

Service Bulletin A300-22-6021, Revision 1, dated December 24, 1993 (for Model A300-600 series airplanes), as applicable.

(c) As of November 2, 1994, no person shall install a FCC having either P/N B470ABM1 or B470AAM1 on any airplane.

New actions required by this AD:

(d) For airplanes on which Modification No. 11454 [reference Airbus Service Bulletin A310-22-2044 (for Model A310 series airplanes) or Airbus Service Bulletin A300-22-6032 (for Model A300-600 series airplanes)] has not been installed: Accomplish paragraphs (d)(1), (d)(2)(i) and (d)(2)(ii) of this AD.

(1) Within 24 months after the effective date of this AD, modify the autopilot in accordance with Airbus Service Bulletin A310-22-2044, Revision 1, dated January 8, 1997 (for Model A310 series airplanes), or Service Bulletin A300-22-6032, Revision 1, dated January 8, 1997 (for Model A300-600 series airplanes), as applicable. The requirements of paragraph (a) of AD 95-25-09, amendment 39-9455, if applicable, must be accomplished prior to or at the same time the requirements of this paragraph are accomplished.

(2) Prior to further flight following accomplishment of paragraph (d)(1) of this AD:

(i) Remove the AFM revisions required by paragraph (b) of this AD; and

(ii) Perform an operational test of this autopilot disconnect feature to determine that it operates properly, in accordance with Airbus Service Bulletin A310-22-2047, dated July 16, 1996 (for Model A310 series airplanes), or Service Bulletin A300-22-6035, dated July 16, 1996 (for Model A300-600 series airplanes), as applicable. If any discrepancy is detected, prior to further flight, repair it in accordance with the applicable service bulletin. Repeat this test thereafter at intervals not to exceed 18 months.

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM-113.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM-113.

(f) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(g) The modification of the FCC's shall be done in accordance with Airbus Service Bulletin A310-22-2036, dated December 14, 1993, or Airbus Service Bulletin A300-22-6021, Revision 1, dated December 24, 1993, as applicable. The incorporation by reference of those documents was approved previously by the Director of the Federal Register, in

accordance with 5 U.S.C. 552(a) and 1 CFR part 51, as of May 23, 1996 (61 FR 16873, April 18, 1996). The modification and operational test of the autopilot shall be done in accordance with Airbus Service Bulletin A310-22-2044, Revision 1, dated January 8, 1997; Airbus Service Bulletin A300-22-6032, Revision 1, dated January 8, 1997; Airbus Service Bulletin A310-22-2047, dated July 16, 1996; or Airbus Service Bulletin A300-22-6035, dated July 16, 1996; as applicable. The incorporation by reference of those documents was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(h) This amendment becomes effective on October 3, 1997.

Issued in Renton, Washington, on August 25, 1997.

John J. Hickey,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97-23099 Filed 8-28-97; 8:45 am]

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RAILROAD RETIREMENT BOARD

20 CFR Part 261

RIN 3220-AB15

Finality of Decisions Regarding Railroad Retirement Annuities

AGENCY: Railroad Retirement Board.

ACTION: Final rule.

SUMMARY: The Railroad Retirement Board (Board) hereby adopts regulations pertaining to the finality of decisions under the Railroad Retirement Act of 1974 (Act).

EFFECTIVE DATE: This rule will be effective September 29, 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: The Board's rules and procedures regarding the finality of decisions are presently contained in Board Orders, which are not readily available to the public. The Board Order regarding finality of decisions provides that finality of certain decisions is based on a number of factors; adjudication based on these

factors is difficult to administer. Also the Board Order does not contain any time limits on reopening.

The regulation addresses the finality of benefit decisions. This rule is similar to the regulation of the Social Security Administration (SSA) entitled "Reopening and Revising Determinations and Decisions" (20 CFR 404.987-404.996).

Section 261.1 describes who may open a final decision issued by the agency. Section 261.2 describes when a final decision may be reopened. All final decisions, except decisions awarding separation allowance lump sum payments, may be reopened within 12 months of the date of notice of such decision (see § 261.2(d)); within 4 years of the date of notice if new and material evidence is furnished or if there was an adjudicative error not consistent with the evidence of record at the time of adjudication; or at any time under the conditions set forth in § 261.2(c).

Section 261.3 provides that a change of legal interpretation or administrative ruling upon which a decision was based is not a basis for reopening.

Section 261.4 provides that the annuity beginning date will not be changed if the annuitant was later found to be engaged in compensated service for an employer, as defined in part 202 of the Board's regulations, and the annuitant had no basis for knowing that he was engaged in such service. This section also provides that the award of an annuity would not be withdrawn if based upon incorrect records of service where the erroneously credited service months do not exceed 6 months and the annuitant was not at fault in causing the error.

Section 261.5 provides that a decision may be reopened after the 1 year and 4 year time limits set forth in § 261.2 of this part if the Board had begun an investigation within those time limits. However, if the Board does not diligently pursue the investigation it will not reopen the decision if the decision was favorable to the annuitant.

Sections 261.6-261.8 are procedural and provide that if a decision is reopened, the annuitant will be given notice and will have a right to reconsideration and/or a hearing. Any hearing shall be conducted in accordance with part 260 of the Board's regulations (20 CFR 260).

Section 261.9 provides that if a decision on a claim is reopened it may also cause a reopening of a decision on a previous claim based upon the same compensation record, even though the time limits for reopening a decision on the first claim have passed.

Section 261.10 provides that where new evidence shows that the date of birth used in the initial decision was incorrect or where the record of compensation has been changed a decision may be revised even beyond the time limits of § 261.2 of this part if such reopening is favorable to the annuitant, but any increase in benefits payable as the result of the reopening shall be paid prospectively only.

Finally, § 261.11 provides that the three-member Board has the discretion to reopen or not to reopen any decision under these regulations.

On December 21, 1995, the Board published this rule as a proposed rule (60 FR 66203–66205). The Labor Member of the Board dissented from publication of the proposed rule. His reasons for doing so were set forth in the supplementary section of the proposed rule (60 FR 66204). One comment was received, indicating agreement with the views of the Labor Member. The views of the commentor were considered, but a majority of the Board does not agree with those views. In addition to the comment discussed above, the Board received letters from two individuals requesting that final action on this rule be deferred to allow rail labor and rail management to reach agreement on the substance of the rule. Based upon comments received by rail labor and management, to the effect that the Board should consider closely paralleling the Social Security Administration's regulations regarding reopening, the Board has added a new paragraph (7) to § 261.2(c). This paragraph provides that the Board will reopen an unfavorable decision to correct an error made by the Board which should have been obvious at the time the initial decision was made. This paragraph is identical to 20 CFR 404.988(c)(8) of the regulations of the Social Security Administration. Proposed § 261.2(c)(9) was modified and § 261.2(c)(10) was removed to make this regulation more consistent with Social Security regulations.

The Board, with the concurrence of the Office of Management and Budget, has determined that this is not a significant regulatory action under Executive Order 12866; therefore, no regulatory impact analysis is required. There are no information collections associated with this rule.

List of Subjects in 20 CFR Part 261

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 by adding part 261 to read as follows:

PART 261—ADMINISTRATIVE FINALITY

Sec.

261.1 Reopening and revising decisions.

261.2 Conditions for reopening.

261.3 Change of legal interpretation or administrative ruling.

261.4 Decisions which shall not be reopened.

261.5 Late completion of timely investigation.

261.6 Notice of revised decision.

261.7 Effect of revised decision.

261.8 Time and place to request review of a revised decision.

261.9 Finality of findings when later claim is filed on same earnings record.

261.10 Increase in future benefits where time period for reopening has expired.

261.11 Discretion of the three-member Board to reopen or not to reopen a final decision.

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

§ 261.1 Reopening and revising decisions.

(a) This part sets forth the Board's rules governing finality of decisions. After the expiration of the time limits for review as set forth in part 260 of this chapter, decisions of the agency may be reopened and revised under the conditions described in this part, by the bureau, office, or entity that made the earlier decision or by a bureau, office, or other entity at a higher level, which has the claim properly before it.

(b) A *final decision* as that term is used in this part means any decision of the type listed in § 260.1 of this chapter where the time limits for review as set forth in part 260 of this chapter or in the Railroad Retirement Act have expired.

(c) *Reopening* a final decision under this part means a conscious determination on the part of the agency to reconsider an otherwise final decision for purposes of revising that decision.

(d) *New and material evidence* as that phrase is used in this part means evidence that may reasonably be expected to affect a final decision, which was unavailable to the agency at the time the decision was made, and which the claimant could not reasonably have been expected to have submitted at that time.

§ 261.2 Conditions for reopening.

A final decision may be reopened:

(a) Within 12 months of the date of the notice of such decision, for any reason;

(b) Within four years of the date of the notice of such decision, if there is new and material evidence or there was adjudicative error not consistent with the evidence of record at the time of adjudication; or

(c) At any time if:

(1) The decision was obtained by fraud or similar fault;

(2) Another person files a claim on the same record of compensation and allowance of the claim adversely affects the first claim;

(3) A person previously determined to be dead on whose earnings record a survivor annuity is based is found to be alive;

(4) A claim was denied because of the absence of proof of death of the employee, and the death is later established:

(i) By reason of an unexplained absence from his or her residence for a period of 7 years; or

(ii) By location or identification of his or her body;

(5) The Social Security Administration has awarded duplicate benefits on the same record of compensation;

(6) The decision was that the claimant did not have an insured status, and compensation has been credited to the employee's record of compensation in accordance with part 211 of this chapter:

(i) To enter items transferred by the Social Security Administration which were credited under the Social Security Act when they should have been credited to the employee's railroad retirement compensation record; or

(ii) To correct an error made in the allocation of earnings to an individual which, if properly allocated, would have given him or her an insured status at the time of the decision and the evidence of these earnings was in the possession of the Railroad Retirement Board or the Social Security Administration at the time of the decision;

(7) The decision is wholly or partially unfavorable to a party, but only to correct clerical error or an error that appears on the face of the evidence that was considered when the determination or decision was made;

(8) The decision found the claimant entitled to an annuity or to a lump sum payment based on the earnings record of a deceased person, and it is later established that:

(i) The claimant was convicted of a felony or an act in the nature of a felony for intentionally causing that person's death; or

(ii) If the claimant was subject to the juvenile justice system, he or she was found by a court of competent jurisdiction to have intentionally caused that person's death by committing an act which, if committed by an adult, would have been considered a felony or an act in the nature of a felony;

(9) The claimant shows that it is to his or her advantage to select a later annuity beginning date and refunds, by cash payment or setoff, past payments applying to the period prior to the later beginning date, subject, however, to the provisions of subpart D of part 217 and § 218.9 of this chapter;

(10) The decision is incorrect because of a failure to apply a reduction, or the proper reduction, to the tier I component of an annuity, but the Board shall apply the reduction only for the months following the month the Board first takes corrective action.

(d) Revision of the amount or payment of a separation allowance lump sum amount pursuant to section 6(e) of the Railroad Retirement Act is limited to 60 days from the date of notification of the award of the separation allowance lump sum payment.

§ 261.3 Change of legal interpretation or administrative ruling.

A change of legal interpretation or administrative ruling upon which a decision is based does not render a decision erroneous and does not provide a basis for reopening.

§ 261.4 Decisions which shall not be reopened.

The following decisions shall not be reopened:

(a) An award of an annuity beginning date to an applicant later found to have been in compensated service to an employer under part 202 of this chapter on that annuity beginning date and who is found not to be at fault in causing the erroneous award; provided, however, that this exception shall not operate to permit payment of benefits for any month in which the claimant is found to be engaged in compensated service.

(b) An award of an annuity based on a subsequently discovered erroneous crediting of months of service and compensation to a claimant where:

(1) The loss of such months of service and compensation will cause the applicant to lose his or her eligibility for an annuity previously awarded;

(2) The erroneously credited months of service do not exceed six months; and

(3) The annuitant is found not to be at fault in causing the erroneous crediting.

(c) An erroneous award of an annuity where the error is no greater than one dollar per month per annuity affected.

(d) An erroneous award of a lump sum or accrued annuity payment where the error is no greater than \$25.00.

§ 261.5 Late completion of timely investigation.

(a) A decision may be revised after the applicable time period in § 261.2(a) or

§ 261.2(b) of this part expires if the Railroad Retirement Board begins an investigation into whether to revise the decision before the applicable time period expires and the agency diligently pursues the investigation to the conclusion. The investigation may be based on a request by a claimant or on action by the Railroad Retirement Board.

(b) *Diligently pursued* for purposes of this section means that in view of the facts and circumstances of a particular case, the necessary action was undertaken and carried out as promptly as the circumstances permitted. Diligent pursuit will be presumed to have been met if the investigation is concluded and, if necessary, the decision is revised within 6 months from the date the investigation began.

(c) If the investigation is not diligently pursued to its conclusion, the decision will be revised if a revision is applicable and if it is favorable to the claimant. It will not be revised if it would be unfavorable to the claimant.

§ 261.6 Notice of revised decision.

(a) When a decision is revised, notice of the revision will be mailed to the parties to the decision at their last known address. The notice will state the basis for the revised decision and the effect of the revision. The notice will also inform the parties of the right to further review.

(b) If a hearings officer or the three-member Board proposes to revise a decision, and the revision would be based only on evidence included in the record on which the prior decision was based, all parties will be notified in writing of the proposed action. If a revised decision is issued by a hearings officer, any party may request that it be reviewed by the three-member Board, or the three-member Board may review the decision on its own initiative.

§ 261.7 Effect of revised decision.

A revised decision is binding unless:

(a) The revised decision is reconsidered or appealed in accord with part 260 of this chapter;

(b) The three-member Board reviews the revised decision; or

(c) The revised decision is further revised consistent with this part.

§ 261.8 Time and place to request review of a revised decision.

A party to a revised decision may request, as appropriate, further review of the decision in accordance with the rules set forth in part 260 of this chapter.

§ 261.9 Finality of findings when later claim is filed on same earnings record.

If two claims for benefits are filed on the same record of compensation, findings of fact made in a decision in the first claim may be revised in determining or deciding the second claim, even though the time limit for revising the findings made in the first claim has passed. However, a finding in connection with a claim that a person was fully or currently insured at the time of filing an application, at the time of death, or any other pertinent time, may be revised only under the conditions stated in § 261.2 of this part.

§ 261.10 Increase in future benefits where time period for reopening has expired.

If, after the time period for reopening under § 261.2(b) of this part has expired, new evidence is furnished showing a different date of birth or new evidence is furnished which would cause a correction in a record of compensation as provided for in part 211 of this chapter and, as a result of the new evidence, increased benefits would be payable, the Board will pay increased benefits, but only for the months following the month the new evidence is received.

§ 261.11 Discretion of the three-member Board to reopen or not to reopen a final decision.

In any case in which the three-member Board may deem proper, the Board may direct that any decision, which is otherwise subject to reopening under this part, shall not be reopened or direct that any decision, which is otherwise not subject to reopening under this part, shall be reopened.

Dated: August 21, 1997.

By Authority of the Board.

For the Board,

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 97-23080 Filed 8-28-97; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 917

[KY-211-FOR]

Kentucky Regulatory Program

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

ACTION: Final rule; approval of amendment.