of a religious organization, all service performed by him or her, even though the service may not involve the conduct of religious worship or the ministration of sacerdotal functions, is in the exercise of the ministry.

Example. M, a duly ordained minister, is assigned by X, the religious body constituting M's church, to perform advisory service to Y company in connection with the publication of a book dealing with the history of M's church denomination. Y is neither a religious organization nor operated as an integral agency of a religious organization. M performs no other service for X or Y. M is working in the exercise of the ministry.

(vi) If a minister is working for an organization which is neither a religious organization nor operated as an integral agency of a religious organization and the work is not performed under an assignment or designation by ecclesiastical superiors, then only the work done by the minister in the conduct of religious worship or the ministration of sacerdotal functions is in the exercise of the ministry. (See paragraph (d)(2) of this section for an exception to this rule.)

Example. M, a duly ordained minister, is engaged by N University to teach history and mathematics. M does no other work for N although from time to time M performs marriages and conducts funerals for relatives and friends. N University is neither a religious organization nor operated as an integral agency of a religious organization. M is not working for N under an assignment by his ecclesiastical superiors. The work performed by M for N University is not in the exercise of the ministry. However, service performed by M in performing marriages and conducting funerals is in the exercise of the ministry.

(d) *When is work by a minister not in the exercise of the ministry.* (1) Work performed by a duly ordained, commissioned, or licensed minister of a church which is not in the exercise of the ministry is not excluded from employment.

(2) Work performed by a duly ordained, commissioned, or licensed minister of a church as an employee of the United States, or a State, territory, or possession of the United States, or the District of Columbia, or a foreign government, or a political subdivision of any of these, is not in the exercise of the ministry, even though the work may involve the ministration of sacerdotal functions or the conduct of religious worship. For example, we consider service performed as a chaplain in the Armed Forces of the United States to be work performed by a commissioned officer and not by a minister in the exercise of the ministry. Also, service performed by an employee of a State as a chaplain in a State prison is considered to be performed by a civil servant of the State and not by a minister in the exercise of the ministry.

(e) *Work in the exercise of duties required by a religious order.* Work performed by a member of a religious order in the exercise of duties required by the order includes all duties required of the member of the order. The nature or extent of the work is immaterial so long as it is service which the member is directed or required to perform by the member's ecclesiastical superiors.

§ 404.1024 Election of coverage by religious orders.

A religious order whose members are required to take a vow of poverty, or any autonomous subdivision of that religious order, may elect to have social security coverage extended to the work performed by its members in the exercise of duties required by that order or subdivision. The rules on the election of coverage by these religious orders are described in 26 CFR 31.3121(r). The rules on determining the wages of members of religious orders for which an election of coverage has been made are described in § 404.1046.

§ 404.1026 Work for religious, charitable, educational, or certain other organizations exempt from income tax.

(a) *General.* Work done by an employee in the employ of a religious, charitable, educational, or other organization described in section 501(c)(3) of the Code which is exempt from income tax under section 501(a) of the Code (section 101(6) of the Internal Revenue Code of 1939) is excluded from employment. This exclusion does not apply to work done during the period for which a form SS–15, Certificate Waiving Exemption From Taxes Under the Federal Insurance Contributions Act, is filed under paragraph (b) of this section, or an organization is deemed to have filed a waiver certificate under paragraph (c) of this section.

(b) *Election of coverage by filing form SS–15 and form SS–15a.* Form SS–15, Certificate Waiving Exemption From Taxes Under the Federal Insurance Contributions Act, and form SS–15a, List of Concurring Employees, filed under section 3121(k) of the Code, have the effect of covering work done by an employee—

(1) Whose signature appears on the form SS–15a (or a supplemental list); or

(2) Who became an employee of the organization after the calendar quarter in which the form SS–15 was filed; or

(3) Who became a member of a group of employees as described in section 3121(k)(1)(E) of the Code after the calendar quarter in which the form SS–15 was filed for that group.

(c) *Deemed filing of waiver certificate.* Under certain conditions, an organization which has never filed a certificate waiving its exemption from social security taxes but has reported wages and paid social security taxes for its employees is deemed to have filed a waiver certificate and elected to cover the services of its employees under social security. Each employee listed on the filed wage reports is deemed to have concurred in the filing of the certificate. The authority and conditions for the deemed filing of a waiver certificate and employee coverage for social security purposes are found in section 3121(k) of the Code.

(d) *Coverage of individual employees.* (1) For the payments to employees or organizations described in paragraph (c) of this section to be considered wages as defined in § 404.1041(a), the employee must—

(i) Request that the payments be considered wages when a deemed filed certificate is not effective for certain periods because of section 3121(k)(4)(C) of the Code; or

(ii) Request that the payments be considered wages when, for periods between March 31, 1972, and the date a deemed filed certificate is effective, the payments were reported for social security purposes and the employer has obtained a refund or credit for the social security taxes paid on those payments.

(2) The request must be in writing and filed with either the Social Security Administration or the Internal Revenue Service on or before April 15, 1980. The written request should identify the employer or employers, the periods in which the work was done and the approximate amount of wages paid in these periods. The employee must show that the employee's share of the social security taxes due on his or her wages has been paid to the Internal Revenue Service or that arrangements have been made with the Internal Revenue Service to make the required payment.

§ 404.1027 Railroad work.

We exclude from employment any work you do as an employee or employee representative as described in the Railroad Retirement Tax Act. However, railroad compensation can be counted for social security purposes under the conditions described in Subpart O of this part.

§ 404.1028 Student working for a school, college, or university.

(a) For purposes of this section, a "school, college, or university" has its usual accepted meaning. It does not, however, include any school, college, or university that is an instrumentality or integral part of a State or a political subdivision of a State for which work can only be covered by an agreement under section 218 of the Act. (See Subpart M of this part.)

(b) If you are a student, any work you do as an employee of a school, college or university is excluded from employment, if you are enrolled in and regularly attending classes at that school, college, or university. The exclusion also applies to work you do for a private nonprofit auxiliary

organization of the school, college, or university if it is organized and operated exclusively for the benefit of, to perform functions of, or to carry out the purposes of the school, college, or university. The organization must be operated, supervised, or controlled by, or in connection with, the school, college, or university.

(c) Whether you are a student for purposes of this section depends on your relationship with your employer. If your main purpose is pursuing a course of study rather than earning a livelihood, we consider you to be a student and your work is not considered employment.

§ 404.1029 Student nurses.

If you are a student nurse, your work for a hospital or nurses training school is excluded from employment if you are enrolled and regularly attending classes in a nurses training school which is chartered or approved under State law.

§ 404.1030 Delivery and distribution or sale of newspapers, shopping news, and magazines.

(a) *If you are under age 18.* Work you do before you reach age 18 delivering or distributing newspapers or shopping news is excluded from employment. This does not include delivery or distribution to some point for further delivery or distribution by someone else. If you make house-to-house delivery or sale of newspapers or shopping news (including handbills and similar kinds of advertising material), your work is not covered while you are under age 18. Related work such as assembling newspapers is also excluded.

(b) *If you are any age.* No matter how old you are, work you do in connection with and at the time of the sale of newspapers or magazines to consumers is excluded from employment if there is an arrangement under which—

(1) You are to sell the newspapers or magazines at a fixed price; and

(2) Your pay is the difference between the fixed selling price and the amount you are charged for the newspapers or magazines (whether or not you are guaranteed a minimum amount of compensation or receive credit for unsold newspapers or magazines).

(c) *If you are age 18 or older.* If you have attained age 18, you are self-employed if you work under the arrangement described in paragraph (b) of this section. See § 404.1068(b).

§ 404.1031 Fishing.

(a) If you work on a boat engaged in catching fish or other forms of aquatic animal life, your work is not employment if you have an arrangement with the owner or operator of the boat which provides for all of the following:

(1) You do not receive any cash pay (other than as provided in paragraph (a)(2) of this section).

(2) You receive a share of the catch or a share of the proceeds from the sale of the catch.

(3) The amount of your share depends on the size of the catch.

(4) The operating crew of the boat (or each boat from which you receive a share if the fishing operation involves more than one boat) is normally made up of fewer than 10 individuals.

(b) Work excluded from employment under this section is considered to be self-employment (§ 404.1068(e)).

§ 404.1032 Work for a foreign government.

If you work as an employee of a foreign government in any capacity, your work is excluded from employment. If you are a citizen of the United States and work in the United States as an employee of a foreign government, you are considered to be self-employed (§ 404.1068(d)).

§ 404.1033 Work for a wholly owned instrumentality of a foreign government.

(a) If you work as an employee of an instrumentality of a foreign government, your work is excluded from employment if—

(1) The instrumentality is wholly owned by the foreign government;

(2) Your work is similar to work performed in foreign countries by employees of the United States Government or its instrumentalities; and

(3) The Secretary of State certifies to the Secretary of the Treasury that the foreign government grants an equivalent exemption for services performed in the foreign country by employees of the United States Government or its instrumentalities.

(b) Your work will not be excluded under this section if any of the conditions in paragraph (a) of this section are not met.

(c) If you are a citizen of the United States and work in the United States as an employee of an instrumentality of a foreign government and the conditions in paragraph (a) of this section are met, you are considered to be self-employed (§ 404.1068(d)).

§ 404.1034 Work for an international organization.

(a) If you work as an employee of an international organization entitled to enjoy privileges, exemptions, and immunities as an international organization under the International Organizations Immunities Act (59 Stat. 669), your work is excluded from employment. The organization must meet the following conditions:

(1) It must be a public international organization in which the United States participates under a treaty or authority of an act of Congress authorizing, or making an appropriation for, participation.

(2) It must be designated by executive order to be entitled to enjoy the privileges, exemptions, and immunities provided in the International Organizations Immunities Act.

(3) The designation must be in effect, and all conditions and limitations in the designation must be met.

(b) Your work will not be excluded under this section if any of the conditions in paragraph (a) of this section are not met.

(c) If you are a citizen of the United States and work in the United States as an employee of an international organization that meets the conditions in paragraph (a) of this section, you are considered to be self-employed (§ 404.1068(d)).

§ 404.1035 Work for a communist organization.

If you work as an employee of an organization which is registered, or which is required by a final order of the Subversive Activities Control Board to register under the Internal Security Act of 1950 as a communist action, communist-front, or communist-infiltrated organization, your work is excluded from employment. The exclusion is effective with the calendar year in which the organization is registered or the final order is in effect.

§ 404.1036 Certain nonresident aliens.

(a) *Foreign students.* Foreign students (nonimmigrant aliens) may be temporarily in the United States under subparagraph (F) of section 101(a)(15) of the Immigration and Nationality Act to attend a school or other recognized place of study approved by the Attorney General. On-campus work or work under permission granted by the Immigration and Naturalization Service which is done by these students is excluded from employment. Other work done by these foreign students is not excluded from employment under this section.

(b) *Exchange visitors.* Exchange visitors (nonimmigrant aliens) may be temporarily in the United States under subparagraph (J) of section 101(a)(15) of the Immigration and Nationality Act to participate in exchange visitor programs designated by the Secretary of State. Work done by these exchange visitors to carry out the purpose for which they were admitted and for which permission

has been granted by the sponsor, is excluded from employment. Other work done by these exchange visitors is not excluded from employment under this section.

(c) *Spouse and children.* Work done by a foreign student's or exchange visitor's alien spouse or minor child who is also temporarily in the United States under subparagraph (F) or (J) of section 101(a)(15) of the Immigration and Nationality Act is not excluded from employment under this section unless that spouse or child and the work that is done meets the conditions of paragraph (a) or (b) of this section.

§ 404.1037 Work on or in connection with a non-American vessel or aircraft.

If you work as an employee within the United States on or in connection with (as explained in § 404.1004(b)(8)) a vessel or aircraft that is not an American vessel (as defined in § 404.1004(b)(3)) or American aircraft (as defined in § 404.1004(b)(2)), your work is excluded from employment if—

(a) You are not a citizen of the United States or your employer is not an American employer (as defined in § 404.1004(b)(1)); and

(b) You are employed on and in connection with (as explained in § 404.1004(b)(7)) the vessel or aircraft when outside the United States.

Wages

§ 404.1041 Wages.

(a) The term "wages" means remuneration paid to you as an employee for employment unless specifically excluded. Wages are counted in determining your entitlement to retirement, survivors', and disability insurance benefits.

(b) If you are paid wages, it is not important what they are called. Salaries, fees, bonuses and commissions on sales or on insurance premiums are wages if they are remuneration paid for employment.

(c) The way in which you are paid is unimportant. Wages may be paid on the basis of piecework or a percentage of the profits. Wages may be paid on an hourly, daily, weekly, monthly, or yearly basis. (See § 404.1056 for special rules for agricultural labor.)

(d) Your wages can be in any form. You can be paid in cash or in something other than cash, as for example, goods, lodging, food, or clothing. If your employer pays you cash for your meals or lodging on a regular basis as part of your employment, those payments may be considered wages. Payments made in the form of items other than cash may be counted as wages on the basis of the fair value of the items when paid.

§ 404.1042 Wages when paid and received.

(a) *In general.* Wages are received by an employee at the time they are paid by the employer to the employee. Wages are paid by an employer at the time that they are actually or constructively paid unless they are deemed to be paid later (as described in paragraph (c)(3) of this section).

(b) *Constructive payment.* Wages are constructively paid when they are credited to the account of, or set aside for, an employee so that they may be drawn upon by the employee at any time although not then actually received. To be a payment—

(1) The wages must be credited to or set aside for the employee and must be made available without restriction so that they may be drawn upon at any time; or

(2) The employer must intend to pay or to set aside or credit, and have the ability to pay wages when due to the employee, and failure of the employer to credit or set aside the wages is due to clerical error or mistake in the mechanics of payment, and because of the clerical error or mistake the wages are not actually available at that time.

(c) *Deemed payment.* (1) The first $100 of cash paid, either actually or constructively, by an employer to an employee in a calendar year is considered paid at the time that the amount of the cash payment totals $100 for the year in the case of pay for—

(i) Work not in the course of the employer's trade or business (non-business work);

(ii) Work by certain home workers; and

(iii) Work for an organization exempt from income tax under section 501 of the Code.

(2) We also apply this rule to domestic work in a private home of the employer, except that the test is $50 paid in a calendar quarter.

(3) Cash of less than $150 that an employer pays to an employee in a calendar year, either actually or constructively, for agricultural labor is considered paid at the earliest of—

(i) The time in the calendar year that the employee's pay totals $150; or

(ii) The 20th day of the calendar year on which the employee works for cash pay computed on a time basis.

(4) If an employer pays cash to an employee for two or more of the kinds of work referred to in paragraph (c)(1) of this section, we apply the provisions of this paragraph to the pay for each kind of work.

(d) *Employee tax deductions.* We consider employee tax deductions under section 3101 of the Code to be part of the employee's wages and consider them to be paid at the time of the deduction. We consider other deductions from wages to be wages paid at the time of the deduction. It is immaterial that the deductions are required or permitted by an act of Congress or the law of any State.

(e) *Tips.* (1) Tips received by an employee in the course of employment, that are considered to be "wages", are deemed to be paid at the time the employee reports the tips to the employer in a written statement as provided under section 6053(a) of the Code. Tips that are not reported are deemed to be paid to the employee at the time they are received by the employee.

(2) We consider tips to be received in the course of employment whether they are received by the employee from the employer or from another person. Only tips employees receive and keep for themselves are considered to be the employees' pay. If employees split tips, each employee who receives part of the tip receives tips in the course of employment.

§ 404.1043 Facilities or privileges—Meals and lodging.

(a) Generally, facilities or privileges that an employer furnishes or offers to an employee are not considered wages if the facilities or privileges—

(1) Are of relatively small value; and

(2) Are offered or furnished by the employer merely as a means of promoting the health, good will, contentment, or efficiency of the employees.

(b) The term "facilities or privileges" includes such things as entertainment, medical services, and so-called "courtesy" discounts on purchases. The term does not usually include the value of meals or lodging furnished to employees. The value of these items is wages where—

(1) It is understood by the employer and employee that the employer is to furnish to the employee meals or lodging or both on a regular basis; or

(2) The value of the items is a large part of the total pay. For example, the value of meals or lodging furnished to hospital, restaurant, or hotel employees, or to seamen or other employees aboard vessels, is generally wages because either one or both of these conditions are met.

§ 404.1044 Vacation pay.

We consider your salary while on vacation, or a "vacation allowance" paid by your employer, to be wages.

§ 404.1045 Employee expenses.

Amounts that your employer pays you specifically—either as advances or reimbursements—for traveling or for other ordinary and necessary expenses incurred, or reasonably expected to be incurred, in your employer's business are not wages. The employer must identify these travel and other expenses either by making a separate payment or by specifically stating the separate amounts if both wages and expense allowances are combined in a single payment.

§ 404.1046 Pay for work by certain members of religious orders.

If you are a member of a religious order who has taken a vow of poverty (§ 404.1023), and the order has elected social security coverage under section 3121(r) of the Code, your wages are figured in a special way. Your wages, for social security purposes, are the fair market value of any board, lodging, clothing, and other items of value furnished by the order, or by another organization or person under an agreement with the order. However, the order must report at least $100 a month for each active member. If the fair market value of items furnished to all members of a religious order does not vary significantly, the order may consider all members to have a uniform wage.

§ 404.1047 Annual wage limitation.

Payments made by an employer to you as an employee in a calendar year that are more than the annual wage limitation are not wages. The annual wage limitation is—

(a) $3,600 for 1951 through 1954;
(b) $4,200 for 1955 through 1958;
(c) $4,800 for 1959 through 1965;
(d) $6,600 for 1966 and 1967;
(e) $7,800 for 1968 through 1971;
(f) $9,000 for 1972;
(g) $10,800 for 1973;
(h) $13,200 for 1974;
(i) $14,100 for 1975;
(j) $15,300 for 1976;
(k) $16,500 for 1977;
(l) $17,700 for 1978;
(m) $22,900 for 1979;
(n) $25,900 for 1980;
(o) $29,700 for 1981; and
(p) After 1981 an amount equal to the contribution and benefit base figured under § 404.1048 for that year.

§ 404.1048 Contribution and benefit base after 1981.

(a) *General.* The contribution and benefit base after 1981 is figured under the formula described in paragraph (b) of this section in any calendar year in which there is an automatic cost-of-living increase in old-age, survivors, and disability insurance benefits. The base remains the same if there is no cost-of-living increase in these benefits. The base for 1981 is $29,700. For purposes of this section, the calendar year in which the contribution and benefit base is figured is called the determination year. The base figured in the determination year applies to wages paid after (and taxable years beginning after) the determination year.

(b) *Formula for figuring the contribution and benefit base.* For wages paid after (and taxable years beginning after) the determination year, the contribution and benefit base is the larger of—

(1) The contribution and benefit base in effect for the determination year; or

(2) The amount determined by—

(i) Multiplying the contribution and benefit base in effect for the determination year by the ratio of—

(A) The average of the total wages (as described in paragraph (c) of this section) reported to the Secretary of the Treasury for the calendar year before the determination year to;

(B) The average of the total wages reported to the Secretary of the Treasury for the calendar year before the most recent calendar year in which an increase in the contribution and benefit base was enacted or a determination under this section resulting in an increase of the base was made; and

(ii) Rounding the result of the multiplication, if not a multiple of $300, to—

(A) The nearest multiple of $300; or

(B) The next higher multiple of $300 if the result is a multiple of $150.

(c) *Average of the total wages.* The average of the total wages means the amount equal to all payments to employees reported to the Internal Revenue Service for income tax purposes divided by the number of wage earners. The reported payments include earnings from work not covered under social security and earnings from work covered under social security that are more than the annual wage limitation described in § 404.1047.

§ 404.1049 Payments under an employer plan or system.

(a) Payments to, or on behalf of, you or any of your dependents under your employer's plan or system are excluded from wages. In order to be excluded the payments must be made because of—

(1) Your retirement; or

(2) Your or your dependent's—

(i) Sickness or accident disability;

(ii) Medical or hospitalization expenses connected with sickness or accident disability; or

(iii) Death.

(b) Payments to you or your dependents under your employer's plan at or after the termination of your employment relationship because of your death, retirement for disability, or retirement after reaching an age specified in the plan or in a pension plan of the employer are excluded from wages.

(c) The plan or system established by the employer must provide for the employees generally or for a class or classes of employees. The plan or system may also provide for these employees' dependents. Payments under a plan or system established only for your dependents are not excluded from wages. The plan or system established by the employer can provide for payments on account of one or more of the items in paragraphs (a) and (b) of this section.

(d) For purposes of this section, your dependents include your husband or wife, children, and any other members of your immediate family.

(e) It does not make any difference that the benefit payments are considered in arriving at the amount of your pay or are required by the employment agreement.

§ 404.1050 Retirement payments.

We do not include as wages any payment an employer makes to you (including any amount paid by an employer for insurance or annuities) because of your retirement. This exclusion is different from the one in section § 404.1049 because no plan or system is required.

§ 404.1051 Payments on account of sickness or accident disability, or related medical or hospitalization expenses, not made under a plan or system.

We do not include as wages any payment that an employer makes to you, or on your behalf, on account of your sickness or accident disability, or related medical or hospitalization expenses, if the payment is made 6 or more calendar months following the last calendar month in which you worked for that employer.

§ 404.1052 Payments from or to certain tax-exempt trusts.

(a) We do not include as wages any payment made—

(1) Into a tax-exempt trust by your employer on behalf of you or your beneficiary; or

(2) From a tax-exempt trust to, or on behalf of, you or your beneficiary.

(b) The trust must be exempt from tax under sections 401 and 501(a) of the Code when the payment is made.

(c) The exclusion does not apply to payments to an employee of the trust for work done as an employee of the trust.

§ 404.1053 Payments under or into certain annuity plans.

(a) We do not include as wages any payment made—

(1) Into an annuity plan by your employer on behalf of you or your beneficiary; or

(2) Under an annuity plan to, or on behalf of, you or your beneficiary.

(b) The annuity plan must be a plan described in section 403(a) of the Code when the payment is made.

§ 404.1054 Payments under or into certain bond purchase plans.

(a) We do not include as wages any payment made—

(1) Into a bond purchase plan by your employer on behalf of you or your beneficiary; or

(2) Under a bond purchase plan to, or on behalf of, you or your beneficiary.

(b) The plan must be a qualified bond purchase plan described in section 405(a) of the Code when the payment is made.

§ 404.1055 Payments by an employer of employee's tax or employee's contributions under State law.

We do not include as wages any payment by an employer that is not deducted from your salary (or for which reimbursement is not made by you) of either—

(a) The tax imposed by section 3101 of the Code (employee's share of "social security tax"); or

(b) Any payment required from an employee under a State unemployment compensation law.

§ 404.1056 Payments for agricultural labor.

(a) *The cash-pay and 20-day tests.* Cash payments you receive from an employer for agricultural labor (see § 404.1057) are wages if they are $150 or more in a calendar year, or if you perform agricultural labor for the employer on 20 days or more during the year for cash payments computed on a time basis. Non-cash payments for agricultural labor are not counted as wages.

Example. On 18 days in 1977 A performs agricultural labor for X for cash pay of $8 per day, and X pays A $144 in the year. A performs no further service for X. Neither the $150-cash-pay test nor the 20-day test is met. Therefore, the payments by X to A are not wages. If in 1977 A had performed agricultural labor for X on 20 days for cash pay of $144, the $144 paid by X to A would have been wages because the 20-day test would have been met. Or if A had performed the 18 days of agricultural labor for cash pay of $8.50 per day and had been paid in full in 1977, his cash pay of $153 would have been wages because the $150-cash-pay test would have been met.

(b) *Application of cash-pay test.* (1) If you receive cash pay from an employer both for services which are agricultural labor and for services which are not agricultural labor, we only count the amounts paid for agricultural labor in determining whether cash payments of $150 or more have been made in the calendar year for agricultural labor.

Example. Employer X operates a store and also operates a farm. Employee A, who regularly works in the store, works, on X's farm when additional help is required for the farm activities. In calendar year 1977, X pays A $140 in cash computed on a time basis for agricultural labor performed on 19 different days in that year, and $2,260 for work in connection with the operation of the store. Since the cash payments by X to A in the calendar year 1977 for agricultural labor are less than $150, the cash-pay test is not met. Since A performed agricultural labor for X on less than 20 days in 1977, the 20-day test is not met. The $140 paid by X to A in 1977 for agricultural labor is not wages.

(2) The cash-pay test of $150 or more is based on cash paid in a calendar year rather than on amounts earned during a calendar year.

(3) If you receive cash pay for agricultural labor in any one calendar year from more than one employer, we apply the cash-pay test to payments you received from each employer.

(c) *Application of 20-day test.* (1) We count only agricultural labor for which cash pay is computed on a time basis when determining whether you meet the 20-day test during a calendar year. For purposes of the 20-day test, the amount of the cash pay is immaterial, and it is immaterial whether you also receive payments other than cash or payments that are not computed on a time basis. If cash paid to you for agricultural labor is computed on a time basis, the payments are not "wages" unless they are paid in a calendar year in which either the 20-day test or the $150-cash-pay test is met.

Example. Employer X employs A to construct fences on a farm owned by X. The work constitutes agricultural labor and is performed over 30 days in November and December 1977. A is not employed by X at any other time. A's pay consists of meals and lodging, and $10 cash per day. X pays A $140 cash in December 1977 and $160 cash in January 1978 in full payment for the work. Since A has performed agricultural labor for X on 30 days in 1977, for pay computed on a time basis, the 20-day test is met for 1977 and the $140 cash paid in 1977 is wages. It does not matter that the $150-cash-pay test is not met for 1977. Since X has paid A $160 in cash in 1978 for agricultural labor, the $150-cash-pay test is met for 1978 and the $160 cash paid in 1978 is wages. It does not matter that the 20-day test is not met for 1978. If the payments by X to A in January 1978 had been less than $150, neither the $150-cash-pay test nor the 20-day test would have been met for calendar year 1978, and A's pay in that year would not have been wages.

(2) For determining whether you perform agricultural labor for an employer on 20 days or more during any calendar year for cash pay computed on a time basis, we count as 1 day—

(i) Any day or part of a day on which you actually perform agricultural labor for cash pay computed on a time basis;

(ii) Any day or part of a day on which you do not work, but for which cash pay is paid or payable to you for agricultural labor, such as a day on which you are sick or on vacation; and

(iii) Any day you report for work at the direction of your employer and are ready to work, whether or not you actually perform labor on that day.

Example. During the period of 20 days beginning April 11, 1977, and ending April 30, 1977, employee A was employed by employer X to perform agricultural labor on X's farm. The agreement provided that A would be furnished room and board at the farm and would be paid in cash $150 per month. On 1 day during the 20-day period A was sick and unable to work, and on another day X told A not to work because of weather conditions. At the end of A's employment X paid A $100 in cash for the full 20-day period. The 20-day test had been met and the $100 cash pay is wages.

(3) If in any 1 calendar year you perform agricultural labor for more than one employer, the 20-day test is applied to each employer.

§404.1057 Explanation of agricultural labor.

(a) *What is agricultural labor.* (1) If you work on a farm as an employee of any person, you are doing agricultural labor if your work has to do with—

(i) Cultivating the soil;

(ii) Raising, shearing, feeding, caring for, training or managing livestock, bees, poultry, fur-bearing animals or wildlife; or

(iii) Raising or harvesting any other agricultural or horticultural commodity.

(2) If you work on a farm as an employee of any person in connection with the production or harvesting of maple sap, the raising or harvesting of mushrooms, or the hatching of poultry, you are doing agricultural labor. If you work in the processing of maple sap into maple syrup or maple sugar you are not doing agricultural labor even though you work on a farm. Work in a mushroom cave or poultry hatchery is agricultural

labor only if the cave or hatchery is operated as part of a farm.

(3) If you work as an employee of the owner, tenant, or other operator of a farm, you are doing agricultural labor if most of your work is done on a farm and is involved with—

(i) The operation, management, conservation, improvement, or maintenance of the farm or its tools or equipment (this may include work by carpenters, painters, mechanics, farm supervisors, irrigation engineers, bookkeepers, and other skilled or semiskilled workers); or

(ii) Salvaging timber or clearing the land of brush and other debris left by a hurricane.

(4) You are doing agricultural labor no matter for whom or where you work, if your work involves—

(i) Cotton ginning;

(ii) Operating or maintaining ditches, canals, reservoirs, or waterways, if they are used only for supplying and storing water for farm purposes and are not owned or operated for profit; or

(iii) producing or harvesting crude gum (oleoresin) from living trees or processing the crude gum into gum spirits of turpentine and gum resin (if the processing is done by the original producer).

(5) Your work as an employee in the handling, planting, drying, packing, packaging, processing, freezing, grading, storing, or delivering to storage, to a market or to a carrier for transportation to market, of any agricultural or horticultural commodity is agricultural labor if—

(i) You work for a farm operator or a group of farm operators (other than a cooperative organization);

(ii) Your work involves the commodity in its raw or unmanufactured state; and

(iii) The operator produced most of the commodity you work with during the period for which you are paid, or if you work for a group of operators, all of the commodity you work with during the pay period is produced by that group.

(6) If you do nonbusiness work or domestic work in the private home of your employer, it is agricultural labor if you do the work on a farm operated for profit. A farm is not operated for profit if the employer primarily uses it as a residence or for personal or family recreation or pleasure. (See § 404.1058 for an explanation of domestic work and § 404.1059(a) for an explanation of nonbusiness work.)

(7) The term "farm operator" means an owner, tenant, or other person, in possession of and operating a farm.

(8) Work is not "agricultural labor" if it is done in the employ of a cooperative organization, which includes corporations, joint-stock companies, and associations treated as corporations under the Code. Any unincorporated group of operators is considered to be a cooperative organization if more than 20 operators are in the group at any time during the calendar year in which the work is done.

(9) Processing work which changes the commodity from its raw or natural state is not agricultural labor. An example of this is the extraction of juices from fruits or vegetables. However, work in the cutting and drying of fruits or vegetables does not change the commodity from its raw or natural state and can be agricultural labor.

(10) The term "commodity" means a single agricultural or horticultural product. For example, all apples are a commodity, while apples and oranges are two commodities.

(11) Work connected with the commerical canning or freezing of a commodity is not agricultural labor nor is work done after the delivery of the commodity to a terminal market for distribution for consumption.

(b) *What is a farm.* For purposes of social security coverage, "farm" includes a stock, dairy, poultry, fruit, fur-bearing animal, or truck farm, plantation, ranch, nursery, range or orchard. A farm also includes a greenhouse or other similar structure used mostly for raising agricultural or horticultural products. A greenhouse or other similar structure used mostly for other purposes such as display, storage, making wreaths and bouquets is not a farm.

§ 404.1058 Domestic service in the employer's home.

(a) *Payments for domestic service.*—(1) *The $50 standard.* We do not inlcude as wages cash payments that an employer makes to you in any calendar quarter for domestic service in the employer's private home, unless the cash pay in that calendar quarter is $50 or more. Non-cash payments for domestic service are not counted as wages.

(2) *How evaluation is made.* We apply the $50 standard for a calendar quarter based on when the payments are made to you rather than when the pay is earned. To count toward the $50 amount, payment must be made to you in cash (including checks or other forms of money). We apply the $50 standard only to services performed as a domestic. if an employer pays you for performing other work, the cash pay for the nondomestic work does not count toward the $50 domestic service pay required for the remuneration to count as wages.

(3) *More than one domestic employer.* The $50 standard applies to each employer when you perform domestic services for more than one employer in a calendar quarter. The wages paid by more than one employer for domestic services may not be combined to decide whether you have been paid $50 or more in a calendar quarter. The standard applies to each employee when an employer has two or more domestic employees during a calendar quarter.

(4) *Rounding dollar amounts for reporting.* For social security purposes, an employer has an option in the way he or she reports cash wages paid for domestic service in his or her private home. The employer may report the actual wages paid or may round the wages to the nearest dollar. For purposes of rounding to the nearest dollar the cents are disregarded unless it amounts to one-half dollar or more, in which case it will be raised to $1. If an employer uses this method to report a cash payment to you for domestic service in his or her private home in a calendar quarter, he or she must use the same method to report payments to other employees in that quarter for similar services.

(b) *What is domestic service.* Domestic service is work of a household nature done by you in or about a private home of the employer. A private home is a fixed place of residence of a person or family. A separate dwelling unit maintained by a person in an apartment house, hotel, or other similar establishment may be a private home. If a house is used primarily for supplying board or lodging to the public as a business enterprise, it is not a private home. In general, services of a household nature in or about a private home include services performed by cooks, waiters, butlers, housekeepers, governessess, maids, valets, baby sitters, janitors, laundresses, furnacemen, caretakers, handymen, gardeners, footmen, grooms, and chauffeurs of automobiles for family use. Pay for these services does not come under this provision unless the services are performed in or about a private home of the employer. Pay for services not of a household nature, such as services performed as a private secretary, tutor, or librarian, even though performed in the employer's home, does not come under this provision.

§ 404.1059 Special situations.

(a) *Payments for service not in course of employer's trade or business (nonbusiness work) and payments to certain home workers.*—(1) *The $100 standard.* We do not include as wages

cash pay of less than $100 paid to you in a calendar year by an employer for services not in the course of the employer's trade or business (nonbusiness work) and for services as a home worker.

(2) *How evaluation is made.* (i) We apply the $100 standard for a calendar year based on when the payments are made to you rather than when the pay is earned. To count toward the $100 amount, payment must be in cash (including checks or other forms of money). The $100 standard applies to each employer when you perform services not in the course of the employer's trade or business or as a homeworker for two or more employers.

(ii) If the employer has two or more employees, the standard applies to each employee. In applying the $100 standard, we disregard cash payments for any other type of services you perform for the employer.

(iii) The noncash payments an employer pays you for services not in the course of the employer's trade or business or as a homeworker are not counted as wages, even if the employer has paid you cash wages of $100 or more in the calendar year for services of that type.

(3) *Definitions.* The term "services not in the course of the employer's trade or business" (also called nonbusiness work) means services that do not promote or advance the trade or business of the employer. Services performed for a corporation do not come within this definition. A homeworker is described in § 404.1008(c).

(b) *Nonprofit, income-tax exempt organizations.*—(1) *The $100 standard.* We do not include as wages payments of less than $100 in a calendar year made by an employer that is an organization exempt from income tax under section 501 of the Code.

(2) *How evaluation is made.* We apply the $100 standard for a calendar year based on when the payments are made to you rather than when the pay is earned. To figure the $100 amount, both cash and noncash payments are counted. The $100 standard applies to each employer where you render services for two or more nonprofit, income-tax exempt organizations during a calendar year. The $100 standard also applies to each of you where a nonprofit, income-tax exempt organization has two or more employees. In applying the standard, the tax-exempt status of the employer and not the nature or place of your services is controlling.

(c) *Payments to members of the uniformed services.*—(1) *The standard.* We include as the wages of a member of the uniformed services the individual's basic pay as explained in paragraph (c)(3) of this section plus the wages deemed paid to the individual under paragraph (c)(2) of this section. Only the basic pay is taxable for social security purposes.

(2) *Wages deemed paid.* (i) After 1977, a member of the uniformed services is considered to have been paid additional wages of $100 for each $300 of basic pay paid to the individual in a calendar year. The amount of additional wages deemed paid cannot be more than $1,200 for any calendar year. No wages may be deemed paid for units of basic pay which are less than $300.

(ii) Before 1978, a member of the uniformed services is considered to have been paid additional wages of $300 for each calendar quarter after 1956 in which the individual is paid any amount of basic pay.

(3) *Basic pay.* "Basic pay" means the monthly pay prescribed by 37 U.S.C. 203 (Pay and Allowances for the Uniformed Services) for a member of the uniformed services on active duty or on active duty for training.

(d) *Payments to "volunteers and volunteer leaders" in the Peace Corps.* If you are a "volunteer" or "volunteer leader" under the provisions of the Peace Corps Act (*22 U.S.C. 2501ff*), payments for your services are wages with the exception of amounts in excess of the amounts certified as payable under section 5(*c*) or 6(*1*) of the Peace Corps Act. Amounts certified under those sections are considered to have been paid to the individual at the time the service is performed. See § 404.1018(*e*) on coverage of these services.

(e) *Moving expenses.* We do not include as wages amounts paid to, or on behalf of, an employee for moving expenses if it is reasonable to believe that a similar deduction is allowable under section 217 of the Code.

(f) *Payments by employer to survivor or estate of former employee.* We do not include as wages any payment by an employer to a survivor or the estate of a former employee after the calendar year in which the employee died.

(g) *Payments to employees for non-work periods.* (1) We do not include as wages any payment (other than vacation or sick pay) made by an employer to an employee for a period throughout which the employment relationship exists between the employer and the employee, but in which the employee does not work for the employer (including employees subject to call for the performance of work), nor any payment made to a corporate officer solely for holding office during a period in which no work was performed if the payment is made—

(i) After the calendar month in which the employee attains age 62; or

(ii) To an employee who is, at the time of payment, entitled to disability insurance benefits under the Act, and entitlement began before the calendar year in which the payment is made.

(2) Vacation or sick pay is not excluded from wages under this paragraph. If an employee does any work for the employer in the period for which the payment is made, no payments by the employer to the employee for that period are excluded from wages as vacation or "sick pay." The term " sick pay" as used in this paragraph, includes "sick leave" payments made by a State, a political subdivision, or an interstate instrumentality, to an employee for a period during which he or she was absent from work because of illness.

Example. Mrs. A, an employee of X, attained age 62 on September 15, 1976, and stopped working regularly for X on September 30, 1976. Their employment relationship continued for several years until Mrs. A's death, and X paid Mrs. A $50 per month as consideration for Mrs. A's agreement to work when asked by X. The payment for each month was made on the first day of the following month. After September 30, 1976, she worked one day in October 1976. The payment made by X to Mrs. A on November 1 (for October 1976) is not excluded from wages under this exception, but the payments made after November 1976 are excluded from wages. The payment on November 1 was not excluded because Mrs. A worked for X on 1 day in October 1976. (Since Mrs. A had attained age 62 in September 1976, the November 1 payment would have been excluded if Mrs. A had not worked for X in October 1976.)

(h) *Tips.* (1) We include as wages tips received by an employee if—

(i) The tips are paid in cash; and

(ii) The tips amount to $20 or more and are received in the course of employment by an employee in a calendar month.

(2) Cash tips include checks and other forms of money. Tips received in a form other than cash, such as passes, tickets, or other goods are not wages. If an employee works for more than one employer in a calendar month, we apply the $20 tip test to work done for each employer.

(i) *Payments by employer under group legal services plan.* We do not include as wages any contribution, payment, or service, provided by an employer under a qualified group legal services plan which is excludable from the gross income of an employee, or the

employee's spouse or dependents, under section 120 of the Code.

§ 404.1060 Deemed wages for certain individuals interned during World War II.

(a) *In general.* United States citizens of Japanese ancestry who were interned during any period of time from December 7, 1941, through December 31, 1946, by the United States Government at a place operated by the government within the United States are deemed to have been paid wages (in addition to the wages actually paid) as provided in paragraph (c) of this section during any period after attaining age 18 while interned. This provision is effective for determining entitlement to, and the amount of, any monthly benefit for months after December 1972, for determining entitlement to, and the amount of, any lump-sum death payment in the case of a death after December 1972, and for establishing a period of disability.

(b) *Information needed to process deemed wages.* Unless we have already made a determination on deemed wages for a period of internment of an individual, any person applying for a monthly benefit, a recalculation of benefits by reason of this section, or a lump-sum death payment, must submit certain information before the benefit or payment may be computed on the basis of deemed wages. This information is—

(1) The place where the individual worked before internment;

(2) The highest hourly wage before internment;

(3) The place and date of internment;

(4) Date of birth (if not previously furnished);

(5) Whether or not another Federal benefit is being received based wholly or in part upon the period of internment; and

(6) In the case of a woman, her maiden name.

(c) *Amount of deemed wages.* The amount of wages which may be deemed is determined as follows:

(1) *Employed prior to internment.* If the individual was employed before being interned, the deemed wages are the greater of—

(i) The highest actual hourly rate of pay received for any employment before internment, multiplied by 40 for each full week during the period of internment; or

(ii) The Federal minimum hourly rate in effect for the period of internment, multiplied by 40 for each full week during that period.

(2) *Self-employed or not employed prior to internment.* If the individual was self-employed or was not employed before the period of internment, the deemed wages are the Federal minimum hourly rate in effect for that period, multiplied by 40 for each full week during the period.

(d) *When wages are not deemed.* Wages are not deemed under this section—

(1) For any period before the quarter in which the individual attained age 18; or

(2) If a larger benefit is payable without the deemed wages; or

(3) If a benefit based in whole or in part upon internment is determined by any agency of the United States to be payable under any other law of the United States or under a system set up by that agency. However, this exception does not apply in cases where the failure to receive deemed wages reduces the primary insurance amount by 50 cents or less.

(e) *Certification of internment.* The certification concerning the internment is made by the Secretary of Defense or his representative. After the internment has been verified, wages are deemed to have been paid to the internee.

Self-Employment

§ 404.1065 Self-employment coverage.

For an individual to have self-employment coverage under social security, the individual must be engaged in a trade or business and have net earnings from self-employment that can be counted as self-employment income for social security purposes. The rules explaining whether you are engaged in a trade or business are in §§ 404.1066–404.1077. What are net earnings from self-employment is discussed in §§ 404.1080–404.1095. Section 404.1096 describes the net earnings from self-employment that are counted as self-employment income for social security purposes.

§ 404.1066 Trade or business in general.

For you to be covered as a self-employed person for social security purposes, you must be engaged in a trade or business. You can carry on a trade or business as an individual or as a member of a partnership. With some exceptions, the term "trade or business" has the same meaning as it does when used in section 162 of the Code.

§ 404.1068 Employees who are considered self-employed.

(a) *General.* Although we generally exclude services performed by employees from the definition of trade or business, certain types of services are considered a trade or business even though performed by employees. If you perform any of the services described in paragraphs (b) through (e) of this section, you are self-employed for social security purposes. Certain other services described in § 404.1071 (relating to ministers and members of religious orders) and § 404.1073 (relating to certain public officers) may be considered a trade or business even though performed by employees.

(b) *Newspaper vendors.* If you have attained age 18 and perform services as a newspaper vendor that are described in § 404.1030(b), you are engaged in a trade or business.

(c) *Sharefarmers.* If you perform services as a sharefarmer that are described in § 404.1017, you are engaged in a trade or business.

(d) *Employees of a foreign government, an instrumentality wholly owned by a foreign government, or an international organization.* If you are a United States citizen and perform the services that are described in § 404.1032, § 404.1033(a), or § 404.1034(a), you are engaged in a trade or business if the services are performed in the United States.

(e) *Certain fishermen.* If you perform services as a fisherman that are described in § 404.1031, you are engaged in a trade or business.

§ 404.1070 Christian Science practitioners.

If you are a Christian Science practitioner, the services you perform in the exercise of your profession are a trade or business unless you were granted an exemption from coverage under section 1402(e) of the Code. An exemption cannot be granted if you filed a valid waiver certificate under the provisions that apply to taxable years ending before 1968.

§ 404.1071 Ministers and members of religious orders.

(a) If you are a duly ordained, commissioned, or licensed minister of a church, or a member of a religious order who has not taken a vow of poverty, the services you perform in the exercise of your ministry or in the exercise of duties required by the order (§ 404.1023(c) and (e)) are a trade or business unless you filed for and were granted an exemption from coverage under section 1402(e) of the Code. An exemption cannot be granted if you filed a valid waiver certificate under the provisions that apply to taxable years ending before 1968.

(b) If you are a member of a religious order and have taken a vow of poverty, the services you perform in the exercise of your duties required by the order may be covered as employment. (See § 404.1023 (a) and (e)).

§ 404.1073 Public office.

(a) *General.* The performance of the functions of a public office is not a trade or business except under the circumstances explained in paragraph (b) of this section. If you are an officer of a State or political subdivision, you are considered as employee of the State or political subdivision.

(b) *State and local governmental employees paid by fees.* (1) The services of employees of States and political subdivisions, including those in positions paid solely on a fee-basis, may be covered as employment only by a Federal-State agreement under section 218 of the Act (see Subpart M of this part). States, when entering into these agreements, have the option of excluding under the agreement coverage of services in positions paid solely by fees. If you occupy a position paid solely on a fee-basis and the State elects to exclude your services, you are considered to be engaged in a trade or business.

(2) If you are a notary public, you are not a public officer even though you perform a public function. Your services as a notary public are not covered for social security purposes.

§ 404.1074 Farm crew leader who is self-employed.

If you are a farm crew leader and are deemed the employer of the workers as described in § 404.1010, we consider you to be engaged in a trade or business. This includes services performed in furnishing workers to perform agricultural labor for others, as well as services performed as a member of the crew.

§ 404.1075 Members of certain religious groups opposed to insurance.

(a) You may file an application with the Internal Revenue Service for exemption from social security self-employment tax if—

(1) You are a member of a recognized religious sect or division of the sect; and

(2) You adhere to the tenets or teachings of the sect or division of the sect and for this reason are conscientiously opposed to receiving benefits from any private or public insurance that—

(i) Makes payments in the event of death, disability, old age, or retirement; or

(ii) Makes payments toward the cost of, or provides services for, medical care (including the benefits of any insurance system established by the Act).

(b) Your application must be filed under the rules described in 26 CFR 1.1402(h).

(c) Regardless of whether you meet all these conditions, your application for exemption will not be approved unless we find that—

(1) The sect or division of the sect has established tenets or teachings which cause you to be conscientiously opposed to the types of insurance benefits described in paragraph (a)(2) of this section;

(2) For a substantial period of time it has been the practice for members of the sect or division of the sect to make provision for their dependent members which is reasonable in view of their general level of living; and

(3) The sect or division of the sect has been in existence continuously since December 31, 1950.

(d) In addition, your application for exemption will not be approved if any benefit or other payment referred to in § 404.305(a) became payable to you or on your behalf at or before the time of the filing of your application for exemption.

§ 404.1077 Individuals under railroad retirement system.

If you are an employee or employee representative as defined in section 3231(b) and (c) of the Code, your work is not a trade or business. Your services are covered under the railroad retirement system.

Self-Employment Income

§ 404.1080 Net earnings from self-employment.

(a) *Definition of net earnings from self-employment.* If you are self-employed, you must first determine the amount of your net earnings from self-employment before figuring the amount of your earnings that count for social security purposes. Some of your earnings may not be included as net earnings from self-employment even though they are taxable for income tax purposes. If you are an employee but we consider you to be self-employed for social security purposes, you must figure your earnings as though you were actually self-employed. Subject to the special rules in §§ 404.1081–404.1095, the term "net earnings from self-employment" means—

(1) Your gross income, as figured under subtitle A of the Code, from any trade or business you carried on, less deductions attributed to your trade or business that are allowed by that subtitle; plus

(2) Your distributive share of income (or loss) from a trade or business carried on by a partnership of which you are a member, as described in paragraph (b) of this section.

(b) *Income or loss from a partnership.* (1) Your distributive share (whether or not actually distributed) of the income or loss from any trade or business carried on by a partnership of which you are a member, other than as a limited partner, is determined under section 704 of the Code.

(2) If you are a limited partner, your distributive share is included in your net earnings from self-employment if—

(i) The amount is payable to you for services you render to or on behalf of the partnerships; and

(ii) It is a guaranteed payment described in section 707(c) of the Code.

(3) You are a "limited partner" if your financial liability for the obligations of the partnership is limited to the amount of your financial investment in the partnership. Generally, you will not have to perform services in the operation of, or participate in the control of, the business carried on by the partnership for the taxable year involved.

(c) *Reporting methods.* Your gross income from a trade or business includes the gross income you received (under the cash method) or that accrued to you (under the accrual method) from the trade or business in the taxable year. It is immaterial that the income may be attributable in whole or in part to services you rendered or other acts you performed in a prior taxable year.

(d) *What is a taxable year.* (1) The term "taxable year" means—

(i) Your annual accounting period on which you regularly figure your income in keeping your books; or

(ii) A short period resulting from your death before the end of your annual accounting period or from a change of your annual accounting period.

(2) The term "annual accounting period" means—

(i) A calendar year, consisting of 12 months ending on December 31; or

(ii) A fiscal year, consisting of—

(A) 12 months ending on the last day of any month other than December; or

(B) A period, if elected under section 441 of the Code, that varies from 52 to 53 weeks and always ends on the same day of the week that occurs last in a calendar month or nearest to the last day of the calendar month.

(3) Your taxable year for figuring self-employment income is the same as your taxable year for the purposes of subtitle A of the Code. Your taxable year is a calendar year if—

(i) You keep no books;

(ii) You have no annual accounting period; or

(iii) You have an annual accounting period that differs from the definition of

fiscal year as described in paragraph (d)(2)(ii) of this section.

§ 404.1081 General rules for figuring net earnings from self-employment.

(a) *Determining net earnings.* (1) In determining your gross income and the deductions attributable to your trade or business for the purpose of determining your net earnings from self-employment, the provisions that apply to the taxes imposed by sections 1 and 3 of the Code are used.

(2) If you use the accrual method of accounting to figure your taxable income from a trade or business, you must use the same method in determining your net earnings from self-employment.

(3) If you are engaged in a trade or business of selling property on the installment plan and elect, under the provisions of section 453 of the Code, to use the installment method of accounting in figuring your income, you must use the installment method in determining your net earnings from self-employment.

(4) Any income which can be excluded from gross income under any provision of subtitle A of the Code cannot be counted in determining your net earnings from self-employment, unless—

(i) You are a resident of Puerto Rico (see § 404.1089);

(ii) You are a minister or member of a religious order (see § 404.1091);

(iii) You are a United States citizen temporarily living outside the United States (see § 404.1092); or

(iv) You are a citizen of, or have income from sources within, certain possessions of the United States (see § 404.1093).

(b) *Trade or business carried on.* You must carry on the trade or business either personally or through agents or employees. Income from a trade or business carried on by an estate or trust is not included in determining the net earnings from self-employment of the individual beneficiaries of the estate or trust.

(c) *Aggregate net earnings.* If you are engaged in more than one trade or business, your net earnings from self-employment consist of the total of the net income and losses of all the trades or businesses you carry on. A loss in one trade or business you carry on offsets the income from another trade or business.

(d) *Partnerships.* When you have net earnings from self-employment from a partnership as described in § 404.1080 (a) and (b), those net earnings are combined with your other net earnings from self-employment in determining your total net earnings from self-employment for the taxable year.

(e) *Different taxable years.* If you are a partner and your taxable year is different from that of the partnership, you must include, in figuring your net earnings from self-employment, your distributive share of the income or loss of the partnership for its taxable year ending with or within your taxable year. For the special rule in case of the termination of a partner's taxable year as a result of death, see § 404.1087.

(f) *Meaning of partnerships.* A partnership for social security purposes is one that is recognized as a partnership for income tax purposes. For income tax purposes, the term "partnership" includes not only a partnership as known under common law, but also a syndicate, group, pool, joint venture, or other unincorporated organization that carries on any trade or business, financial operation, or venture, and which is not a trust, estate, or a corporation.

(g) *Proprietorship taxed as domestic corporation.* If you are a proprietor of an unincorporated business enterprise and have elected to be taxed as a domestic corporation, you must figure your net earnings from self-employment without regard to the election you have made.

§ 404.1082 Rentals from real estate; material participation.

(a) *In general.* Your rentals from real estate and from personal property leased with the real estate (including rentals paid in crop shares) and the deductions attributable to the rentals are excluded in figuring your net earnings from self-employment, unless you receive the rentals in the course of a trade or business as a real estate dealer. If you are an owner or lessee of land, rentals paid in crop shares include income you get under an agreement with another person if the arrangement provides for the following:

(1) The other person will produce agricultural or horticultural commodities on the land.

(2) The commodities produced, or the income from their sale, will be divided between you and the other person.

(3) The amount of your share depends on the amount of the commodities produced.

(b) *Real estate dealers.* (1) You are a real estate dealer if you are engaged in the business of selling real estate to customers for profit.

(2) If you merely hold real estate for investment or speculation and receive rental income from it, you are not considered a real estate dealer.

(3) If you are a real estate dealer, but also hold real estate for investment or speculation in addition to real estate you hold for sale to customers, only the rental income from the real estate held for sale to customers and the deductions attributable to it are included in determining your net earnings from self-employment. The rental income from real estate you hold for investment or speculation and the deductions attributable to it are not counted in figuring your net earnings from self-employment.

(c) *Special rule for farm rental income.*—(1) *In general.* If you own or lease land, any income you derive from it is included in figuring your net earnings from self-employment if—

(i) The income results from an arrangement between you and another person which provides for the other person to produce agricultural or horticultural commodities on the land that you own or lease and for you to materially participate in the production or the management of the production of the agricultural or horticultural commodities; and

(ii) You actually do materially participate.

(2) *Nature of arrangement.* (i) The arrangement between you and the other person may be either oral or written. It must provide that the other person will produce one or more agricultural or horticultural commodities and that you will materially participate in the production or the management of the production of the commodities.

(ii) The term "production," refers to the physical work performed and the expenses incurred in producing a commodity. It includes activities like the actual work of planting, cultivating, and harvesting crops, and the furnishing of machinery, implements, seed, and livestock.

(iii) The term "management of the production," refers to services performed in making managerial decisions about the production of the crop, such as when to plant, cultivate, dust, spray, or harvest, and includes advising and consulting, making inspections, and making decisions on matters, such as rotation of crops, the type of crops to be grown, the type of livestock to be raised, and the type of machinery and implements to be furnished.

(3) *Material participation.* (i) If you show that you periodically advise or consult with the other person, who under the rental arrangement produces the agricultural or horticultural commodities, and also show that you periodically inspect the production activities on the land, you will have presented strong evidence that you are materially participating.

(ii) If you also show that you furnish a large portion of the machinery, tools, and livestock used in the production of the commodities, or that you furnish or advance monies, or assume financial responsibility, for a substantial part of the expense involved in the production of the commodities, you will have established that you are materially participating.

(4) *Employees or agents.* We consider any farm rental arrangement entered into by your employee or agent and another person to be an arrangement entered into by you. However, we do not consider the services of an employee or agent as your services in determining the extent to which you have participated in the production or management of production of a commodity.

(5) *Examples.*

Example 1. After the death of her husband, Ms. A rents her farm, together with its machinery and equipment, to B for one-half of the proceeds from the commodities produced on the farm by B. It is agreed that B will live in the tenant house on the farm and be responsible for the overall operation of the farm, such as planting, cultivating, and harvesting the field crops, caring for the orchard and harvesting the fruit and caring for the livestock and poultry. It also is agreed that Ms. A will continue to live in the farm residence and help B operate the farm. Under the agreement it is expected that Ms. A will regularly operate and clean the cream separator and feed the poultry flock and collect the eggs. When possible she will assist B in such work as spraying the fruit trees, penning livestock, culling the poultry, and controlling weeds. She will also assist in preparing the meals when B engages seasonal workers. The agreement between Ms. A and B clearly provides that she will materially participate in the overall production operations to be conducted on her farm by B. In actual practice, Ms. A regularly performs those services. The regularly performed services are material to the production of an agricultural commodity, and the services performed are material to the production operations to which they relate. The furnishing of a substantial portion of the farm machinery and equipment also supports the conclusion that Ms. A has materially participated. Accordingly, the rental income Ms. A receives from her farm should be included in her net earnings from self-employment.

Example 2. G owns a fully-equipped farm which he rents to H under an arrangement which provides that G will materially participate in the management of the production of crops raised on the farm under the arrangement. G lives in town about 5 miles from the farm. About twice a month he visits the farm and looks over the buildings and equipment. G may occasionally, in an emergency, discuss with H some phase of a crop production activity. In effect, H has complete charge of the management of farming operations regardless of the understanding between him and G. Although G pays one-half of the cost of the seed and fertilizer and is charged for the cost of materials purchased by H to make all necessary repairs, G's activities are not material in the crop production activities. Accordingly, G's income from the crops is not included in net earnings from self-employment.

(d) *Rental income from living quarters.*—(1) *No services provided for occupants.* Payments you receive for renting living quarters in a private residence, duplex, or multiple-housing unit are generally rental income from real estate. Except in the case of real estate dealers, these payments are excluded in determining net earnings from self-employment, even if the payments are in part attributable to personal property furnished under the lease.

(2) *Services provided for occupants.* (i) Payments you receive for renting living quarters where services are also provided to the occupant, as in hotels, boarding houses, or apartment houses furnishing hotel services, or in tourist camps or tourist homes, are included in determining your net earinings from self-employment. Any payments you receive for the use of space in parking lots, warehouses, or storage garages are also included in determining your net earnings from self-employment.

(ii) Generally, we consider services to be provided to the occupant if they are primarily for the occupant's convenience and are other than those usually provided in connection with the rental of rooms or other space for occupancy only. We consider the supplying of maid service to be a service provided to the occupant. However, we do not consider the furnishing of heat and light, the cleaning of public entrances, exits, stairways, and lobbies and the collection of trash, as services provided to the occupant.

Example. A owns a building containing four apartments. During the taxable year, A received $1,400 from apartments numbered 1 and 2, which are rented without services provided to the occupants, and $3,600 from apartments numbered 3 and 4, which are rented with services provided. A's fixed expenses for the four apartments are $1,200 during the taxable year. In addition, A has $500 of expenses attributable to the services provided to the occupants of apartments 3 and 4. In determining his net earnings from self-employment, A includes the $3,600 received from apartments 3 and 4, and the expenses of $1,100 ($500 plus one-half of $1,200) attributable to them. The rentals and expenses attributable to apartments 1 and 2 are excluded. Therefore, A has $2,500 of net earnings from self-employment from the building for the taxable year.

(e) *Treatment of business income which includes rentals from real estate.* If an individual or a partnership is engaged in a trade or business other than real estate, and part of the income is rentals from real estate, only that part of the income which is not rentals and the expenses attributable to that portion are included in determining net earnings from self-employment.

§ 404.1083 Dividends and interest.

(a) The dividends you receive on shares of stock are excluded in determining your net earnings from self-employment, unless you are a dealer in stocks and securities and receive the dividends in the course of your trade or business.

(b) The interest you receive on a bond, debenture, note, certificate, or other evidence of indebtedness issued with interest coupons or in registered form by any corporation (including one issued by a government or political subdivision) is excluded in determining your net earnings from self-employment, unless you are a dealer in stocks and securities and receive the interest in the course of your trade or business.

(c) If you hold stocks or securities for investment or speculation purposes, any dividends and interest you receive that are excludable under paragraphs (a) and (b) of this section are excluded in determining your net earnings from self-employment, whether or not you are a dealer in stocks and securities.

(b) A dealer in stocks or securities is a merchant with an established place of business who is regularly engaged in the business of purchasing stocks or securities and reselling them to customers. The dealer, as a merchant, buys stocks or securities and sells them to customers with a view to making a profit. Persons who buy and sell or hold stocks or securities for investment or speculation, regardless of whether the buying or selling constitutes a trade or business, are not dealers in stocks or securities.

§ 404.1084 Gain or loss from disposition of property; capital assets; timber, coal, and iron ore; involuntary conversion.

(a) If you are engaged in a trade or business, you must, in determining your net earnings from self-employment, exclude any gain or loss—

(1) That is considered a gain or loss from the sale or exchange of a capital asset;

(2) From the cutting of timber or from the disposal of timber or coal, even if held primarily for sale to customers, if section 631 of the Code applies to the gain or loss;

(3) From the disposal of iron ore mined in the United States, even if held primarily for sale to customers, if

section 631 of the Code applies to the gain or loss; and

(4) From the sale, exchange, involuntary conversion, or other disposition of property that is not—

(i) Stock in trade or other property of a kind which would properly be included in inventory if on hand at the close of the taxable year; or

(ii) Property held primarily for sale to customers in the ordinary course of a trade or business;

(b) For purposes of paragraph (a)(4) of this section, it is immaterial whether a gain or loss is treated as a capital gain or as an ordinary gain or loss for purposes other than determining earnings from self-employment.

(c) For purposes of paragraph (a)(4) of this section—

(1) The term "involuntary conversion" means a compulsory or unintended change of property into other property or money as a result of such things as destruction, theft or seizure; and

(2) The term "other disposition" includes destruction or loss by fire, theft, storm, shipwreck, or other casualty, even though there is no change of the property into other property or money.

Example. During the taxable year 1976, A, who owns a grocery store, had a net profit of $1,500 from the sale of groceries and a gain of $350 from the sale of a refrigerator case. During the same year, he had a loss of $2,000 as a result of damage by fire to the store building. In figuring taxable income for income tax purposes, all of these items are considered. In determining net earnings from self-employment, however, only the $1,500 of profit derived from the sale of groceries is included. The $350 gain and the $2,000 loss are excluded.

§ 404.1085 Net operating loss deduction.

When determining your net earnings from self-employment, you disregard the deduction provided by section 172 of the Code that relates to net operating losses sustained in years other than the taxable year.

§ 404.1086 Community income.

(a) *In case of an individual.* (1) If community property laws apply to income that an individual derives from a trade or business (other than a trade or business carried on by a partnership), all of the gross income and the deductions attributable to the income are generally treated as the gross income and deductions of the husband. However, if the wife exercises substantially all of the management and control of that trade or business, all of the gross income and deductions are treated as the gross income and deductions of the wife.

(2) The term "mananagement and control" means management and control in fact, not the management and control given to the husband under the community property laws. For example, a wife who operates a beauty parlor without any significant help from her husband will be considered as having substantially all of the management and control of the business, despite the provision of any community property law giving the husband the right of management and control of community property. The income and deductions from the operations of the beauty parlor are considered the income and deductions of the wife.

(b) *In case of a partnership.* Even though only a portion of a partner's distributive share of the income or loss from a trade or business carried on by a partnership is community income or loss under the community property laws applicable to the share, all of the distributive share is included in figuring the net earnings from self-employment of that partner. No part of the share is taken into account in figuring the net earnings from self-employment of the spouse of the partner. In any case in which both spouses are members of the same partnership, the distributive share of the income or loss of each spouse is included in figuring the net earnings from self-employment of that spouse.

§ 404.1087 Figuring partner's net earnings from self-employment for taxable year which ends as a result of death.

(a) *General.* In the case of a deceased partner whose taxable year ends because of death, the deceased partner's net earnings from self-employment includes the amount of his or her distributive share of partnership ordinary income or loss for the partnership's taxable year that is attributable to an interest in the partnership through the month of death.

(b) *Computation.* (1) The deceased partner's distributive share of partnership ordinary income or loss for the partnership taxable year in which death occurred is determined by applying the rules contained in paragraphs (d) and (f) of § 404.1081.

(2) The portion of the distributive share to be included in the deceased partner's net earnings from self-employment for his or her last taxable year is determined by treating the ordinary income or loss constituting the distributive share as having been realized or sustained ratably over the partnership taxable year during which the deceased partner had an interest in the partnership and during which the deceased partner's estate, or any other person succeeding by reason of the death to rights to his partnership interest, held an interest in the partnership.

(c) *Deceased partner's distributive share.* A deceased partner's distributive share includes the distributive share of the estate or of any other person succeeding to the interest of a deceased partner. It does not include any share attributable to a partnership interest that was not held by the deceased partner at the time of death. If a deceased partner's estate should acquire an interest in a partnership in addition to the interest to which it succeeded upon the death of the deceased partner, the amount of the distributive share attributable to the additional interest acquired by the estate is not included in computing the deceased partner's distributive share of the partnership's ordinary income or loss for the partnership taxable year.

(d) *Options available to farmers.* In determining the applicability of the optional method of figuring net earnings from self-employment to a member of a farm partnership it is necessary to determine the partner's distributive share of partnership gross income or distributive share of income described in section 702(a)(8) of the Code.

§ 404.1088 Retirement payment to retired partners.

(a) *In general.* If you are a retired partner, in figuring your net earnings from self-employment you must exclude payments made to you on a periodic basis by a partnershp on account of your retirement and which are to continue until your death. This exclusion applies only if the payments are made under a written plan which meets the requirements set out in 26 CFR 1.1402(a)–(17) and the conditions in paragraph (b) of this section are met. The necessary requirements and conditions must be met throughout the entire partnership's taxable year for the payments to be excluded so that either all or none of the payments are excluded.

(b) *Other conditions.* You must have been paid your full share of the partnership's capital before the close of the partnership's taxable year in which retirement payments are made. Also, no member of the partnership can have any financial obligations to you (in his or her capacity as a partner) except to make the retirement payments. Lastly, you cannot perform any services for the partnership in the partnership's taxable year which falls wholly or partially in your taxable year in which you receive the retirement payments.

Example. D, a partner in the DEF partnership, retired from the partnership as of

December 31, 1976. The taxable year of both D and the partnership is the calendar year. During the partnership's taxable year ending December 31, 1977, D rendered no service to any trade or business carried on by the partnership. On or before December 31, 1977, all obligations (other than retirement payments under the plan) from the other partners to D were liquidated, and D's share of the capital of the partnership was paid to him. Retirement payments received by D under the partnership's plan in his taxable year ending December 31, 1977, are excluded in determining net earnings from self-employment (if any) for that taxable year.

§ 404.1089 Figuring net earnings for residents and nonresidents of Puerto Rico.

(a) *Residents.* If you are a resident of Puerto Rico, whether or not you are an alien, a citizen of the United States, or a citizen of Puerto Rico, you must figure your net earnings from self-employment in the same manner as would a citizen of the United States residing in the United States. In figuring your net earnings from self-employment you must include your income from sources in Puerto Rico even though you are a resident of Puerto Rico during the entire taxable year.

(b) *Nonresidents.* A citizen of Puerto Rico, who is also a citizen of the United States and who is not a resident of Puerto Rico must figure net earnings from self-employment in the same manner as other citizens of the United States.

§ 404.1090 Personal exemption deduction.

The deduction provided by section 151 of the Code, relating to personal exemptions, is excluded in determining net earnings from self-employment.

§ 404.1091 Figuring net earnings for ministers and members of religious orders.

(a) *General.* If you are a duly ordained, commissioned, or licensed minister of a church or a member of a religious order who has not taken a vow of poverty, we consider you to be engaged in a trade or business under the conditions described in § 404.1071 with regard to services described in § 404.1023 (c) and (e). In figuring your net earnings from self-employment from performing these services, you must include certain income (described in paragraphs (b) and (c) of this section) that may be excluded from your gross income for income tax purposes.

(b) *Housing and meals.* You must include in figuring your net earnings from self-employment the rental value of a home furnished to you and any rental allowance paid to you as payment for services performed in the exercise of your ministry or in the exercise of duties required by your order even though the rental value or rental allowance may be excluded from gross income by section 107 of the Code. Also, the value of any meals or lodging furnished to you in connection with the performance of these services is included in figuring your net earnings from self-employment even though their value is excluded from gross income by section 119 of the Code.

(c) *Services outside the United States.* If you are a citizen of the United States performing services outside the United States which are in the exercise of your ministry or in the exercise of duties required by your order, your net earnings from self-employment from the performance of these services is figured as described in paragraph (b) of this section. However, it is figured without regard to the exclusions from gross income provided in sections 911 and 931 of the Code, relating to income earned by individuals in certain camps and to income from sources within possessions of the United States.

§ 404.1092 Figuring net earnings for U.S. citizens temporarily living outside the United States.

If you are engaged in a trade or business and you derive earnings from self-employment outside the United States, but have been a resident of the United States during the entire taxable year, your net earnings from self-employment are figured without using the exclusion from gross income provided by section 911 (a)(2) of the Code. Even though all of your income was derived from sources outside the United States, and may for income tax purposes be excluded from gross income, that income is included in figuring your net earnings from self-employment.

§ 404.1093 Possession of the United States.

In using the exclusions from gross income provided under section 931 of the Code (relating to income from sources within possessions of the United States) and section 932 of the Code (relating to citizens of possessions of the United States) for purposes of figuring your net earnings from self-employment, the term "possession of the United States" shall be deemed not to include the Virgin Islands, Guam, or American Samoa.

§ 404.1094 Options available for figuring net earnings from self-employment.

(a) *General.* If you have income from a trade or business in certain situations, you have options for figuring your net earnings from self-employment. The options available to you depend on whether you have income from an agricultural trade or business or a non-agricultural trade or business. For a definition of agricultural trade or business see § 404.1095.

(b) *Agricultural trade or business.* The net earnings from self-employment you derive from an agricultural trade or business may, at your option, be figured as follows:

(1) *Gross income of $2,400 or less.* If your gross income is $2,400 or less you may, at your option, report 66⅔ percent of the gross income as net earnings from self-employment instead of your actual net earnings from your business.

(2) *Gross income of more than $2,400.* If your gross income is more than $2,400 and your actual net earnings from your business are less than $1,600 you may, at your option, report $1,600 as net earnings from self-employment instead of your actual net earnings. If your actual net earnings are $1,600 or more you cannot use the optional method.

(3) *Two or more agricultural trades or businesses.* If you carry on more than one agricultural trade or business as a sole properietor or as a partner, you must combine your gross income and net income from each trade or business to find out whether you may use the optional method of figuring net earnings.

(c) *Non-agricultural trade or business.* (1) The net earnings from self-employment you derive from a non-agricultural trade or business may be reported under an optional method if you are self-employed on a regular basis (as defined in paragraph (c)(4) of this section). You cannot use the optional method of reporting for more than 5 taxable years, and you cannot report less than your actual net earnings from self-employment.

(2) *Computation.* If your actual net earnings from self-employment are less than $1,600 and less than 66⅔ percent of your gross income, you may, at your option, report 66⅔ percent of your gross income (but not more than $1,600) as your net earnings from self-employment.

Example. A operates a grocery store and files income tax returns on a calendar year basis. A meets the "self-employed on a regular basis" requirement because actual net earnings from self-employment were $400 or more in 1976 and in 1977. Gross income and net profit from operating the grocery store in 1978 through 1980 are as follows:

	1978	1979	1980
Gross income	$2,800	$1,200	$1,000
Net profit	300	400	800

For the year 1978, A may report as annual net earnings from self-employment either—

(i) None. (Actual net earnings from self-employment are less than $400); or

(ii) $1,600. (Non-agricultural option, 66⅔ percent of $2,800, but not to exceed the $1,600 maximum.)

For the year 1979, A may report as annual net earnings from self-employment either—

(i) $400. (Actual net earnings from self-employment); or

(ii) $800. (Non-agricultural option, 66⅔ percent of $1,200.)

For the year 1980, A must report $800, the actual net earnings from self-employment. The non-agricultural option is not available because A's actual net earnings are not less than 66⅔ percent of the gross income.

(3) *Figuring net earnings from both non-agricultural and agricultural self-employment.* If you are self-employed on a regular basis, you may use the non-agricultural optional method of reporting when you have both non-agricultural and agricultural trades or businesses. However, in order to use this method, your actual net earnings from non-agricultural self-employment combined with your actual net earnings from agricultural self-employment, or your optional net earnings from agricultural self-employment, must be less than $1,600, and the net non-agricultural earnings must be less than 66⅔ percent of your gross non-agricultural income. If you qualify for using both the non-agricultural and agricultural option, you may report less than your actual total net earnings, but not less than your actual net earnings from non-agricultural self-employment alone. If you elect to use both options in a given taxable year, the combined maximum reportable net earnings from self-employment may not exceed $1,600.

Example. C was regularly self-employed. She derived actual net earnings from self-employment of $400 or more in 1975 and in 1976. Her gross income and net profit from operating both a grocery store and a farm in 1978 are:

Grocery Store	
Gross income	$1,000
Net profit	800
Farm	
Gross income	$2,600
Net profit	400

For the year 1978, C may report $1,200 (actual net earnings from self-employment from both businesses), or $2,400 ($1,600 agricultural option (66⅔ percent of $2,600 farm gross income not to exceed $1,600) and $800 grocery store profit). C cannot use the non-agricultural option for 1978 because her actual grocery store net exceeds 66⅔ percent of her grocery store gross income.

(4) *Self-employed on a regular basis.* For any taxable year beginning after 1972, we consider you to be self-employed on a regular basis, or to be a member of a partnership on a regular basis, if, in at least 2 of the 3 taxable years immediately before that taxable year, you had actual net earnings from self-employment of not less than $400 from agricultural and non-agricultural trades or businesses (including your distributive share of the net income or loss from any partnership of which you are a member).

(d) *Members of partnerships.* If you are a member of a partnership you may use the optional method of reporting. Your gross income is your distributive share of the partnership's gross income (after all guaranteed payments to which section 707(c) of the Code applies have been deducted), plus your own guaranteed payment.

(e) *Computing gross income.* For purposes of this section gross income means—

(1) Under the cash method of computing, the gross receipts from the trade or business reduced by the cost or other basis of property that was purchased and sold, minus any income that is excluded in computing net earnings from self-employment; or

(2) Under the accrual method of computing, the gross income minus any income that is excluded in figuring net earnings from self-employment.

(f) *Exercise of option.* For each taxable year for which you are eligible to use the optional method and elect to use that method, you must figure your net earnings from self-employment in that manner on your tax return for that year. If you wish to change your method of reporting after your tax return is filed, you may change it by filing an amended tax return with the Internal Revenue Service or by filing with us Form 2190, Change in Method of Computing Net Earnings from Self-Employment.

§ 404.1095 Agricultural trade or business.

(a) An agricultural trade or business is one in which, if the trade or business were carried on entirely by employees, the major portion of the services would be agricultural labor (§ 404.1057).

(b)(1) If the services are partly agricultural and partly non-agricultural, the time devoted to the performance of each type of service is the test used to determine whether the major portion of the services is agricultural labor.

(2) If more than half of the time spent in performing all the services is spent in performing services that are agricultural labor, the trade or business is agricultural.

(3) If half or less of the time spent in performing all the services is spent in performing services that are agricultural labor, the trade or business is not agricultural. The time spent in performing the services is figured by adding the time spent in the trade or business during the taxable year by every individual (including the individual carrying on the trade or business and the members of that individual's family).

(c) We do not apply the rules in this section if the non-agricultural services are performed in connection with a trade or business separate and distinct from the agricultural trade or business. A roadside automobile service station on a farm is a trade or business separate and distinct from the agricultural trade or business, and the gross income from the service station, less the deductions attributable to it, is to be considered in determining net earnings from self-employment.

(d) We consider a sharefarmer (see § 404.1068(c)) or a materially participating owner or tenant (see § 404.1082(c)) to be engaged in an agricultural trade or business. We use the rules in this section to determine whether a farm crew leader who is self-employed (see § 404.1074) is engaged in an agricultural trade or business.

§ 404.1096 Self-employment income.

(a) *General.* Self-employment income is the amount of your net earnings from self-employment that is subject to social security tax and counted for social security benefit purposes. The term "self-employment income" means the net earnings from self-employment you derive in a taxable year, except as described in paragraphs (b), (c) and (d) of this section.

(b) *Maximum self-employment income.* (1) The term "self-employment income" does not include that part of your net earnings from self-employment that exceeds (or that part of your net earnings from self-employment which, when added to the wages you received in that taxable year, exceeds)—

(i) For taxable years ending before 1955, $3,600;

(ii) For taxable years ending in 1955 through 1958, $4,200;

(iii) For taxable years ending in 1959 through 1965, $4,800;

(iv) For taxable years ending in 1966 and 1967, $6,600;

(v) For taxable years ending after 1967 and beginning before 1972, $7,800;

(vi) For a taxable year beginning in 1972, $9,000;

(vii) For a taxable year beginning in 1973, $10,800;

(viii) For a taxable year beginning in 1974, $13,200;

(ix) For a taxable year beginning in 1975, $14,100;

(x) For a taxable year beginning in 1976, $15,300;

(xi) For a taxable year beginning in 1977, $16,500;

(xii) For a taxable year beginning in 1978, $17,700;

(xiii) For a taxable year beginning in 1979, $22,900;

(xiv) For a taxable year beginning in 1980, $25,900;

(xv) For a taxable year beginning in 1981, $29,700; and

(xvi) For taxable years beginning after 1981, an amount equal to the contribution and benefit base figured under § 404.1048.

(2) For the purpose of this paragraph the term "wages" includes remuneration paid to an employee for services covered by an agreement entered into under section 218 of the Act, or an agreement entered into under section 3121(l) of the Code, which would be wages under section 209 of Act if the services were considered employment under section 210(a) of the Act.

(c) *Minimum net earnings from self-employment.* (1) Self-employment income does not include your net earnings from self-employment when the amount of those earnings for the taxable year is less than $400. If you have only $300 of net earnings from self-employment for the taxable year you would not have any self-employment income.

(2) If you have net earnings from self-employment of $400 or more for the taxable year you may have less than $400 of creditable self-employment income. This occurs where your net earnings from self-employment is $400 or more for a taxable year and the amount of your net earnings from self-employment plus the amount of the wages paid to you during that taxable year exceed the maximum creditable earnings for a year. For example, if you had net earnings from self-employment of $1,000 for 1978, and were also paid wages of $17,500 during 1978, your creditable self-employment income for 1978 would be $200.

(d) *Nonresident aliens.* A nonresident alien never has self-employment income. We do not consider an individual who is a resident of the Commonwealth of Puerto Rico, the Virgin Islands, Guam or American Samoa to be a nonresident alien.

[FR Doc. 80-9295 Filed 3-26-80; 8:45 am]

BILLING CODE 4110-07-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1316

Inclusion of Moneys and Other Assets in Definition of Term "Property"

AGENCY: Department of Justice, Drug Enforcement Administration.

ACTION: Final order.

SUMMARY: On November 10, 1978, Pub. L. 95-633 became effective and authorized the seizure and forfeiture of moneys and other assets under Section 511 of the Controlled Substances Act (84 Stat. 1276; 21 U.S.C. 881). The purpose of this final order is to amend the definition of "property" as contained in § 1316.71 to reflect the additional authority to seize and forfeit such moneys and assets.

EFFECTIVE DATE: March 27, 1980.

FOR FURTHER INFORMATION CONTACT: William M. Lenck, Chief Counsel, Drug Enforcement Administration, Department of Justice, Washington, D.C. 20537 (202-633-1276).

PART 1316—ADMINISTRATIVE FUNCTIONS, PRACTICES, AND PROCEDURES

§ 1316.71(c) [Amended]

By virtue of the authority vested in me by 21 U.S.C. 881(d) and 28 CFR 0.100(b), § 1316.71(c) of Title 21, Code of Federal Regulations is amended by adding the words "money or other asset," between the words "equipment" and "vessel" in the existing text.

Dated: March 21, 1980.

Peter B. Bensinger,

Administrator, Drug Enforcement Administration.

[FR Doc. 80-9314 Filed 3-26-80; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Public Health Service

42 CFR Parts 52, 52a, 52b, 52c, 52d, 52e, 59a

Corrections to Grant-in-Aid Regulations

AGENCY: Public Health Service, HEW

ACTION: Final rule; corrections.

SUMMARY: On February 25, 1980, final rules concerning the subject grant-in-aid regulations of the National Institutes of Health were adopted (45 FR 12240). This notice corrects errors which appeared in that document. Section 52c.6(a) is also technically amended by deleting the statement relating to indirect costs to conform to current legislation.

FOR FURTHER INFORMATION CONTACT: Mr. Lowell D. Peart, NIH Regulations Officer, National Institutes of Health, Bethesda, Maryland 20205 (301) 496-4606

SUPPLEMENTARY INFORMATION: On page 12240: (a) Column 1, Part 52, table of contents, the following should be omitted: "52.30 Allocation of costs.; 52.31 Direct costs in general.; 52.32 Indirect costs.; and 52.33 Particular direct costs." (b) Column 2, § 52.1(b), second line, insert the word "support" between the words "research" and "grants."

On page 12241: (a) Column 1, § 52.4 delete "(a)" and change "(1)," "(2)," and "(3)" to "(a)," "(b)," and "(c)" respectively. (b) Column 1, § 52.4, third line, insert "requested" between the words "nature" and "project" and in the sixth line insert the word "other" between the words "any" and "key." (c) Column 1, § 52.5(a), sixth line, change "he" to "the Secretary." (d) Column 2, § 52.6(a), fifth line, change "his" to "the Secretary's." (d) Column 3, § 52.6(c), fourth line, change "so as to" to read "which" and, in the twelfth line, "he" to "the Secretary."

On page 12242: (a) Column 1, § 52.8, change "43 FR 60108" to "45 FR 6724." (b) § 52.9, fourth line, change "his" to "the Secretary's." (c) Column 3, § 52a.4(b), delete "In accordance with section 1-00-30 of the Department of Health, Education, and Welfare Grants," and capitalize the word "each."

On page 12243: (a) Column 1, § 52a.6(a), fifth line, change "his" to "the Director's." (b) Column 3, § 52a.8, after the colon "42 CFR Part 50 PHS grants appeal process" is moved to the first item and "43 FR 60108" is changed to "45 FR 6724."

On page 12244, column 3, § 52b.8, thirteenth line, change "he" to "the Director."

On page 12245: (a) Column 1, § 52b.8(i), second line, change "his" to "the Director's." (b) Column 1, § 52b.8(j), delete "'American National Standard Specifications for Making Buildings and Facilities Accessible to, and Usable by, the Physically Handicapped', American National Standards Institute, Inc. (ANSI) No. A117.1 1961," and insert "'Federal Accessibility Standard' (41 CFR Subpart 101-19.6)." (c) Column 2, § 52b.9(a), fifteenth line, change "he" to "the Director." (d) Column 3, § 52b.11, twenty-third line, change "he" to "the Director."

On page 12246, column 3, § 52c.3(a)(4), second line, delete the word "and" between the words "body" and "which."

On page 12247: (a) Column 1, § 52c.5(a), seventh line, change "his" to "the Secretary's." (b) Column 2, § 52c.6(b), ninth line, delete the words "provided that only direct costs of biomedical research may be charged to a grant under this part." (c) Column 2, § 52c.7, move "42 CFR Part 50 PHS grant appeals process" to be the first item after the colon and change "43 FR 60108" to read "45 FR 6724." (d) Column 3, § 52d.2(f), fourth line, change