

46354 and Vol. 57, No. 233, page 57159). Based upon testimony received and further deliberation, the Commission has amended its Rules of Practice and Procedure.

List of Subjects in 18 CFR Part 401

Administrative practice and procedure, Environmental impact statements, Freedom of information, Water pollution control, Water resources.

18 CFR part 401 is amended as follows:

SUBCHAPTER A—ADMINISTRATIVE MANUAL

PART 401—RULES OF PRACTICE AND PROCEDURE

1. The authority citation for part 401 continues to read as follows:

Authority: Delaware River Basin Compact, 75 Stat. 688.

2. Section 401.35(b)(17) is added to read as follows:

§ 401.35 Classification of projects for review under section 3.8 of the Compact.

(b) * * *
(17) Electric generating or cogenerating facilities designed to consumptively use in excess of 100,000 gallons per day of water during any 30-day period.

Dated: December 11, 1992.

Susan M. Weisman,
Secretary.

[FR Doc. 92-30604 Filed 12-16-92; 8:45 am]
BILLING CODE 3360-01-M

TENNESSEE VALLEY AUTHORITY

18 CFR Part 1301

Freedom of Information Act

AGENCY: Tennessee Valley Authority (TVA).

ACTION: Final rule.

SUMMARY: The Tennessee Valley Authority is amending its Freedom of Information Act regulations to reflect administrative changes within TVA.

EFFECTIVE DATE: December 17, 1992.

FOR FURTHER INFORMATION CONTACT: Mark R. Winter, TVA, 1101 Market Street (MR 2F), Chattanooga, TN 37402-2801, telephone number: (615) 751-2523.

SUPPLEMENTARY INFORMATION: This rule was not published in proposed form since it relates to agency practice. Since this rule is nonsubstantive, it is being made effective immediately, December 17, 1992.

List of Subjects in 18 CFR Part 1301

Administrative practice and procedure, Freedom of Information, Privacy Act, Sunshine Act.

For the reasons set forth in the preamble, title 18, chapter XIII of the Code of Federal Regulations is amended as follows:

PART 1301—PROCEDURES

1. The authority citation for part 1301 continues to read as follows:

Authority: 16 U.S.C. 831-831dd, 5 U.S.C. 552.

2. Section 1301.1 is amended by revising the introductory text of paragraph (b) to read as follows:

§ 1301.1 Records.

(b) *Requests.* Requests to inspect and copy TVA records shall be directed to the TVA FOIA Officer, TVA Records and Information Management, Information Support Services, Tennessee Valley Authority, 400 Summit Hill Drive, Knoxville, TN 37902-1499. A request shall:

§ 1301.1 [Amended]

3. Section 1301.1 is amended by revising the second and third sentences of paragraph (c)(1)(i) to read as follows:

(c) * * *
(1) * * *
(i) * * * Initial determinations shall be made by the TVA FOIA Officer or the TVA FOIA Officer's designee. If the initial determination is not to comply with the request, the notice to the person making the request shall include a statement of the reasons for the denial of the request; a notice of the right of the person making the request to appeal the denial to the Vice President, Facilities Services, and the time limits therefor; and the name and job title of the person responsible for the initial determination.

§ 1301.1 [Amended]

4. Section 1301.1 is amended by revising the first sentence of paragraph (c)(1)(ii) to read as follows:

(c) * * *
(1) * * *
(ii) For the purposes of this paragraph, a request is deemed to be received by TVA only when it is physically delivered to the TVA FOIA Officer and meets all the requirements of paragraph (b) of this section. * * *

§ 1301.1 [Amended]

5. Section 1301.1 is amended by revising the first and second sentences of paragraph (c)(2)(i) to read as follows:

(c) * * *
(2) * * * (i) If the initial determination is to deny the request, the person making the request may appeal such action to the Vice President, Facilities Services. Such an appeal must be taken within 30 days after the person's receipt of the initial determination and is taken by delivering a written notice of appeal to the Vice President, Facilities Services, TVA, 400 Summit Hill Drive, Knoxville, TN 37902-1499. * * *

§ 1301.1 [Amended]

6. Section 1301.1 is amended by revising the third sentence of paragraph (c)(2)(ii) to read as follows:

(c) * * *
(2) * * *
(ii) * * * Determinations of appeals under this section shall be made by the Vice President, Facilities Services, or the Vice President, Facilities Services' designee. * * *

§ 1301.1 [Amended]

7. Section 1301.1 is amended by revising the second sentence of paragraph (c)(3)(i) to read as follows:

(c) * * *
(3) * * *
(i) * * * Such extension may not exceed 10 working days, and a decision to make such extension shall be made by the TVA FOIA Officer, or the TVA FOIA Officer's designee. * * *

§ 1301.1 [Amended]

8. Section 1301.1 is amended by revising the fourth sentence of paragraph (c)(3)(ii) to read as follows:

(c) * * *
(3) * * *
(ii) * * * A decision to make an extension under this paragraph shall be made by the Vice President, Facilities Services, or the Vice President, Facilities Services' designee. * * *

John J. O'Donnell,
Vice President, Facilities Services.
[FR Doc. 92-30457 Filed 12-16-92; 8:45 am]
BILLING CODE 3120-06-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Part 404

RIN 0960-AD18

Federal Old-Age, Survivors, and Disability Insurance Benefits; Extending Old-Age, Survivors, Disability, and Hospital Insurance Coverage to Certain State and Local Government Employees

AGENCY: Social Security Administration, HHS.

ACTION: Final rules.

SUMMARY: We are amending our regulations to reflect a statutory change as provided in section 11332 of Public Law (Pub. L.) 101-508, the Omnibus Budget Reconciliation Act of 1990 (OBRA '90). This statutory change extends mandatory Social Security old-age, survivors, disability, and hospital insurance (OASDHI) coverage to certain services performed by individuals who are employees of a State, a political subdivision of a State, or any wholly owned instrumentality of one or more of the above, and who are not members of the employer's retirement system. The statute also provides an exclusion from its coverage for certain listed services. The effect of this change is to provide OASDHI coverage and benefits to some employees whose services were previously excluded from the definition of mandatory covered employment.

EFFECTIVE DATES: December 17, 1992. The provisions of section 11332 of Public Law 101-508 apply to services performed after July 1, 1991.

FOR FURTHER INFORMATION CONTACT: Duane Heaton, Legal Assistant, 3-B-1 Operations Building, 6401 Security Boulevard, Baltimore, MD 21235, (301) 965-8470.

SUPPLEMENTARY INFORMATION:

Background

Prior to OBRA '90, services performed by individuals who were employees of a State (other than the District of Columbia, Guam, or American Samoa), a political subdivision of a State, or any wholly owned instrumentality thereof, were generally not covered under Social Security unless the State entered into a voluntary coverage agreement with the Secretary of Health and Human Services (the Secretary) as provided under section 218 of the Act. Although all States entered into agreements with the Secretary, many of the States excluded certain services from coverage. Many of

these excluded services also were not under any public retirement plan. As a result, a part of the workforce was not participating in any public retirement plan and was not covered by Social Security. OBRA '90 provides mandatory OASDHI coverage for much of this workforce that was not under any public retirement plan.

In these final regulations, we are amending the Social Security regulations to reflect section 11332 of OBRA '90. Section 11332 amends section 210(a) of the Social Security Act (the Act) by extending mandatory OASDHI coverage to certain services performed by individuals who are employees of a State (other than the District of Columbia, Guam, or American Samoa), a political subdivision of a State, or any wholly owned instrumentality of one or more of the foregoing, and who are not members of the employer's retirement system. For purposes of administering this statute, the term "retirement system" has the meaning given in section 218(b)(4) of the Act, except as provided in regulations prescribed by the Secretary of the Treasury. Section 218(b)(4) states that "retirement system" means a pension, annuity, retirement, or similar fund or system established by a State or a political subdivision thereof.

The statute provides an exclusion from mandatory coverage for services performed:

1. By an individual who is employed to relieve him or her from unemployment;
2. In a hospital, home, or other institution by an individual who is a patient or inmate thereof;
3. By an individual as an employee serving on a temporary basis in case of fire, storm, snow, earthquake, flood, or other similar emergency;
4. By an election official or election worker if the remuneration paid in a calendar year for such service is less than \$100; or
5. By an employee in a position compensated solely on a fee basis which is treated, pursuant to section 211(c)(2)(E) of the Act, as a trade or business for purposes of inclusion of the fees in net earnings from self-employment.

In addition, exclusions from coverage set forth in other provisions of the Act such as the exclusion for services performed by students employed in public schools, colleges, and universities will continue to be applicable. Coverage for these students will continue to be provided at the option of the State under section 218 of the Act and such coverage which was provided prior to July 2, 1991, the

effective date of OBRA section 11332, will continue.

Finally, the statute provides that services mandatorily covered under section 11332 of OBRA '90 may not be covered under a voluntary section 218 agreement.

Regulations Changes

We are amending the regulations to reflect section 11332 of Public Law 101-508 and to make a technical and clarifying change to § 404.1020(a). Specifically, we are amending the regulations as follows:

- The mandatory coverage and applicable exclusions are reflected in subpart K in a revised § 404.1020(a);
- The treatment of certain State and local government employees paid by fees is reflected in a revised § 404.1073;
- In revised §§ 404.1200 and 404.1201 of subpart M, we explain there is also mandatory OASDHI coverage, provide a cross-reference to § 404.1020(a), and make clear that subpart M regulations only apply to section 218 agreements, as appropriate;
- In revised § 404.1209 we explain that services mandatorily covered under section 11332 may not be covered under a section 218 agreement; and
- We also have made a technical change to § 404.1020(a) to make it clear that work as an employee of the District of Columbia, Guam, or American Samoa is not excluded from Social Security coverage if the work is covered under § 404.1021 or § 404.1022. This clarification reflects section 210(a)(7) (C), (D), and (E) of the Act and is consistent with our longstanding policy reflecting these statutory provisions. Without this technical change, § 404.1020(a) is potentially confusing on this point due to the fact that § 404.1004 defines the term "State" to include the District of Columbia, Guam, and American Samoa.

These revisions are non-discretionary; they are needed to reflect enacted legislation. For that reason, any cost impact from the policies these revisions codify is attributable to the legislation and not to the regulations.

Regulatory Procedures

Dispensing with the Notice of Proposed Rulemaking and Public Comment

We are publishing the above amendments to the regulations as final rules instead of proposed rules. The Department of Health and Human Services, even when not required by statute, as a matter of policy, generally follows the Administrative Procedure Act (APA) notice of proposed rulemaking and public comment

procedures specified in 5 U.S.C. 553 in the development of its regulations. The APA provides exceptions to its notice and comment procedures when an agency finds there is good cause for dispensing with such procedure. Section 553(b)(B) of the APA exempts application of notice and comment rulemaking procedure "when the

agency for good cause finds * * * that notice and public procedures thereon are impracticable, unnecessary, or contrary to the public interest." We are dispensing with notice and comment rulemaking in the case of these regulations because such rulemaking is unnecessary since this change merely conforms the regulations to the

controlling statute, does not involve administrative discretion, and does not independently affect the rights of claimants.

Executive Order No. 12291

The estimated impact on the trust funds for fiscal years (FY) 1991-1995 is as follows (\$ in millions):

	FY 1991	FY 1992	FY 1993	FY 1994	FY 1995
Increase in OASDI payroll taxes	\$467	\$2,122	\$2,275	\$2,459	\$2,661
Increase in HI payroll taxes	8	30	21	12	4
Increase in OASDI benefit payments	neg	neg	4	9	15

The overall increase in costs will exceed the threshold amount for a major rule under Executive Order 12291. However, because the policy codified in these regulations ultimately relates to transfer payments (i.e., benefit payments to members of the public), OMB has waived the requirement for a regulatory impact analysis for this rule.

Regulatory Flexibility Act

We certify that these final regulations will not have a significant economic impact on a substantial number of small entities, including small governmental jurisdictions. Any economic impact involved in the regulations reflecting section 11332 of Public Law 101-508 results directly from the statutory amendments, not from the regulations. Therefore, we believe that a regulatory flexibility analysis as provided in Public Law 96-354, the Regulatory Flexibility Act, is not required.

Paperwork Reduction Act

These final regulations impose no additional reporting and recordkeeping requirements subject to Office of Management and Budget clearance.

(Catalog of Federal Domestic Assistance: Programs Nos. 93.800 Medicare—Hospital Insurance; 93.801 Medicare—Supplementary Medical Insurance; 93.802 Social Security—Disability Insurance; 93.803 Social Security—Retirement Insurance; 93.805 Social Security—Survivor's Insurance.)

List of Subjects in 20 CFR Part 404

Administrative practice and procedure; Death benefits; Disability benefits; Old-Age, Survivors, and Disability Insurance.

Editorial note: This document was received at the Office of the Federal Register December 10, 1992.

Dated: October 7, 1991.

Gwendolyn S. King,
Commissioner of Social Security.

Approved: December 18, 1991.

Louis W. Sullivan,
Secretary of Health and Human Services.

For the reasons set out in the preamble, part 404 of title 20 of the Code of Federal Regulations is amended as follows:

1. The authority citation for subpart K of part 404 is revised to read as follows:

Authority: Secs. 205(a), 209, 210, 211, 226, 226A, 229(a), 230, 231, and 1102 of the Social Security Act; 42 U.S.C. 405(a), 409, 410, 411, 426, 426-1, 429(a), 430, 431, and 1302; secs. 1151(d)(2)(C), 1704, and 1882 of Pub. L. 99-514, 100 Stat. 2505, 2779, and 2914; sec. 9003 of Pub. L. 100-203, 101 Stat. 1330-287; secs. 1011B(a)(23)(B) and 8013 of Pub. L. 100-647, 102 Stat. 3486 and 3789.

2. Section 404.1020 is amended by adding paragraphs (a)(3) and (a)(4) to read as follows:

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

(a) * * *

(3) You perform services after July 1, 1991, as an employee of a State (other than the District of Columbia, Guam, or American Samoa), a political subdivision of a State, or any wholly owned instrumentality of one or more of the foregoing and you are not a member of a retirement system of such State, political subdivision, or instrumentality. Retirement system has the meaning given that term in section 218(b)(4) of the Act, except as provided in regulations prescribed by the Secretary of the Treasury. This paragraph does not apply to services performed—

(i) As an employee employed to relieve you from unemployment;

(ii) In a hospital, home, or other institution where you are a patient or inmate thereof;

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

(iv) As an election official or election worker if the remuneration paid in a calendar year for such service is less than \$100; or

(v) As an employee in a position compensated solely on a fee basis which is treated, pursuant to section 211(c)(2)(E) of the Act, as a trade or business for purposes of inclusion of the fees in net earnings from self-employment; or

(4) The work is covered under § 404.1021 or § 404.1022.

* * * * *

3. Section 404.1073 is amended by revising paragraph (b)(1), redesignating paragraph (b)(2) as (b)(3), and adding a new paragraph (b)(2) to read as follows:

§ 404.1073 Public office.

* * * * *

(b) *State and local governmental employees paid by fees.* (1) *Voluntary coverage under section 218 of the Act.* The services of employees of States and political subdivisions, including those in positions paid solely on a fee-basis, may be covered as employment 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 has not covered your services under section 218 of the Act, you are considered to be engaged in a trade or business.

(2) *Mandatory old-age, survivors, disability, and hospital insurance coverage.* Beginning with services performed after July 1, 1991, Social Security coverage (old-age, survivors, disability, and hospital insurance) is mandatory, with certain exceptions, for services performed by employees of a State, a political subdivision of a State, or of a wholly owned instrumentality of one or more of the foregoing, if the employees are not members of a retirement system of the State, political

subdivision, or instrumentality. Among the exclusions from such mandatory coverage is service performed by an employee in a position compensated solely on a fee-basis which is treated pursuant to section 211(c)(2)(E) of the Act as a trade or business for purposes of inclusion of such fees in the net earnings from self-employment.

4. The authority citation for subpart M of part 404 is revised to read as follows:

Authority: Secs. 205, 210, 218, and 1102 of the Social Security Act; 42 U.S.C. 405, 410, 418, and 1302; sec. 12110 of Pub. L. 99-272, 100 Stat. 287, sec. 9002 of Pub. L. 99-509, 100 Stat. 1970.

5. Section 404.1200 is amended by revising the title of the section, designating the present text as (a), adding a new heading to paragraph (a), and adding a new paragraph (b) to read as follows:

§ 404.1200 General.

(a) *Coverage under section 218 of the Act.* * * *

(b) *Mandatory old-age, survivors, disability, and hospital insurance coverage.* Under section 210(a)(7)(F) of the Act, mandatory old-age, survivors, disability, and hospital insurance coverage is extended to certain services performed after July 1, 1991, by individuals who are employees of a State (other than the District of Columbia, Guam, or American Samoa), a political subdivision of the State, or any wholly owned instrumentality of one or more of the foregoing, and who are not members of the employer's retirement system. Certain services are excluded from such mandatory coverage (see § 404.1020(a)(3)).

6. Section 404.1201 is amended by revising paragraph (a) to read as follows:

§ 404.1201 Scope of this subpart regarding coverage and wage reports and adjustments.

* * * * *

(a) *Coverage under section 218 of the Act.* * * * * *

7. Section 404.1209 is amended by adding paragraph (f) to read as follows:

§ 404.1209 Mandatorily excluded services.

* * * * *

(f) *Services covered under section 210(a)(7)(F) of the Act.* (See § 404.1200(b).)

[FR Doc. 92-30391 Filed 12-16-92; 8:45 am]

BILLING CODE 4190-29-M

20 CFR Part 404

[Regulations No. 4]

RIN 0960-AC45

Federal Old-Age, Survivors and Disability Insurance; Extension of Social Security Coverage to Certain Workers; Medicare Only Coverage of Certain State and Local Government Employees; Medicare Qualified Government Employment

AGENCY: Social Security Administration, HHS.

ACTION: Final rules.

SUMMARY: We are revising several rules in Subpart K—Employment, Wages, Self-Employment, and Self-Employment Income—Part 404 of title 20 of the Code of Federal Regulations. These revisions reflect statutory enactments that—Extend Social Security coverage to certain work situations; and extend Medicare coverage to certain employees of States and their local governments.

We are also amending certain regulatory provisions of part 404, Subpart E—Deductions; Reductions; and Nonpayments of Benefits—to reflect the manner in which these statutory enactments affect the annual earnings test.

EFFECTIVE DATE: December 17, 1992.

FOR FURTHER INFORMATION CONTACT: L.V. Dudar, Legal Assistant, Office of Regulations, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, (410) 965-1795.

SUPPLEMENTARY INFORMATION:

Extension of Social Security Coverage

The Omnibus Budget Reconciliation Act of 1987 (OBRA 1987)—Public Law 100-203—contains several provisions extending and revising Social Security coverage to certain workers. An OBRA 1987 provision concerning coverage of agricultural work was subsequently amended by a provision of the Technical and Miscellaneous Revenue Act of 1988 (TAMRA)—Public Law 100-647. The amendments to the rules to reflect these statutory provisions are as follows.

Section 404.1015 Family Services

Based on section 210(a)(3)(A) of the Social Security Act (the Act), as amended by section 9005 of OBRA 1987, we are amending § 404.1015 to provide that the coverage exclusion that was applicable to a child under age 21 who is an employee of his or her parent(s) applies only when the child is under age 18. However, section

210(a)(3)(B) of the Act, as amended by section 9005 of OBRA 1987, provides that we continue to exclude from coverage the nonbusiness work or domestic service a child, age 18 through 20, may perform as an employee of his or her parent(s) and our revisions to the regulations reflect this requirement. At age 21, any work a child performs for his or her parent(s) is covered.

Based on section 210(a)(3) of the Act, as amended by section 9004 of OBRA 1987, we are deleting a paragraph of § 404.1015 and amending two other paragraphs of this section pertaining to spousal employment. These changes provide that service performed by a person working for his or her spouse is no longer excluded from coverage unless the work is nonbusiness or domestic work.

Section 404.1019 Work as a Member of a Uniformed Service of the United States

Based on section 210(l)(1) of the Act, as amended by section 9001 of OBRA 1987, we are amending paragraph (a) of this section to show that we will now provide Social Security coverage for inactive duty training performed by a member of a uniformed service.

Section 404.1055 Payments for Agricultural Labor

We are amending this section to reflect the change in coverage of agricultural labor required by the amendments of section 209(a)(7) of the Act (formerly section 209(h)(2) of the Act), by section 9002 of OBRA 1987 and section 8017 of TAMRA. These statutory changes provide that all cash payments to an employee for agricultural labor are covered wages if the employer's total expenditures for agricultural labor in the calendar year equal or exceed \$2,500 annually irrespective of how much the individual was paid. If the employer's total annual expenditures are less than \$2,500, cash payments to an employee of \$150 or more are wages, but any amount below \$150 is not wages. For a hand harvest laborer (i.e., seasonal agricultural labor), irrespective of the employer's expenditures for agricultural labor, cash payments of less than \$150 annually are not wages if he or she (1) is paid on a piece rate basis as a hand harvester in a piece rate operation, (2) commutes to the farm daily, and (3) was employed less than 13 weeks in agriculture in the preceding calendar year. The earnings are covered, as under prior law, if the employer pays the employee \$150 or more in a year. The provision in the regulation at § 404.1055(c) which covered an agricultural employee who works at

least 20 days for an employer for cash pay computed on a time basis (the 20-day test) has been eliminated as a result of section 9002 of OBRA 1987 with respect to remuneration paid for agricultural labor after December 31, 1987.

Section 404.1058 Special Situations

This section is amended to reflect one statutory provision. We will include as wages pay to members of a uniformed service while on inactive duty for training to reflect section 9001 of OBRA 1987. See also the amendment to § 404.1019—Work as a member of a uniformed service of the United States—discussed above.

Extension of Medicare Coverage

We are amending § 404.1018b—Medicare qualified government employment—to reflect the enactment of sections 9129 and 13205 of the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA of 1985—Pub. L. 99-272), which amends section 210(p) of the Act to provide for Medicare coverage, subject to certain exceptions, of employees of State and local political subdivisions. This Medicare protection applies mostly to State and local government employees hired after March 31, 1986, who are not covered under title II of the Social Security Act because the State did not enter into a coverage agreement with the Secretary of Health and Human Services under section 218 of the Social Security Act providing for such coverage. The employees who come under the scope of the COBRA of 1985 legislation are thus covered under Medicare but may not be under Social Security. The amended § 404.1018b also lists the categories of State and local government employees described under section 210(p)(2) of the Act as added by section 13205(b)(1) of COBRA 1985. The amended § 404.1018b also reflects the amendments to section 210(p)(2) of the Act by the enactment of section 1985(b)(18) of the Tax Reform Act of 1986 (Pub. L. 99-514), which excludes from mandatory Medicare coverage, election officials or election workers whose remuneration for such service is less than \$100 in a calendar year. Section 11332 of the Omnibus Budget Reconciliation Act of 1990 (OBRA 1990—Pub. L. 101-508) mandated coverage of the services of most State and local employees not covered under a State or local employer's retirement system which are not already covered under a section 218 agreement, effective for services performed after July 1, 1991. We also are amending § 404.1020—Work for States and their political subdivisions and

instrumentalities, § 404.1021—Work for the District of Columbia, and § 404.1022—American Samoa or Guam to include references to the pertinent § 404.1018b provisions.

Medicare coverage had previously been extended to Federal employment as the result of the enactment of section 278 of the Tax Equity and Fiscal Responsibility Act of 1982 (Pub. L. 97-248). These Medicare coverage provisions have been implemented by a separate regulation published on October 4, 1988 (53 FR 38943) (see § 404.1018b).

Annual Earnings Test Changes—Subpart E of Part 404

We are amending paragraph (c)(3) of § 404.429—Earnings; defined—to refer to the amended § 404.1055—Payments for agricultural labor (see above). The amended § 404.1055 reflects changes in agricultural labor coverage for remuneration paid after December 31, 1987, as required by the enactment of section 9002 of OBRA 1987 as later amended by section 8017 of TAMRA. Also, we are deleting the table of annual wage limitations from paragraph (c)(1) of § 404.429 since this table duplicates the table under § 404.1047. Paragraph (c)(1) of § 404.429 as amended will refer to the table under § 404.1047.

Public Comments

These rules were published as a notice of proposed rulemaking (NPRM) at 55 FR 37488 on September 12, 1990. We received no comments on the proposed rules.

Deletion of Previously Published Section

The NPRM contained a proposed change which added a new § 404.1097 concerning income earned as a corporate director. The proposed change was dictated by section 9022 of OBRA 1987 with respect to the treatment of earnings of corporate directors for performance of services as a director. This proposed regulatory change, however, was subsequently negated by section 5123 of OBRA 1990 which reinstituted the rule as it existed prior to OBRA 1987. These final rules, therefore, contain no reference to earnings of a corporate director for services performed as a director since the statutory basis for this regulatory change no longer exists.

These regulations are non-discretionary; they are needed to reflect enacted legislation. For that reason any cost impact from the policies these revisions codify is attributable to the legislation and not to this regulation.

Regulatory Procedures

Executive Order 12291

These final regulations have been reviewed under Executive Order 12291 to determine whether a major rule is involved. Two provisions of these final regulations reflect statutory provisions with a significant cost impact on the public. The two provisions and their estimated costs are the following:

1. Social Security coverage of persons performing inactive duty training—estimated yearly costs starting in 1988 have risen to \$452 million in FY 1992 and \$474 million in FY 1993 with an estimated 1.4 million persons affected.

2. Medicare coverage of State and local employees—estimated yearly costs starting in 1986 have risen to \$1,418 million in FY 1992 and \$1,585 million in FY 1993 with an estimated 2 million employees affected.

The other legislative changes codified in this regulation will increase costs to the public by \$8 million per year in FY 1992 and FY 1993. The overall increase in costs will exceed the threshold amount for a major rule under Executive Order 12291. However, because the policy codified in this regulation ultimately relates to transfer payments (i.e., benefit payments to members of the public), OMB has waived the requirement for a regulatory impact analysis for this rule.

Paperwork Reduction Act

These final regulations impose no reporting/recordkeeping requirements subject to Office of Management and Budget clearance.

Regulatory Flexibility Act

The Secretary certifies that these final rules will not have a significant economic impact on a substantial number of small entities. Small businesses should not be significantly affected by any of the statutory provisions reflected in these regulations and the tax collected and paid should be insignificant. The statutory provision extending Medicare to State and local government employees will cause some small governmental entities, whose employees had not previously been covered by Medicare, to have to pay the Medicare tax. However, this regulation simply reflects a statutory provision already in effect and implemented by IRS since March 31, 1986 (see Internal Revenue Service Bulletin No. 1986-28 (July 14, 1986)) and by the Health Care Financing Administration (42 CFR 406.15). Consequently, these final regulations have no overall economic impact. Therefore, a regulatory flexibility analysis, as provided in

Public Law 96-354, the Regulatory Flexibility Act, is not required.

(Catalog of Federal Domestic Assistance Programs: No. 93.802 Social Security—Disability Insurance; No. 93.803 Social Security—Retirement Insurance; No. 93.805 Social Security—Survivors Insurance.)

List of Subjects in 20 CFR Part 404

Administrative practice and procedure, Blind, Disability benefits, Old-Age, Survivors, and Disability Insurance, Reporting and recordkeeping requirements, Social Security.

Editorial Note: This document was received by the Office of the Federal Register on December 10, 1992.

Dated April 20, 1992.

Gwendolyn S. King,

Commissioner of Social Security.

Approved: July 22, 1992.

Louis W. Sullivan,

Secretary of Health and Human Services.

Part 404 of chapter III, title 20 of the Code of Federal Regulations is amended as follows:

PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE (1950-)

1. The authority citation for subpart E of part 404 continues to read as follows:

Authority: Secs. 202, 203, 204 (a) and (e), 205(a), 222(b), 223(e), 224, 227, and 1102 of the Social Security Act; 42 U.S.C. 402, 403, 404 (a) and (e), 405(a), 422(b), 423(e), 424, 427, and 1302.

2. Section 404.429 is amended by revising paragraphs (c)(1) and (c)(3) to read as follows:

§ 404.429 Earnings; defined.

* * * * *

(c) * * *

(1) Remuneration in excess of the amounts in the annual wage limitation table in § 404.1047;

* * * * *

(3) Payments for agricultural labor excluded under § 404.1055.

* * * * *

3. The authority citation for subpart K of part 404 continues to read as follows:

Authority: Secs. 205(a), 209, 210, 211, 226, 226A, 229(a), 230, 231, and 1102 of the Social Security Act; 42 U.S.C. 405(a), 409, 410, 411, 426, 426-1, 429(a), 430, 431, and 1302; Secs. 1151(d)(2)(C), 1704, and 1882 of Pub. L. 99-514, 100 Stat. 2505, 2779, and 2914; Sec. 9003 of Pub. L. 100-203, 101 Stat. 1330-287; Secs. 1011B(a)(2)(B) and 8013 of Pub. L. 100-647, 102 Stat. 3486 and 3789.

4. Section 404.1015 is amended by removing present paragraph (a)(1), redesignating the present paragraph (a)(2) as paragraph (a)(1) and revising this redesignated paragraph, adding a

new paragraph (a)(2), revising paragraph (a)(3), and revising the paragraph (a)(4) introductory text to read as follows:

§ 404.1015 Family services.

(a) * * *

(1) You work while under age 18 in the employ of your parent;

(2) You do nonbusiness work (see § 404.1058(a)(3) for an explanation of nonbusiness work) or perform domestic service (as described in § 404.1057(b)) as an employee of your parent while under age 21;

(3) You do nonbusiness work as an employee of your son, daughter, or spouse; or

(4) You perform domestic service in the private home of your son, daughter or spouse as an employee of that son, daughter or spouse unless—

* * * * *

5. Section 404.1018b is revised to read as follows:

§ 404.1018b Medicare qualified government employment.

(a) **General.** The work of a Federal, State, or local government employee not otherwise subject to Social Security coverage may constitute Medicare qualified government employment. Medicare qualified government employment means any service which in all ways meets the definition of "employment" for title II purposes of the Social Security Act, except for the fact that the service was performed by a Federal, State or local government employee. This employment is used solely in determining eligibility for protection under part A of title XVIII of the Social Security Act (Hospital Insurance) and for coverage under the Medicare program for end-stage renal disease.

(b) **Federal employment.** If, beginning with remuneration paid after 1982, your service as a Federal employee is not otherwise covered employment under the Social Security Act, it is Medicare qualified government employment unless excluded under § 404.1018(c).

(c) **State and local government employment.** If, beginning with service performed after March 31, 1986, your service as an employee of a State or political subdivision (as defined in § 404.1202(b)), Guam, American Samoa, the District of Columbia, or the Northern Mariana Islands is excluded from covered employment solely because of section 210(a)(7) of the Social Security Act which pertains to employees of State and local governments (note §§ 404.1020 through 404.1022), it is Medicare qualified government employment except as provided in paragraphs (c) (1) and (2) of this section.

(1) An individual's service shall not be treated as employment if performed—

(i) By an individual employed by a State or political subdivision for the purpose of relieving that individual from unemployment;

(ii) In a hospital, home, or other institution by a patient or inmate thereof as an employee of a State, political subdivision, or of the District of Columbia;

(iii) By an individual, as an employee of a State, political subdivision or the District of Columbia serving on a temporary basis in case of fire, storm, snow, earthquake, flood, or other similar emergency;

(iv) By an individual as an employee included under 5 U.S.C. 5351(2) (relating to certain interns, student nurses, and other student employees of hospitals of the District of Columbia government), other than as a medical or dental intern or a medical or dental resident in training; or

(v) By an election official or election worker paid less than \$100 in a calendar year for such service.

(2) An individual's service performed for an employer shall not be treated as employment if—

(i) The service would be excluded from coverage under section 210(a)(7) of the Social Security Act which pertains to employees of State and local governments;

(ii) The service is performed by an individual who—

(A) Was performing substantial and regular service for remuneration for that employer before April 1, 1986;

(B) Was a bona fide employee of that employer on March 31, 1986; and

(C) Did not enter into the employment relationship with that employer for purposes of meeting the requirements of paragraphs (c)(2)(ii) (A) and (B) of this section; and

(iii) After March 31, 1986, but prior to the service being performed, the employment relationship with that employer had not been terminated.

6. Section 404.1019 is amended by revising paragraph (a) to read as follows:

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

(a) Your work as a member of a uniformed service of the United States is covered under Social Security (unless creditable under the Railroad Retirement Act), if—

(1) On or after January 1, 1957, the work is service on active duty or active duty for training but not including service performed while on leave without pay; or

(2) On or after January 1, 1988, the work is service on inactive duty training.

7. Section 404.1020 is amended by revising present paragraph (a)(2), redesignating present paragraph (b) as paragraph (c), adding a new paragraph (b), and revising redesignated paragraphs (c)(4)(ii)(B) and (c)(4)(iv)(B) to read as follows:

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

(a) General.

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

(b) Medicare qualified government employment. Notwithstanding the provisions of paragraph (a) of this section, your work may be covered as Medicare qualified government employment (see § 404.1018b(c) of this subpart).

(c) * * *

(4) * * *

(ii) * * *

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

(iv) * * *

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

8. Section 404.1021 is amended by adding paragraph (c) to read as follows:

§ 404.1021 Work for the District of Columbia.

(c) Medicare qualified government employment. If your work is not covered under Social Security, it may be covered as Medicare qualified government employment (see § 404.1018b(c) of this subpart).

9. Section 404.1022 is amended by adding paragraph (d) to read as follows:

§ 404.1022 American Samoa or Guam.

(d) Medicare qualified government employment. If your work is not covered under Social Security, it may be covered as Medicare qualified government employment (see § 404.1018b(c) of this subpart).

10. Section 404.1055 is revised to read as follows:

§ 404.1055 Payments for agricultural labor.

(a) The \$2,500 expenditures and \$150 cash-pay tests. Your cash payments in a calendar year after 1987 from an employer for agricultural labor (see § 404.1056) are wages if—

(1) Your employer's total expenditures for agricultural labor in that year are \$2,500 or more, regardless of how much you were paid, or

(2) Your employer's total expenditures for agricultural labor are less than \$2,500 in that year and your employer paid you \$150.00 or more in that year.

(b) Exceptions to the \$2,500 expenditures and \$150 cash-pay tests.

(1) Noncash payments for agricultural labor are not wages under either the \$2,500 expenditures or \$150 cash-pay test.

(2) Your cash payments in a calendar year from an employer for agricultural labor are not wages, irrespective of your employer's total annual expenditures for agricultural labor, if you are a hand harvest laborer (i.e., seasonal agricultural labor), and—

(i) Your employer paid you less than \$150 in that year;

(ii) You are paid on a piece rate basis in an operation which has been, and is customarily and generally recognized in the region of employment as paying on a piece rate basis;

(iii) You commute daily from your permanent residence to the farm on which you are so employed; and,

(iv) You were employed in agriculture less than 13 weeks during the previous calendar year.

Example: In 1988, A (not a hand harvest laborer) performs agricultural labor for X for cash pay of \$144 in the year. X's total agricultural labor expenditures for 1988 are \$2,450. Neither the \$150 cash-pay test nor the \$2,500 expenditures test is met. Therefore, X's payments to A are not wages.

(c) When cash-pay is creditable as wages. (1) If you receive cash pay from an employer for services which are agricultural labor and for services which are not agricultural labor, we count only the amounts paid for agricultural labor in determining whether cash payments equal or exceed \$150. If the amounts paid are less than \$150, we count only those amounts paid for agricultural labor in determining the wages to credit the individual if the \$2,500 expenditures test is met (for periods beginning on or after January 1, 1988) or the 20-day work test described in paragraph (c) of this section (for periods of time prior to 1988).

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 1988, X pays A \$140 cash for agricultural labor performed in that year, and \$2,260 for work in connection with the operation of the store. Additionally, X's total expenditures for agricultural labor in 1988 were \$2,010. Since the cash payments by X to A in the calendar year 1988 for agricultural labor are less than \$150, and total agricultural labor expenditures were under \$2,500, the \$140 paid by X to A for agricultural labor is not wages. The \$2,260 paid for work in the store is wages.

(2) The amount of cash pay for agricultural labor that is creditable to an individual 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 \$150 cash-pay test and \$2,500 total expenditures test to each employer.

(d) Application of the \$150 cash-pay and 20-day tests prior to 1988. (1) For the time period prior to 1988, we apply either the \$150 a year cash-pay test or the 20-day test. Cash payments are wages if you receive \$150 or more from an employer for agricultural labor or under the 20-day test if you perform agricultural labor for which cash pay is computed on a time basis on 20 or more days 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.

11. Section 404.1058 is amended by revising paragraph (c)(1), adding introductory text to paragraph (c)(2), and adding paragraph (c)(4) to read as follows:

§ 404.1058 Special situations.

(c) * * *

(1) The standard. We include as the wages of a member of the uniformed services—

(i) Basic pay, as explained in paragraph (c)(3) of this section, for performing the services described in paragraph (a)(1) of § 404.1019 of this subpart; or

(ii) Compensation, as explained in paragraph (c)(4) of this section, for performing the services described in paragraph (a)(2) of § 404.1019 of this subpart.

(2) Wages deemed paid. These following provisions apply to members

of the uniformed services who perform services as described in paragraph (a)(1) of § 404.1019 of this subpart.

(4) *Compensation.* "Compensation" refers to the remuneration received for services as a member of a uniformed service, based on regulations issued by the Secretary concerned (as defined in 37 U.S.C. 101(5) under 37 U.S.C. 206(a), where such member is not entitled to the basic pay (as defined by paragraph (3) of this section).

[FR Doc. 92-30390 Filed 12-16-92; 8:45 am]
BILLING CODE 4190-29-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 8357]

RIN 1545-AJ79

Certain Cash or Deferred Arrangements and Employee and Matching Contributions Under Employee Plans; Correction

AGENCY: Internal Revenue Service, Treasury.

ACTION: Correcting amendment.

SUMMARY: This document contains corrections to the final regulations (T.D. 8357), which were published Wednesday, March 25, 1992 (57 FR 10289), relating to certain cash or deferred arrangements (CODAs) and employee and matching contributions under employee plans.

EFFECTIVE DATE: August 15, 1991.

FOR FURTHER INFORMATION CONTACT: Catherine Livingston Fernandez, 202-622-6030, (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

The final regulation that is the subject of this correction replaces all of the 1988 proposed and final regulations on these subjects, and the amendments to regulations under section 401 (k) and (m) of the Internal Revenue Code of 1986, issued on May 14, 1990.

Need for Correction

As published, T.D. 8357 contains an error which may prove to be misleading and is in need of clarification.

List of Subjects for 26 CFR 1.401-0 Through 1.419A-2T

Bonds, Employee benefit plans, Income taxes, Pensions, Reporting and

recordkeeping requirements, Securities, Trusts and trustees.

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Accordingly, 26 CFR part 1 is corrected by making the following correcting amendment:

Paragraph 1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. In § 1.401(k)-1 (f)(3)(ii), the first sentence in the concluding text is revised to read as follows:

§ 1.401(k)-1 Certain cash or deferred arrangements.

(f) * * *
(3) * * *
(ii) * * *

Recharacterized excess contributions continue to be treated as employer-contributions that are elective contributions for all other purposes under the Internal Revenue Code, including sections 401(a) (other than 402(a)(4) and 401(m)), 404, 409, 411, 412, 415, 416, and 417. * * *

Dale D. Goode,

Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 92-30311 Filed 12-16-92; 8:45 am]
BILLING CODE 4830-01-M

DEPARTMENT OF JUSTICE

Parole Commission

28 CFR Part 2

Paroling, Recommitting and Supervising Federal Prisoners; Domestic and Foreign Travel by Federal Parolees

AGENCY: Parole Commission, Justice.

ACTION: Final rule.

SUMMARY: The U.S. Parole Commission is amending its regulations to change the procedure by which travel requests from federal parolees are approved. Current Commission procedures require Parole Commission approval for any parolee who requests permission to travel outside the contiguous forty-eight states of the United States. Approval for travel within the contiguous forty-eight states of the United States may be granted by the U.S. Probation Office. This rule change allows the U.S. Probation Office to grant and deny requests for travel within the United

States, including Alaska and Hawaii, as well as the U.S. Territories. Parole Commission approval will be required only for a request to travel to a foreign country.

EFFECTIVE DATE: January 19, 1993.

FOR FURTHER INFORMATION CONTACT:

Richard Preston, Office of General Counsel, telephone (301) 492-5959.

SUPPLEMENTARY INFORMATION:

The Commission has decided to allow U.S. Probation Offices to determine whether a parolee should be permitted to travel not only within the contiguous forty-eight states of the United States, but also to Alaska and Hawaii, as well as the U.S. Territories (e.g., Puerto Rico, Guam and the Virgin Islands). The Commission has decided that this procedure is appropriate because continuing parole supervision by a U.S. Probation Officer is available for any parolee who is granted permission to travel to these destinations. Coordination of supervision may be arranged between the U.S. Probation Officers concerned, who can also determine the appropriateness of the travel request itself.

The Commission will retain its requirement for approval by a U.S. Parole Commissioner in the case of any request to travel to a foreign country. These requests must be closely examined because no supervision will be available for the parolee, and a variety of sensitive questions may be involved (e.g., travel to a foreign country that prohibits entry to individuals convicted of certain felonies, or travel to a foreign country that is known for its bank secrecy laws by a parolee who has not adequately accounted for the proceeds for his crime). The Commission will also continue to review all requests for recurring travel and extended vacation travel.

Executive Order 12291 and Regulatory Flexibility Statement

The U.S. Parole Commission has determined that this final rule is not a major rule within the meaning of Executive Order 12291. The rule will not have a significant economic impact upon a substantial number of small entities, within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 605(b).

List of Subjects in 28 CFR Part 2

Administrative practice and procedure, Probation and parole, Prisoners.

Accordingly, the U.S. Parole Commission adopts the following amendment to 28 CFR part 2:

PART 2—[AMENDED]

1. The authority citation for 28 CFR part 2 continues to read as follows:

Authority: 18 U.S.C. 4203(a)(1) and 4204(a)(6).

2. Section 2.41 is amended by revising paragraph (b) to read as follows:

§ 2.41. Travel approval.

(b) Specific advance approval by the Commission is required for all foreign travel, employment requiring recurring travel more than fifty miles outside the district (except employment at offshore locations), and vacation travel outside the district exceeding thirty days. A request for such permission shall be in writing and must demonstrate a substantial need for such travel.

Dated: November 3, 1992.

Edward F. Reilly, Jr.,

Chairman, U.S. Parole Commission.

[FR Doc. 92-30547 Filed 12-16-92; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF THE INTERIOR**U.S. Geological Survey****30 CFR Part 400**

RIN 1028-AA04

Regulations for Obtaining Federal Assistance in Financing Explorations for Mineral Reserves, Excluding Organic Fuels, in the United States, its Territories and Possessions

AGENCY: U.S. Geological Survey, Interior.

ACTION: Final rule.

SUMMARY: The U.S. Geological Survey (USGS) has reviewed its regulations for currency, adequacy, and continued need. Consequently, the USGS is removing the Regulations for Obtaining Federal Assistance in Financing Explorations for Mineral Reserves, Excluding Organic Fuels, in the United States, its Territories and Possessions because the program has had no funding authority since 1979, and it is doubtful that funding will be authorized in the foreseeable future.

EFFECTIVE DATE: January 19, 1993.

FOR FURTHER INFORMATION CONTACT: Gary C. Curtin, 913 National Center Reston, Virginia 22092, 703-648-4242.

SUPPLEMENTARY INFORMATION:**Response to Public Comment**

No comments were received from the public in response to the proposed rule

as published in the Federal Register (57 FR 43411) on September 21, 1992.

Required Analyses

The Department of the Interior has determined this document is not a major rule under E.O. 12291 and certifies this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). Because the program has not been funded since 1979, removal of the regulations will not adversely affect the Nation's economy or any small entities in industry or Government.

This action will have no potential for significant environmental impact and is categorically excluded from the requirements for compliance with the National Environmental Policy Act of 1969, as amended (Pub. L. 91-190, 83 Stat. 852).

Paperwork Reduction Act

No information collection or recordkeeping has been required under the regulations since 1989.

Executive Order No. 12778

The Department has certified to the Office of Management and Budget that this proposed regulation meets the applicable standards provided in Sections 2(a) and 2(B) of Executive Order No. 12778.

Author

The principal author of this proposed rule is Gary Curtin, Geologic Division, U.S. Geological Survey.

List of Subjects in 30 CFR Part 400

Government contracts, Grant programs—natural resources, Mineral resources, Mineral royalties.

PART 400—[REMOVED]

Under the authority of 30 U.S.C. 642(e) and for the reasons stated above, 30 CFR part 400 is removed.

Dated: November 16, 1992.

Harlan L. Watson,

Principal Deputy Assistant Secretary—Water and Science.

[FR Doc. 92-30477 Filed 12-16-92; 8:45 am]

BILLING CODE 4310-31-M

Office of Surface Mining Reclamation and Enforcement**30 CFR Part 914****Indiana Permanent Regulatory Authority**

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is announcing the approval of a proposed amendment to the Indiana permanent regulatory program (hereinafter referred to as the Indiana program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment consists of proposed changes to the Indiana Surface Mining Rules at 310 Indiana Administrative Code (IAC) 12-3, 12-8, and 12-9 concerning reclamation fees. The amendment specifies the requirements for payment of the reclamation fee established by Indiana Code (IC) 13-4.1-3-2. The amendment is intended to revise the Indiana program to be consistent with the corresponding Federal regulations.

EFFECTIVE DATE: December 17, 1992.

FOR FURTHER INFORMATION CONTACT:

Roger W. Calhoun, Director, Indianapolis Field Office, Office of Surface Mining Reclamation and Enforcement, Minton-Capehart Federal Building, 575 North Pennsylvania Street, room 301, Indianapolis, IN 46202, Telephone (317) 226-6166.

SUPPLEMENTARY INFORMATION:

- I. Background on the Indiana Program.
- II. Submission of Amendment.
- III. Director's Findings.
- IV. Summary and Disposition of Comments.
- V. Director's Decision.
- VI. Procedural Determinations.

I. Background on the Indiana Program

On July 29, 1982, the Indiana program was made effective by the conditional approval of the Secretary of the Interior. Information pertinent to the general background on the Indiana program, including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Indiana program can be found in the July 26, 1982, Federal Register (47 FR 32017). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 914.15 and 914.16.

II. Submission of Amendment

By letter dated May 7, 1992 (Administrative Record No. IND-1079), the Indiana Department of Natural