competitiveness, and employment in small entities. Whether preparation of a final regulatory analysis is warranted will be determined after receipt and review of such comments, if any.

Effective Date

The Commission will announce an effective date for the rule upon publication of the rule in final form. Petitions to stay, in whole or in part, the termination of an order pursuant to the rule shall be filed pursuant to Commission Rule 2.51, 16 CFR § 2.51. In the case of orders that have been in effect for at least 20 years, the rule would provide respondents with 30 days to the file such a petition before the order is automatically terminated by the rule. Pending the disposition of such a petition, the order would be deemed to remain in effect without interruption.

List of Subjects in 16 CFR Part 3

Administrative practice and procedure, Claims, Equal access to justice, Lawyers.

Accordingly, the Federal Trade Commission proposes to amend Title 16, Chapter I, Subchapter A, of the Code of Federal Regulations as follows:

PART 3—RULES OF PRACTICE FOR ADJUDICATIVE PROCEEDINGS

1. The authority for Part 3 would continue to read as follows:

Authority: Sec. 6, 38 Stat. 721 (15 U.S.C. 46), unless otherwise noted.

2. Section 3.72 would be amended by adding a new paragraph 3.72(b)(3) to read as follows:

§ 3.72 Reopening.

* * * * *

(b) * * *

(3) *Termination of existing orders.* (i) *Generally.* Notwithstanding the foregoing provisions of this rule, and except as provided in paragraphs (b)(3)(ii) and (iii) of this section, an order issued by the Commission before August 16, 1995, will be deemed, without further notice or proceedings, to terminate 20 years from the date on which the order was first issued, or on [30 days following publication of the final rule in the **Federal Register**], whichever is later.

(ii) *Exception.* This paragraph applies to the termination of an order issued before August 16, 1995, where a complaint alleging a violation of the order was or is filed (with or without an accompanying consent decree) in federal court by the United States or the Federal Trade Commission while the order remains in force, either on or after August 16, 1995, or within the 20 years preceding that date. If more than one complaint was or is filed while the order remains in force, the relevant complaint for purposes of this paragraph will be the latest filed complaint. An order subject to this paragraph will terminate 20 years from the date on which a court complaint described in this paragraph was or is filed, except as provided in the following sentence. If the compliant was or is dismissed, or a federal court rules or has ruled that the respondent did not violate any provision of the order, and the dismissal or ruling was or is not appealed, or was or is upheld on appeal, the order will terminate according to paragraph (b)(3)(i) of this section is though the complaint was never filed; provided, however, that the order will not terminate between the date that such complaint is filed and the later of the deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal. The filing of a complaint described in this paragraph will not affect the duration of any order provision that has expired, or will expire, by its own terms. The filing of a complaint described in this paragraph also will not affect the duration of an order's application to any respondent that is not named in the complaint.

(iii) *Stay of Termination.* Any party to an order may seek to stay, in whole or part, the termination of the order as to that party pursuant to paragraph (b)(3)(i) or (ii) of this section. Petitions for such stays shall be filed in accordance with the procedures set forth in § 2.51 of these rules. Such petitions shall be filed on or before the date on which the order would be terminated pursuant to paragraph (b)(3)(i) or (ii) of this section. Pending the disposition of such a petition, the order will be deemed to remain in effect without interruption.

(iv) *Orders not terminated.* Nothing in § 3.72(b)(3) is intended to apply to *in camera* orders or other procedural or interlocutory rulings by an Administrative Law Judge or the Commission.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 95–20143 Filed 8–15–95; 8:45 am]

BILLING CODE 6750–01–M

RAILROAD RETIREMENT BOARD

20 CFR Part 230

RIN 3220–AA61

Reduction and Non-Payment of Annuities by Reason of Work

AGENCY: Railroad Retirement Board.

ACTION: Proposed rule.

SUMMARY: The Railroad Retirement Board (Board) proposes to revise Part 230 of its regulations to explain how employment or self-employment after an annuitant's annuity beginning date may cause a reduction in or non-payment of the annuity.

DATES: Comments must be received by September 15, 1995.

ADDRESSES: Secretary to the Board, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611.

FOR FURTHER INFORMATION CONTACT: Thomas W. Sadler, Assistant General Counsel, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611, (312) 751–4513, TDD (313) 754–4701.

SUPPLEMENTARY INFORMATION: Sections 2(f) and 2(g)(2) of the Railroad Retirement Act (45 U.S.C. 231a (f) and (g)(2)) provide for a reduction in or non-payment of an annuity if post-retirement earnings exceed the limits set forth in section 203 of the Social Security Act (45 U.S.C 403). Although these provisions were enacted as part of the Railroad Retirement Act of 1974 (Pub. L. 93–445, Title I, 88 Stat. 1312), the Board has never explained in its regulations how such provisions operate.

Sections 230.5 through 230.16 of these proposed regulations explain how the earnings limitations set forth in section 203 of the Social Security Act apply to a railroad retirement benefit. Specifically, these proposed sections explain how an individual attains an insured status so that the earnings limitations are applicable to his or her benefit, what portion of a railroad retirement benefit is subject to these earnings restrictions (the work deduction component), and how a railroad retirement benefit may be reduced or not paid because of post-retirement earnings.

Secton 230.9 sets forth a revised interpretation of the work deduction component subject to deduction for excess earnings. The revised interpretation tracks explicitly the language of sections 2(f)(1) and 2(f)(2) of the Railroad Retirement Act. These sections provide that the work deduction component of the tier I benefit is the amount of that benefit attributable to post-1974 railroad service

and all social security coverage wages and self employment income. The Railroad Retirement Board has been computing the work deduction as the difference between a hypothetical tier I benefit computed on the basis of all service and a hypothetical tier I benefit computed using only pre-1974 railroad service. This method of computation substantially overvalues pre-1975 railroad service and results in a smaller work deduction component than contemplated by the language of the statute. This revised definition would become effective no earlier than January 1, 1996.

The Labor Member of the Railroad Retirement Board dissented from the vote of the majority of the Board to adopt the revised definition of the work deduction component and wishes to express his views on that change. It is the Labor Member's opinion that the previous definition of the work deduction component of the tier I benefit is the correct interpretation of the statute, giving meaning not only to the wording of the statute itself, but also to the intention of Congress in enacting that provision. Congress, in subjecting tier I benefits to work deductions, like social security benefits, nevertheless recognized that until 1975 these benefits were not subject to such deductions. By providing that only that part of the tier I benefit as is computed on the basis of social security wages and post-1974 railroad compensation Congress intended to preserve that portion of the tier I benefit based on railroad earnings before 1975 as not subject to work deductions. The construction given the Railroad Retirement Act by the majority results in a much smaller exempt amount with the value of pre-1975 railroad earnings eroding more and more each year. In the view of the Labor Member, this is directly contrary to the intention of Congress to preserve the value of pre-1975 railroad service, and since the current method follows past opinions of agency staff, the proposed change will have difficulty passing legal challenge.

The Labor Member is of the opinion that the majority's interpretation of the work deduction component has been manufactured solely to increase the amount of that component, by as much as several hundred dollars per month, so as to reduce benefit payments. He believes that the majority's action is arbitrary and capricious, compromises due process, and that it is wrong to change a long-standing agency interpretation without a compelling reason to do so. Moreover, analysis prepared by agency staff has shown that the change in interpretation will be costly and impose substantial administrative burdens on agency staff. Finally, the change in interpretation will result in recurring benefit recomputations resulting from additional earnings. Because of the delay in posting these earnings there will occur additional overpayments that will be subject to recovery action. In summary, the Labor Member believes that the action of the majority is arbitrary and capricious, will adversely affect rights and expectations of our beneficiaries, and is contrary to the intention of Congress in drafting the language in question.

Sections 230.17 through 230.20 of these proposed regulations explain how an annuitant must report his or her post-retirement earnings to the Board and what penalties may apply for failure to make such reports. Finally, proposed § 230.21 explains when the Board may suspend the payment of a benefit because the annuitant is currently engaging in employment or self-employment.

Other restrictions apply to a railroad retirement benefit because of post-retirement work. Sections 2(e)(3), (e)(5) and (g)(1) of the Act (45 U.S.C. 231a(e)(3), (e)(5), and (g)(1)) provide for the non-payment of a benefit for any month in which an annuitant performs compensated service for an employer under the Act. Proposed § 230.4 explains how these provisions apply to a railroad retirement benefit. Section 2(e)(4) of the Act provides for a special earnings limitation for disability annuitants. A reference to this limitation is found in proposed § 230.3. Proposed § 230.22 explains how work outside the United States may affect payment of a benefit.

Finally, the Railroad Unemployment Insurance and Retirement Improvement Act of 1988, Public Law 100–647, section 7302(b) (102 Stat. 3342, 3777), amended section 2(e) of the Railroad Retirement Act to provide for an earnings limitation applicable to the tier II and supplemental annuity components of a railroad retirement annuity where an employee or spouse annuitant performs work for wages for the last employer(s) for whom he or she worked prior to his or her annuity beginning date (commonly known as last person service). These provisions are explained in proposed § 230.23.

The Board, in conjunction with the Office of Management and Budget, has determined that this is not a major rule under Executive Order No. 12866; therefore, no regulatory impact analysis is required. Information collections required by this part have been approved by the Office of Management and Budget under Control Nos. 3220–0032 and 3220–0073.

List of Subjects in 20 CFR 230

Railroad employees, Railroad retirement.

For the reasons set out in the preamble, Title 20, Chapter II, of the Code of Federal Regulations is proposed to be amended as follows:

1. Part 230 is revised to read as follows:

PART 230—REDUCTION AND NON-PAYMENT OF ANNUITIES BY REASON OF WORK

Sec.

Authority: 45 U.S.C. 231f.

§ 230.1 Introduction.

This part describes what events may cause a reduction in or nonpayment of part or all of an individual's annuity under the Railroad Retirement Act as the result of the annuitant engaging in

employment or self-employment after his or her annuity beginning date.

§ 230.2 Definitions.

Annuity means a payment due an entitled person for a calendar month and made to him or her on the first day of the following month.

Retirement Age means age 65, with respect to an employee or spouse who attains age 62 before January 1, 2000 (age 60 in the case of a widow(er), remarried widow(er) or surviving divorced spouse). For an employee or spouse who attains age 62 (or age 60 in the case of a widow(er), remarried widow(er), or surviving divorced spouse) after December 31, 1999, retirement age means the age provided for in section 216(1) of the Social Security Act.

Social Security Overall Minimum Guarantee means the benefit paid to an employee which is equal to the total amount of family benefits which would be payable under the Social Security Act on the earnings record of that employee had his or her railroad compensation been covered under that statute and not the Railroad Retirement Act. This benefit is only paid when it is greater than the amount of annuities produced by the benefit formulas under the Railroad Retirement Act.

Tier I Benefit means the benefit component of an annuity under the Railroad Retirement Act calculated using Social Security Act formulas and based upon earnings covered by either the Railroad Retirement Act or the Social Security Act.

Tier II Benefit means the benefit component calculated under a formula found in the Railroad Retirement Act and based only upon earnings in the railroad industry.

Vested Dual Benefit means a monthly payment due an entitled person in addition to the tier I and tier II benefit. The benefit is payable to employee annuitants who met certain requirements under the Railroad Retirement Act and Social Security Act prior to 1975. The vested dual benefit restores, in part, any reduction in the tier I benefit due to receipt of a social security benefit.

Work Deduction Component means that part of an individual's annuity which is subject to non-payment or reduction because of employment or self-employment after the annuity beginning date (see § 230.9 of this part). The work deduction component for a survivor annuitant is the entire annuity (see § 230.10 of this part). The special work deduction component for last person service work deductions is defined in § 230.23 of this part.

§ 230.3 Loss of disability annuity because of earnings and penalties.

The provisions pertaining to loss of a disability annuity because of earnings and penalties may be found in part 220, Subpart M of this chapter.

§ 230.4 Loss of annuity for month in which compensated service is rendered.

(a) If an individual in receipt of an annuity renders compensated service to an employer covered under the Railroad Retirement Act, as defined in part 202 of this chapter, he or she shall not be paid an annuity with respect to any month in which such service is rendered.

(b) If an employee in receipt of an annuity renders compensated service to an employer covered under the Railroad Retirement Act, as defined in part 202 of this chapter, no spouse annuity or divorced spouse annuity based on the employee's earnings record shall be paid with respect to any month in which the employee renders such service.

§ 230.5 Earnings limitation; definitions.

As used in this part:

(a) *Earnings* shall have the same meaning as that term is defined in § 404.429 of this title. Generally, earnings shall include:

(1) Remuneration for services rendered as an employee, and

(2) Any earnings from self-employment (less any loss from self-employment for the year).

(3) Deferred income from self-employment which is received in a year after the year in which entitlement to an annuity under the Railroad Retirement Act begins is not included in determining the individual's excess earnings if it is based on services performed before entitlement begins.

(b) *Annual Exempt Amount* means the maximum amount of money that can be earned in a year without losing any annuity because of earnings. Annuitants who are between 60 and retirement age during the entire year have a lower annual exempt amount than those who attain retirement age during the year, are over retirement age during the whole year or die in the year they would have attained retirement age. The amount which constitutes the annual exempt amount is determined periodically by the Secretary of Health and Human Services in accord with § 404.430 of this title and is published in the **Federal Register**, usually in October in the year preceding the year in which it applies. No annual exempt amount applies with regard to the reduction due to last person service. See § 230.23 of this part.

(c) *Excess earnings* means, with respect to an individual who has attained retirement age before the close of his or her taxable year, 33⅓ percent of the amount of earnings above the annual limit that must be applied against the amount of benefit subject to work deductions. If the individual has not attained retirement age before the close of his or her taxable year, the applicable percentage is 50 percent. The excess earnings as derived under the preceding sentences, if not a multiple of $1, shall be reduced to the next lower $1.

(d) *Monthly exempt amounts* means the amount of wages which an annuitant may earn in any month without part of his or her annuity being deducted because of excess earnings. The monthly exempt amount is determined periodically by the Secretary of Health and Human Services in accordance with § 404.430 of this title and is published in the **Federal Register**, usually in October in the year preceding the year in which it applies. The monthly exempt amount applies only in an annuitant's grace year or years (see § 230.14 of this part).

§ 230.6 Earnings limitation; annual earnings test.

(a) Under the annual earnings test, deductions are made from an annuity payable to an annuitant for each month in a calendar year in which the auunitant is under age 70 and to which excess earnings are charged. This deduction is in an amount equal to the lesser of the amount of the excess earnings so charged or the total amount of the work deduction component, as explained in § 230.11 of this part.

(b) Deductions are made from an annuity payable on the basis of an employee's earnings record because of the employee's excess earnings. However, deductions will not be made from the annuity payable to a divorced spouse who has been divorced from the employee for at least two years.

(c) If an annuity is payable to a person who is not the employee but who is entitled on the basis of the earnings record of the employee and such person has excess earnings charged to a month, a deduction is made only from that person's annuity for that month. This deduction is in an amount equal to the lesser of the amount of the excess earnings so charged or the total amount of the work deduction component, as explained in § 230.11 of this part. See § 230.12 of this part for the method of charging excess earnings.

§ 230.7 Earnings limitation; earnings in a taxable year.

(a) In applying the annual earnings test, all of an annuitant's earnings for all

months of the annuitant's taxable year are used even though the individual may not be entitled to an annuity during all months of the taxable year. However, in the case of a survivor annuity, earnings after the annuity terminates are not included in the total earnings for the taxable year that is used for the annual earnings test. The taxable year of an employee is presumed to be a calendar year until it is shown to the satisfaction of the Railroad Retirement Board that the individual has a different taxable year. A self-employed individual's taxable year is a calendar year unless the individual has a different taxable year for the purposes of subtitle A of the Internal Revenue Code of 1986. The number of months in a taxable year is not affected by the time an application is filed, attainment of any particular age, marriage or the termination of marriage, adoption, or the death of the annuitant.

(b) Remuneration for services rendered as an employee are includable as earnings for the months and year in which the annuitant rendered the compensated services. Net earnings from self-employment, or net losses therefrom, are includable as earnings or losses in the year for which such earnings or losses are reportable for Federal income tax purposes.

(c) Earnings in and after the month an individual attains age 70 will not be used to figure excess earnings. For the employed individual, wages for months prior to the month of attainment of age 70 are used to figure the excess earnings. For the self-employed individual, the pro rata share of the net earnings or net loss for the taxable year for the period prior to the month of attainment of age 70 is used to figure the excess earnings. If the annuitant was not engaged in self-employment prior to the month of attainment of age 70, any subsequent earnings or losses from self-employment in the same taxable year will not be used to figure the excess earnings.

§ 230.8 Earnings limitation; work deduction insured status.

(a) An individual entitled to a retirement annuity must have a work deduction insured status for his or her annuity to be reduced by work deductions. No work deduction insured status is required for the reduction due to last person service employment. See § 230.23 of this part.

(b) An employee has a work deduction insured status when he or she has sufficient quarters of coverage under the Social Security Act to be eligible for a social security benefit, or would be eligible for a benefit under that Act if he or she was old enough and has accumulated sufficient wage quarters which, when added to all quarters of railroad compensation after 1974 would equal the number of quarters of coverage necessary to have an insured status under the Social Security Act.

(c) A spouse has a work deduction insured status when he or she:

(1) Is married to an employee who has or who acquires a work deduction insured status, or

(2) Is vested for a vested dual benefit amount.

(d) If the employee has a work deduction insured status, both the employee and the spouse may lose part of their annuities because of the employee's earnings. A spouse may also lose part of his or her annuity if the spouse works.

(e) A divorced spouse has a work deduction insured status when he or she was married to an employee who has or who acquires a work deduction insured status. A divorced spouse who has been divorced from the employee for at least two years is not subject to deductions for the employee's excess earnings, however, the divorced spouse is still subject to deductions based on his or her own earnings.

§ 230.9 Earnings limitation; retirement work deduction component.

(a) *Employee annuity.* The amount of any employee annuity which is subject to work deductions is the amount of the tier I component of the employee annuity computed on the basis of the employee's railroad retirement covered compensation and service subsequent to 1974 and the employee's wages and self-employment income derived from employment covered under the Social Security Act, plus any vested dual benefit payable. If the annuity is reduced for early retirement, then the age reduction factor is applied to this result. Work deductions will not apply to the tier I component for any month in which that component is reduced due to receipt of social security benefits.

(b) *Spouse annuity.* The tier I work deduction component for the spouse or divorced spouse is the amount of the tier I component computed on the basis of the employee's railroad retirement covered compensation and service subsequent to 1974 and the employee's wages and self-employment income derived from employment covered under the Social Security Act. A spouse's vested dual benefit is entirely subject to reduction for work deductions. Work deductions will not apply to the tier I component for any month in which that component is reduced due to receipt of social security benefits.

(c) Any benefit payable under the social security overall minimum guarantee is treated as a social security benefit and is subject to the same work deductions as would be applicable to a social security benefit.

§ 230.10 Earnings limitation; survivor work deductions.

The total survivor annuity is subject to reduction for excess earnings except that work deductions are not applicable to:

(a) A disabled child annuitant age 18 or over,

(b) A disabled annuitant under age 60 who became entitled to a disabled widow's annuity before age 60 (work deductions become applicable when the disabled widow attains age 60),

(c) Any survivor annuitant at least age 70, and

(d) Any survivor annuitant who receives a social security benefit which is reduced for work deductions, if the total amount of excess earnings are recoverable from the social security benefit.

§ 230.11 Earnings limitation; yearly amount subject to work deductions.

The yearly amount subject to work deductions is determined by multiplying the monthly work deduction component by the number of months subject to withholding for work deductions in a year. The amount to be withheld for work deductions is the annuitant's excess earnings as defined in § 230.5 of this part or the total work deduction component, whichever would be less.

§ 230.12 Earnings limitation; method of charging.

(a) *Months charged.* Excess earnings, as described in § 230.5 of this part, of an individual are charged to each month beginning with the first month the individual is entitled to benefits in the taxable year in question and continuing, if necessary, to each succeeding month in such taxable year until all of the individual's excess earnings have been charged. Excess earnings, however, are not charged to any month described in §§ 230.13 and 230.14

(b) *Amount of excess earnings charged*—(1) *Employee's excess earnings.* The employee's excess earnings are charged on the basis of $1 of excess earnings for each $1 of the employee's and his or her spouse's or divorced spouse's monthly work deduction components.

(2) *Excess earnings of annuitant other than the employee.* The excess earnings of an annuitant other than an employee-annuitant are charged on the basis of $1 of excess earnings for each $1 of his or

her monthly work deduction component.

(3) *Employee and spouse or divorced spouse both have excess earnings.* If both the employee and a spouse or divorced spouse entitled on his or her compensation record have excess earnings, the employee's excess earnings are charged first against the total work deduction components payable on his or her compensation record, as described in paragraph (b)(1) of this section. Next, the excess earnings of the spouse or divorced spouse are charged (as described in paragraph (b)(2) of this section) against his or her own work deduction component, but only to the extent that such component has not already been charged with the excess earnings of the employee.

§ 230.13 Earnings limitation; monthly benefits payable.

(a) No matter how much an annuitant earns in a given taxable year, no deduction on account of excess earnings will be made in a work deduction component in any month is which:

(1) The annuitant was not entitled to an annuity;

(2) The annuitant was entitled to a monthly earnings test and has a month of entitlement in which he or she neither worked for wages greater than the monthly exempt amount nor rendered substantial services in self-employment (see § 230.14 of this part);

(3) The annuitant was age 70;

(4) The annuitant was entitled to a disability annuity other than as a disabled widow(er) and was under age 65;

(5) The annuitant was entitled to a disabled child's annuity; or

(6) The annuitant was a widow(er) under age 60 and entitled to a disabled widow(er)'s annuity.

§ 230.14 Earnings limitation; monthly earnings test.

(a) No matter how much an annuitant earns in a given taxable year, no deduction on account of excess earnings will be made in benefits payable for any month which is a ''nonwork'' month (see paragraph (b) of this section) in the annuitant's ''grace year'' (see paragraph (c) of this section).

(b) A nonwork month is any month in which an individual is entitled to an annuity and:

(1) Does not work in self-employment (see paragraphs (d) and (e) of this section);

(2) Does not perform services for wages greater than the monthly exempt amount (see § 230.5 of this part); and

(3) Does not work in remunerative activity not covered by the Social Security Act in excess of 45 hours in a month while outside the United States. A nonwork month occurs even if there are no excess earnings in the year.

(c) An annuitant's grace year is:

(1) The first year after 1977 in which there is a nonwork month;

(2) A year after 1977 in which there is a break in entitlement for at least one month and the annuitant becomes entitled to a different type of annuity. The new grace year would then be the taxable year in which occurs the first nonwork month after the break in entitlement;

(3) The year in which an annuity based upon having a child in care, a child's annuity, or a child's benefit under the social security overall minimum guarantee ends for a reason other than the death of the annuitant (this exception applies only if the annuitant is not entitled to any type of benefit in the month after entitlement to the child's annuity or the benefit based on a child in care ends; it does not apply to an annuity based on age, only to an annuity payable because of a child).

Example 1: John, age 65, will retire from his railroad job in April of next year and apply for an annuity to begin May 1. Although he will have earned $15,000 for January-April of that year and plans to work part time, he will not earn an amount in excess of the monthly exempt amount after April. John's taxable year is the calendar year. Since next year will be the first year in which he has a nonwork month while entitled to benefits, it will be his grace year and he will be entitled to the monthly earnings test for that year only. He will receive benefits for all months in which he does not earn an amount in excess of the monthly exempt amount (May-December) even though his total earnings for the year have substantially exceeded the annual exempt amount. However, in the years that follow, only the annual earnings test will be applied if he has earnings that exceed the annual exempt amount, regardless of his monthly earnings.

Example 2: Lisa was entitled to a widow's annuity based upon having a child of her deceased husband, the railroad employee, in her care. The child marries in May, thus terminating Lisa's annuity in April. Since Lisa's entitlement did not terminate by reason of her death and she was not entitled to another type of railroad retirement annuity, she is entitled to a termination grace year for that year. The following year Lisa applies for and becomes entitled to a widow's annuity based upon age. Because there was a break in entitlement to benefits of at least one month before entitlement to another type of annuity, this year will also be a grace year if Lisa has a nonwork month during it.

(d) An individual works in self-employment in any month in which he or she performs substantial services (see § 230.15 of this part) in the operation of a trade or business (or in a combination of trades and businesses if there are more than one) as an owner or partner, even though there may be no earnings or net earnings caused by the individual's services during the month.

(e) For purposes of applying the monthly earnings test, an individual is presumed to have worked in self-employment in each month of the individual's taxable year until it is shown to the satisfaction of the Board that in a particular month the individual did not perform substantial services in any trade or business (or in a combination of trades and businesses if there are more than one) from which the net income or loss is included in computing the individual's annual earnings (see § 230.7 of this part).

(f) For purposes of applying the monthly earnings test, an individual is presumed to have performed services in any month for wages of at least as much as the applicable monthly exempt amount set for that month until it is shown to the satisfaction of the Board that the individual did not perform services in that month for wages of at least as much as the monthly exempt amount.

§ 230.15 Earnings limitation; self-employment—substantial services.

(a) In the case of the monthly earnings test, work deductions do not apply for any month in which the annuitant does not earn more than the monthly exempt amount and does not render substantial services in self-employment, regardless of total earnings for the year.

(b) A self-employed person's monthly work activity cannot be gauged accurately by the amount of monthly earnings; therefore, the self-employed person's services are measured by whether they are substantial (only if, however, the monthly earnings test applies—once the monthly earnings test has been applied in a particular year, work deductions are assessed based on total yearly earnings).

(c) The general test of whether services are substantial is whether, in view of the particular services rendered and the surrounding circumstances, the person can reasonably be considered to be retired in a particular month. In determining whether services rendered in self-employment in a month are substantial, the following factors, among others, may be considered:

(1) The amount of time devoted to the business;

(2) The nature of the services rendered;

(3) A comparison of the services rendered after retirement with the services rendered before retirement;

(4) The setting in which the services were performed, including: the presence of a paid manager, a partner, or a family member who manages the business; the type of business that is involved; the amount of capital invested; and whether the trade or business is seasonal.

(d) An individual who alleges that he or she did not render substantial services in any month or months shall submit detailed information about the operation of the trade or business covered, including the individual's activities in connection therewith. When requested to do so by the Board, the individual shall also submit such additional statements, information, and other evidence as the Board may consider necessary for a proper determination as to whether the individual rendered substantial services in self-employment.

§ 230.16 Evaluation of factors involved in substantial services test.

In determining whether an individual's services are substantial, consideration is given to the following factors:

(a) *Amount of time devoted to trades or businesses.* Consideration is first given to the total amount of time the self-employed individual devotes to all trades or businesses, the net income or loss of which is includable in computing his or her earnings as defined in § 230.7. For the purposes of this paragraph, the time devoted to trade or business includes all the time spent by the individual in any activity, whether physical or mental, at the place of business or elsewhere in furtherance of such trade or business. This includes the time spent in advising and planning the operation of the business, making business contacts, attending meetings, and preparing and maintaining the facilities and records of the business. All time spent at the place of business which cannot reasonably be considered unrelated to business activities is considered time devoted to the trade or business. In considering the weight to be given to the time devoted to trades or businesses the following rules are applied:

(1) *Forty-five hours or less in a month devoted to trade or business.* Where the individual establishes that the time devoted to all of his or her trades or businesses during a calendar month was not more than 45 hours, the individual's services in that month are not considered substantial unless other factors (see paragraphs (b), (c), and (d) of this section), make such a finding unreasonable. For example, an individual who worked only 15 hours in a month might nevertheless be found to have rendered substantial services if he or she was managing a sizable business or engaging in a highly skilled occupation.

(2) *More than 45 hours in a month devoted to trade or businesses.* Where an individual devotes more than 45 hours to all trades and businesses during a calendar month, it will be found that the individual's services are substantial unless it is established to the satisfaction of the Board that the individual could reasonably be considered to be retired in the month and, therefore, that such services were not, in fact, substantial.

(b) *Nature of services rendered.* Consideration is also given to the nature of the services rendered by the individual in any case where a finding that the individual was retired would be unreasonable if based on time alone (see paragraph (a) of this section). The more highly skilled and valuable his or her services in self-employment are, the more likely it is that the individual rendering such services could not reasonably be considered retired. The regular performance of services also tends to show that the individual has not retired. Services are considered in relation to the technical and management needs of the business for which they are rendered. Thus, skilled services of a managerial or technical nature may be so important to the conduct of a sizable business that such services would be substantial even though the time required to render the services is considerably less than 45 hours.

(c) *Comparison of services rendered before and after retirement.* Where consideration of the amount of time devoted to trade or business (see paragraph (a) of this section) and the nature of services rendered (see paragraph (b) of this section) is not sufficient to establish whether an individual's services were substantial, consideration is given to the extent and nature of the services rendered by the individual before his or her ''retirement,'' as compared with the services performed during the period in question. A significant reduction in the amount or importance of services rendered for the business tends to show that the individual is retired; absence of such reduction tends to show that the individual is not retired.

(d) *Setting in which services performed.* Where consideration of factors described in paragraphs (b) and (c) of this section is not sufficient to establish whether or not an individual's services in self-employment were substantial, all other factors are considered. The presence of a capable manager, the kind and size of the business, the amount of capital invested and whether the business is seasonal, as well as any other pertinent factors, are considered in determining whether the individual's services are such that he or she can reasonably be considered retired.

§ 230.17 Obligation to report earnings.

(a) *General Rule.* An individual who during a taxable year is entitled to an annuity is required to report to the Board the total amount of his or her earnings for each taxable year. A exceed the monthly exempt amount multiplied by the number of months in his or her taxable year, except that a report is not required for a taxable year if:

(1) The individual attained the age of 70 in or before the first month of his or her entitlement to benefits in his or her taxable year, or

(2) The individual's benefits subject to the earnings limitation were suspended for reasons other than his or her excess earnings for all months in which he or she was entitled to benefits and was under age 70.

(b) *Time for filing.* The report required by paragraph (a) of this section shall be made on a form prescribed by the Board and shall be filed on or before the 15th day of the fourth month following the close of an individual's taxable year or at such other time as may be set by the Board.

(c) *Representative payee.* Where an individual is receiving benefits on behalf of another, the representative payee shall be responsible for the report required in paragraph (a) of this section.

(d) *Requirement to furnish requested information.* An annuitant, or the person reporting on his or her behalf, is required to furnish any other information about the annuitant's earnings and services that the Board requests for the purpose of determining the correct amount of benefits payable for a taxable year.

(e) *Extension of time for filing report*—(1) *General.* Notwithstanding the provision described in paragraph (b) of this section, the Board may grant a reasonable extension of time for making the report of earning required under this section if it finds that there is valid reason for a delay, but in no case may the period be extended more than 3 months for any taxable year.

(2) *Requirements applicable to requests for extensions:* Before his or her annual report of earnings is due, an annuitant may request an extension of

time for filing the report. The request must be in writing and signed by the requester.

(3) *Valid reason defined.* A valid reason is a bona fide need, problem, or situation which makes it impossible or very difficult for an annuitant (or his or her representative payee) to meet the annual report due date prescribed by law. This may be illness or disability of the one required to make the report, absence or travel so far from home that he or she does not have and cannot readily obtain the records needed for making the report, inability to obtain evidence required from another source when such evidence is necessary in making the report, inability of an accountant to compile the data needed for the annual report, or any similar situation which has a direct bearing on the individuals' ability to comply with the reporting obligation within the specified time limit.

(4) *Evidence that extension of time has been granted.* In the absence of written evidence of a properly approved extension of time for making an annual report of earnings, it will be presumed that no extension of filing time was granted. In such case it will be necessary for the annuitant to establish whether he or she otherwise had good cause (§ 230.19) for filing the annual report after the normal due date.

(Approved by the Office of Management and Budget under control numbers 3220–0032 and 3200–0073)

§ 230.18 Penalty deductions for failure to timely report earnings.

(a) *Penalty for failure to report earnings; general.* Penalty deductions are imposed only against an individual's retirement benefits, in addition to the deductions required because of his or her excess earnings, if:

(1) He or she fails to make a timely report of his or her earnings as specified in § 230.17 for a taxable year; and

(2) It is found that good cause for failure to timely report earnings (see § 230.19) does not exist; and

(3) A deduction is imposed because of his or her excess earnings for that year; and

(4) An overpayment of benefits results, recovery of which is not waived, provided however, that if the person is found to be without fault in causing the overpayment, no penalty shall be assessed.

(b) *Determining amount of penalty deduction.* The amount of the penalty deduction for failure to report earnings for a taxable year within the prescribed time is determined as follows:

(1) *First failure to file timely report.* The penalty deduction for the first failure to file a timely report is an amount equal to the individual's work deduction component for the last month of the year in which the overpayment occurs. If the total excess earnings deduction for the year is less than the work deduction component the penalty equals the total excess earnings or $10, whichever is larger.

(2) *Second failure to file timely report.* The penalty deduction for the second failure to file a timely report is an amount equal to twice the amount of the individual's work deduction component for the last month of entitlement of the year in which the overpayment occurs.

(3) *Subsequent failures to file timely reports.* The penalty deduction for the third or subsequent failure to file a timely report is an amount equal to three times the amount of the individual's work deduction component for the last month of entitlement of the year in which the overpayment occurs.

Example. For the first late report, the violation period begins with the date of entitlement and ends with the last overpaid year for which the report is late. For subsequent late reports, the penalty applies to each overpaid year for which the report is late. For example, an employee has the following earnings record:

Year	Earnings
1980	Excess
1981	
1982	Excess
1983	
1984	Excess
1985	Excess
1986	
1987	Excess
1988	

If the employee reports his 1980, 1982 and 1984 earnings in February 1985, the report is late for 1980 and 1982. Since this is the first late report, there is one penalty. The penalty is equal to the work deduction component for December 1982. If the employee reported his 1985 and 1987 earnings in July 1988, the report is late for 1985 and 1987. Since this is a subsequent late report, 1985 is considered the second late report and 1987 is the third late report. The penalty amount for 1985 is two times the work deduction component for December 1985. The penalty amount for 1987 is three times the work deduction component for December 1987.

(c) *Penalty deduction imposed under § 230.22 not considered.* A failure to make a report as required by § 230.22 of this part for which a penalty deduction is imposed is not counted as a failure to report in determining under this section whether a failure to report earnings or wages is the first or subsequent failure to report.

(d) *Limitation on amount of penalty deduction.* Notwithstanding the provisions described in paragraph (b) of this section, the amount of the penalty deduction imposed for failure to file a timely report of earnings for a taxable year may not exceed the number of months in that year for which the individual received and accepted a benefit and for which deductions are imposed by reason of his or her earnings for such year.

§ 230.19 Good cause for failure to make required reports.

(a) *General.* The failure of an individual to make a timely report required under this part will not result in a penalty deduction provided for in this part if the individual establishes to the satisfaction of the Board that his or her failure to file a timely report was due to good cause. Before making any penalty determination provided for in this part the individual shall be advised of the penalty and good cause provisions and afforded an opportunity to establish good cause for failure to file a timely report. The failure of the individual to submit evidence to establish good cause within a specified time may be considered a sufficient basis for a finding that good cause does not exist. For example, ''good cause'' may be found where failure to file a timely report was caused by:

(1) Serious illness of the individual, or death or serious illness in his or her immediate family;

(2) Inability of the individual to obtain, within the time required to file the report, earnings information from his or her employer because of death or serious illness of the employer or one in the employer's immediate family; or unavoidable absence of his or her employer; or destruction by fire or other damage of the employer's business records; or failure or refusal of the employer to furnish the information upon timely request therefor;

(3) Destruction by fire, or other damage of the individual's business records;

(4) Failure on the part of the Board to furnish forms in sufficient time for an individual to complete and file the report on or before the date it was due, provided the individual made a timely request to the Board for the forms.

(5) Reliance upon a written report to the Board made by, or on behalf of, the annuitant before the close of the taxable year, if such report contained sufficient information about the annuitant's earnings or work to require suspension of his or her work deduction component and the report was not subsequently refuted or rescinded.

(b) *Good cause for subsequent failure.* Where circumstances are similar and an

individual fails on more than one occasion to make a timely report good cause normally will not be found for the second or subsequent violation.

§ 230.20 Request by Board for reports of earnings; effect of failure to comply with request.

(a) *Request by the Board for report during taxable year; effect of failure to comply.* The Board may, during the course of a taxable year, request an annuitant to make a declaration of his or her estimated earnings for his or her taxable year and to furnish any other information about his or her earnings that the Board may specify. If an annuitant fails to comply with such a request from the Board the annuitant's failure in itself constitutes justification for a determination that it may reasonably be expected that the annuitant will have deductions imposed under the earnings for that taxable year, and consequently the Board may suspend payment of the annuitant's work deduction component for the remainder of the taxable year.

(b) *Request by the Board for report after close of taxable year; failure to comply.* After the close of his or her taxable year, the Board may request an annuitant to furnish a report of earnings for the closed taxable year and to furnish any other information about earnings for that year that the Board may specify. If the annuitant fails to comply with this request, such failure shall in itself constitute justification for a determination that the annuitant's work deduction component is subject to deductions for each month in the taxable year (or only for the months thereof specified by the Board).

§ 230.21 Current suspension of work deduction component because an individual works or engages in self-employment.

(a) *Circumstances under which benefit payments may be suspended.* If, on the basis of information obtained by or submitted to the Board, it is determined that an individual entitled to an annuity for any taxable year may reasonably be expected to have deductions imposed against his or her work deduction component by reason of his or her earnings for such year, the Board may, before the close of the taxable year, suspend such component of the individual and of all other persons entitled to benefits on the basis of the individual's earnings record.

(b) *Duration of suspension.* The suspension described in paragraph (a) of this section shall remain in effect with respect to the work deduction component for each month until the Board has determined whether or not any deduction under that part applies for such month.

§ 230.22 Employment outside the United States.

(a) *General rule.* An annuitant who has a work deduction insured status as provided in § 230.8 of this part shall lose his or her work deduction component for any month during which he or she works in remunerative activity not covered by the Social Security Act outside the United States for more than 45 hours. In the case of a survivor annuitant subject to work deductions, earnings from remunerative activity outside the United States shall be charged against the annuity to the same extent that such earnings would have been charged had the remunerative activity taken place within the United States.

(b) *Spouse annuitant.* If an employee-annuitant loses his or her work deduction component for any month in accordance with paragraph (a) of this section, then the amount of any spouse or divorced spouse work deduction component is also not paid in that month. However, the benefits of a divorced spouse who has been divorced from the employee-annuitant for at least 2 years are not subject to withholding because of the employee-annuitant's work activity.

(c) *Outside the United States.* Work activity outside the United States means work activity outside the territorial boundaries of the 50 States, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, Guam, and American Samoa. Self-employment by an alien in Puerto Rico, the U.S. Virgin Islands, Guam, or American Samoa is considered to be outside the U.S. unless the alien is a permanent resident of a State, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, Guam, or American Samoa.

(d) *Remunerative activity not covered by the Social Security Act.* Remunerative activity not covered by the Social Security Act includes all employment or self-employment outside the United States unless the wages or net earnings from self-employment are subject to social security taxes as provided for in the Internal Revenue Code. A trade or business which produces only income which is not considered earnings from self-employment (for example dividends, or rental from real estate) is not considered remunerative employment.

(e) *Obligation to report.* Any annuitant under age 70 who becomes employed or self-employed outside the United States shall file with the Board a report of such employment or self-employment before the annuitant accepts benefits for the second month following the month in which he or she worked or engaged in self-employment. Such report shall be made on the form and in accordance with instructions provided by the Board.

(f) *Penalty for failure to report.* An individual who fails to file a report within the time limits required by paragraph (e) of this section and who is not able to show good cause for such failure, as provided for in § 230.19 of this part, shall be subject to the penalty deductions provided for in § 230.18 of this part.

(g) *Extension of time to file.* An individual may request an extension of time to file the report required in paragraph (e) of this section in accordance with § 230.17 of this part.

(Approved by the Office of Management and Budget under control numbers 3220–0032 and 3220–0073.)

§ 230.23 Last person service work deductions.

(a) *General rule.* An individual in receipt of an employee or spouse annuity who receives remuneration in any month for services rendered as an employee to the last person or persons (LPS) by whom such individual was employed before the date on which his or her annuity began to accrue shall, in addition to any other deduction required by this part, be subject to a deduction in his or her work deduction component, as defined in paragraph (b) of this section, for that month of $1 for every $2 of remuneration received. Unlike the earnings limitation found in §§ 239.5–230.15 of this part there is no monthly or annual exempt amount. Each $2 of remuneration received from a last person service employer subjects the work deduction component to a $1 reduction for that month.

(b) *Work deduction component.* For purposes of this section, the work deduction component of an individual in receipt of an employee annuity shall be that portion of the annuity payable in any month which is computed under section 3(b) of the Railroad Retirement Act as adjusted by section 3(g) of that Act (tier II benefit) plus the amount computed under section 3(e) of that Act (supplemental annuity). With respect to an individual in receipt of a spouse annuity, his or her work deduction component shall be that portion of the annuity payable in any month computed under section 4(b) of the Railroad Retirement Act as adjusted under section 4(d) of that Act (tier II benefit).

(c) *Method of charging.* An individual in receipt of a spouse annuity shall have

the work deduction component of that annuity reduced by the amount of any deduction in the employee annuity required by paragraph (a) of this section. Where both an employee and his or her spouse have received remuneration as described in paragraph (a) of this section, the employee's work deduction component is reduced for his or her earnings and the spouse's work deduction component is reduced first for his or her earnings and then for the employee's earnings.

(d) *Maximum deduction.* Any deductions imposed by this section for any month shall not exceed 50 percent of the work deduction component.

(Approved by the Office of Management and Budget under Control Numbers 3220–0032 and 3320–0073.)

Example. An employee receives wages of $400 from his or her last person service employer in a given month. The deductions in the employee's and his or her spouse's work deduction components are computed as follows:

Annuity component		LPS deduction	Component after deduction
Employee tier 2	$1,000	[1] $191.75	$808.25
Supplemental annuity	43	[2] 8.25	34.75
Spouse tier 2	450	200.00	250.00
Totals	$1,493	$400.00	$1,093.090

[1] $200 × $1,000/$1,043 = 191.75.
[2] $200 × $43/$1,043 = 8.25.

§ 230.24 Exception concerning service to a local lodge or division of a railway labor organization.

In determining whether an annuity is subject to the provisions of this part, the Board shall disregard any remuneration for services rendered after December 31, 1936, to an employer which is a local lodge or division of a railway labor organization if the remuneration for such service is required to be disregarded under the provisions of § 211.2 of this chapter.

Dated: August 7, 1995.

By Authority of the Board.

For the Board.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 95–20078 Filed 8–15–95; 8:45 am]

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DEPARTMENT OF EDUCATION

34 CFR Part 371

RIN 1820–AB32

Vocational Rehabilitation Service Projects for American Indians With Disabilities

AGENCY: Department of Education.

ACTION: Notice of public meeting.

SUMMARY: The Secretary announces a public meeting to discuss the proposed regulations published in the **Federal Register** for comment on July 27, 1995 (60 FR 38608) and to assist in the development of regulations implementing the Vocational Rehabilitation Service Projects for American Indians with Disabilities program.

The purpose of the meeting is to allow interested parties an opportunity to review and discuss the proposed regulations, which implement section 130(b)(3) of the Rehabilitation Act of 1973, as amended (the Act), to provide greater funding continuity for tribal projects that are performing effectively by extending the normal 36-month project period for up to 24 additional months and to provide an opportunity for public comment on the proposed changes to conform the purpose and outcome of the program, consistent with section 100(a)(2) of the Act, as revised by the 1992 Amendments, from placement in suitable employment to placement in gainful employment consistent with individual strengths, resources, priorities, abilities, capabilities, and informed choice.

In addition, the meeting will provide an opportunity for public comment on whether additional changes are needed in existing program regulations in order to clarify requirements, reduce grantee burden, and increase program flexibility and effectiveness.

DATES: The public meeting is scheduled to be held from 8:00 a.m. to 10:15 a.m. on August 30, 1995. Written comments must be submitted by September 11, 1995.

ADDRESSES: The meeting will be held at The Red Lion Hotel, 300–112th Avenue, Bellevue, Washington. The meeting facilities and proceedings will be accessible to people with disabilities.

Individuals participating in the meeting are requested to provide a written copy of their comments. Individuals who cannot attend the meeting are invited to send in written comments regarding the proposed regulations and on the other changes that may be needed that are identified in the **SUPPLEMENTARY INFORMATION** section of this notice. Written comments should be addressed to Fredric K. Schroeder, Commissioner, Rehabilitation Services Administration, U. S. Department of Education, 600 Independence Avenue, S.W., Room 3028, Mary E. Switzer Building, Washington, D.C. 20202–2531. Comments may also be sent through the internet to ''American—Indians@ed.gov''.

SUPPLEMENTARY INFORMATION: The proposed regulations, which would implement section 130(b)(3) of the Act, would permit the granting, on a case-by-case basis, of extensions of up to 24 months to tribal projects that meet the requirements to be established in a new § 371.5. The Secretary is interested in comments regarding this proposed new section and whether the standard for determining to grant extension—which considers compliance with program requirements, continuing need for the project, and project effectiveness—is an appropriate standard. In addition, the Secretary is particularly interested in whether other changes are needed in the program, such as changes in the requirements under § 371.21 for complying with certain State Vocational Rehabilitation (VR) Services Program requirements. These requirements include developing individualized written rehabilitation programs for each individual receiving services, providing an opportunity for dissatisfied recipients to file grievances under procedures comparable to the fair hearing procedures required of State VR agencies, establishing minimum standards for providers of services comparable to those used by State VR agencies, and making an effort to provide a broad scope of VR services in a manner and at a level of quality comparable to the services provided by