

Dated: January 17, 1997.

David L. Evans,

*Acting Deputy Assistant Administrator for  
Ocean Services and Coastal Zone  
Management.*

Accordingly, for the reasons set forth above, 15 CFR Part 922 is amended as follows:

#### **PART 922—[AMENDED]**

1. The authority citation for part 922 continues to read as follows:

Authority: 16 U.S.C. 1431 *et seq.*

2. Part 922 is amended by deleting "Point Reyes/Farallon Islands National Marine Sanctuary" wherever it appears and replacing it with "Gulf of the Farallones National Marine Sanctuary."

[FR Doc. 97-1872 Filed 1-24-97; 8:45 am]

BILLING CODE 3510-08-M

### **RAILROAD RETIREMENT BOARD**

#### **20 CFR Part 211**

**RIN 3220-AB10**

#### **Finality of Records of Compensation**

**AGENCY:** Railroad Retirement Board.

**ACTION:** Final rule.

**SUMMARY:** The Railroad Retirement Board (Board) hereby adopts regulations pertaining to the finality of reports of compensation. The regulations relate to corrections to records of compensation more than four years after the date on which the compensation was required to be reported to the Board.

**EFFECTIVE DATE:** January 27, 1997.

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

**FOR FURTHER INFORMATION CONTACT:** Thomas W. Sadler, Senior Attorney, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611, telephone (312) 751-4513, TTD (312) 751-4701.

**SUPPLEMENTARY INFORMATION:** This rule amends part 211 of the Board's regulations (Creditable Railroad Compensation) by adding a new § 211.16 to that part. Under section 9 of the Railroad Retirement Act, the Board will not change an employee's record of reported compensation if the change is requested more than four years after the report of compensation is required to be filed under § 209.6 of the Board's regulations. Section 211.16 explains when the Board will change a record of compensation beyond the four year period; for example, where the record is incorrect because of clerical error or

fraud, where the compensation was posted to the wrong period or person, or where the compensation was originally reported to the Social Security Administration but the Board or a court has determined that it should have been reported to the Board.

On December 26, 1995, the Board published this rule as a proposed rule (60 FR 66770). The Labor Member of the Board dissented from publication of the proposed rule. His reasons for doing so were set forth in the Supplementary Information section of the proposed rule (60 FR 66770). Comments on the proposed rule were invited on or before February 26, 1996. Three comments were received with respect to the proposed rule. Two commentors indicated agreement with the views of the Labor Member and urged the Board to adopt those views. One of these commentors also suggested that it is inequitable to put on the employee the burden of the consequences of erroneous reporting by employers or erroneous action by a Government agency. A third commentor (the joint comments of the Association of American Railroads and representatives of rail labor) submitted comments and suggested certain changes to the proposed rule. The Board has considered these comments and has made changes as explained below.

The rule, which is now being adopted as a final rule, protects the interests of employees, but also protects the integrity of the trust funds which fund the benefits paid by the agency. Employees have the right to request the Board to credit service and compensation under the Railroad Retirement Act. Accordingly, an employee who believes that he should receive credit, either because he believes that he has been misclassified as an independent contractor or because he believes that his employer should be a covered employer under the Railroad Retirement Act, can notify the Board so the Board can investigate the situation. The final regulation gives recognition to this right but protects the integrity of the trust funds by requiring employees to come forward in a timely manner to contest the correctness of their service and compensation records. By requiring timely protests the regulation puts the Government in a better position to collect any employment taxes associated with the service and compensation correction. It should also be noted that an employee who does not receive full retroactive service credit because he did not timely protest his employment record would still receive social security credit for the service in question, which social security covered credit would be

used in computing any tier I benefit under the Railroad Retirement Act.

As noted above, the Board has revised the proposed rule in accordance with comments received. In response to a concern of the Labor Member, which was repeated by the commentors, to the effect that an employee may not receive credit in certain circumstances under either the Railroad Retirement Act or the Social Security Act, the Board has added language to § 211.16(c) to clarify that this will not happen. The comment concerned a situation where a company has been ruled an employer but taxes have not been paid for service more than 4 years in the past. Under the final rule service more than four years in the past would not be creditable under the RRA. There was concern that in this situation the service might not be creditable under the SSA. First of all, the Board does not believe that the service would be removed under the Social Security Act; however, if this were to occur, the Railroad Retirement Board would use this service and wages in computing the tier I component of the employee's railroad retirement annuity pursuant to section 1(h)(8) of the Railroad Retirement Act (45 U.S.C. 231(h)(8)). Under section 1(h)(8) of the Railroad Retirement Act remuneration that has been subject to tier I railroad retirement taxes, which is how the Board would view wage credits removed under the Social Security Act, is considered to be creditable compensation for the computation of railroad retirement tier I benefits. As noted above, language has been added to section 211.16(c) to clarify this result. If the employee does not accrue the minimum 120 months of railroad retirement service prior to retirement or death so as to be qualified for benefits under the Railroad Retirement Act, his railroad service and compensation will be transferred to the Social Security Administration and used in computing any benefits payable under the Social Security Act.

The other change that has been made in the final rule is the addition of an exception to the general bar against crediting compensation retroactive more than four years without the payment of taxes. The exception would apply in the case of an employee's record that is erroneous as a result of fraudulent reporting by the employee's employer.

The Office of Management and Budget determined that this is a significant regulatory action under Executive Order 12866 and has approved its publication as a final rule. There are no information collections associated with this rule.

## List of Subjects in 20 CFR Part 211

Pensions, Railroad employees, Railroad retirement.

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

**PART 211—[AMENDED]**

1. The authority citation for part 211 continues to read as follows:

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

2. Part 211 is amended by adding a new § 211.16 to read as follows:

**§ 211.16 Finality of records of compensation.**

(a) *Time limit for corrections to records of compensation.* The Board's record of the compensation reported as paid to an employee for a given period shall be conclusive as to amount, or if no compensation was reported for such period, then as to the employee's having received no compensation for such period, unless the error in the amount of compensation or the failure to make return of the compensation is called to the attention of the Board within four years after the date on which the compensation was required to be reported to the Board as provided for in § 209.6 of this chapter.

(b) *Correction after 4 years.* (1) The Board may correct a report of compensation after the time limit set forth in paragraph (a) of this section where the compensation was posted or not posted as the result of fraud on the part of the employer.

(2) Subject to paragraph (c) of this section, the Board may correct a report of compensation after the time limit set forth in paragraph (a) of this section for one of the following reasons:

(i) Where the compensation was posted for the wrong person or the wrong period;

(ii) Where the earnings were erroneously reported to the Social Security Administration in the good faith belief by the employer or employee that such earnings were not covered under the Railroad Retirement Act and there is a final decision of the Board under part 259 of this chapter that such employer or employee was covered under the Railroad Retirement Act during the period in which the earnings were paid;

(iii) Where a determination pertaining to the coverage under the Railroad Retirement Act of an individual, partnership, or company as an employer, is retroactive; or

(iv) Where a record of compensation could not otherwise be corrected under

this part and where in the judgment of the three-member Board that heads the Railroad Retirement Board failure to make a correction would be inequitable.

(c) *Limitation on Crediting Service.* (1) Except as provided in paragraph (b)(1) of this section, no employee may be credited with service months or tier II compensation beyond the four year period referred to in paragraph (a) of this section unless the employee establishes to the satisfaction of the Board that all employment taxes imposed by sections 3201, 3211, and 3221 of title 26 of the Internal Revenue Code have been paid with respect to the compensation and service.

(2) The limitation on the creditability of service months and tier II compensation in paragraph (c)(1) of this section shall not affect the creditability, for purposes of computing the tier I component of a railroad retirement annuity, of compensation payments with respect to which taxes have been paid under either the Railroad Retirement Tax Act or the Federal Insurance Contributions Act.

Dated: January 15, 1997.

By Authority of the Board.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 97-1906 Filed 1-24-97; 8:45 am]

BILLING CODE 7905-01-P

**20 CFR Parts 355, 356****RIN 3220-AB24****Adjustment of Civil Monetary Penalties**

**AGENCY:** Railroad Retirement Board.

**ACTION:** Final rule.

**SUMMARY:** As required by subsection (s) of the Debt Collection Improvement Act of 1996, the Railroad Retirement Board (Board) hereby amends its regulations to provide for adjustments in the amount of civil monetary penalties. The amendment will increase the amount of penalties under the jurisdiction of the Board to keep pace with inflation.

**EFFECTIVE DATE:** January 27, 1997.

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

**FOR FURTHER INFORMATION CONTACT:**

Michael C. Litt, General Attorney, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611, (312) 751-4929, TDD (312) 751-4701.

**SUPPLEMENTARY INFORMATION:**

Subsection (s) of the Debt Collection Improvement Act of 1996, Public Law 104-134, amended the Federal Civil Penalties Inflation Adjustment Act of

1990 to require agencies to publish regulations within 180 days of enactment of the amendment, April 26, 1996, providing for the adjustment of civil monetary penalties provided by law within the jurisdiction of the agency.

The penalties authorized in the Program Fraud Civil Remedies Act and under the false claims provisions at 31 U.S.C. 3729(a) are within the jurisdiction of the Railroad Retirement Board and, therefore, the Board is required to publish regulations providing for the adjustment of the monetary penalties.

The Federal Civil Penalties Inflation Adjustment Act requires that civil monetary penalties be adjusted by the percentage by which the Consumer Price Index for the month of June of the calendar year preceding the adjustment exceeds the Consumer Price Index for the month of June of the calendar year in which the amount of such civil monetary penalty was last set or adjusted. That Act also mandates rounding of the adjustment, depending on the amount of the maximum penalty: Any adjustment must be rounded to the nearest \$1,000 for maximum penalties greater than \$1,000 and less than or equal to \$10,000. However, the amendment limits the initial increase to ten percent of the amount of the maximum penalty.

In both instances the ratio of the Consumer Price Index for the month of June of the calendar year preceding the adjustment to the Consumer Price Index for the month of June of the calendar year in which the amount of such civil monetary penalty was last set or adjusted is 456.7/327.9, which would produce an increase considerably in excess of ten percent of the penalties. Under the Program Fraud Civil Remedies Act the maximum penalty is \$5,000 (there is no minimum penalty); accordingly, this action will increase the maximum penalty by \$500. The minimum and maximum penalties under 31 U.S.C. 3729(a) are \$5,000 and \$10,000 respectively; accordingly, this action will increase the minimum penalty by \$500 and the maximum penalty by \$1,000.

The amendment also restricts application of the adjustments to violations which occur after the date the increase takes effect. Therefore, the increases would not apply in the case of any violation occurring before the effective date of these regulations.

On October 22, 1996, the Board published this rule as a proposed rule (61 FR 54745), inviting comments on or before November 21, 1996. No comments were received.