

List of Subjects in 16 CFR Part 423

Care labeling of textile wearing apparel and certain piece goods; Trade Practices.

By direction of the Commission.

Donald S. Clark,

Secretary.

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RAILROAD RETIREMENT BOARD**20 CFR Part 255**

RIN 3220-AA44

Recovery of Overpayments

AGENCY: Railroad Retirement Board.

ACTION: Proposed rule.

SUMMARY: The Railroad Retirement Board (Board) revises part 255 of its regulations, currently entitled "Recovery of Erroneous Payments", to clarify and update its regulations with respect to recovery of overpayments. The revisions more clearly identify the individuals from whom recovery may be sought and under what circumstances recovery of an overpayment of benefits will be made. The revisions also cover the circumstances under which such recovery may be waived, and the circumstances under which such recovery may be terminated or suspended under the Board's authority concerning administrative relief from recovery.

DATES: Comments must be received by January 29, 1996.

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 (312) 751-4701).

SUPPLEMENTARY INFORMATION: Part 255 of the Board's regulations has not been revised since 1967. Although section 10 of the Railroad Retirement Act of 1974 (45 U.S.C. 231i) includes provisions for recovery and waiver of overpayments of benefits which are substantially the same provisions included in the Railroad Retirement Act of 1937 (45 U.S.C. 228i, superseded), internal procedures dealing with overpayments of benefits have been developed which should properly be included in the regulations of the Board. In addition, in the Board's view, waiver should not be available with respect to certain types of overpayments and this proposed rule reflects those proposals. Because the

proposed rule would make extensive changes in the existing regulation, a section-by-section analysis is provided below.

The title of part 255 is proposed to be revised to "Recovery of Overpayments". The current title, "Recovery of Erroneous Payments", mistakenly implied that all such payments were caused by "fault". Overpayments can and do occur through no fault of the recipients of such payments. The purpose of part 255 is to set out regulations to govern those instances where more than the correct amount of benefits has been paid, regardless of whether or not "fault" exists.

Section 255.1 would replace the present § 255.1, which sets out statutory provisions, with an introductory statement to summarize what is included in part 255.

Section 255.2 defines "overpayment" using essentially the same language that is used in the current § 255.2 to define "erroneous payments".

Section 255.3 states the general rule that overpayments shall be recovered in all cases except where recovery is waived under § 255.10 or administrative relief from recovery is granted under § 255.17 or where collection is suspended or terminated under these regulations or the Federal Claims Collection Standards.

Section 255.4 would replace the current § 255.4, which simply states in a summary manner the methods by which erroneous payments may be recovered, with a detailed description of those individuals from whom overpayments may be recovered.

Section 255.5-255.8 set out the methods by which an overpayment of benefits may be recovered. These methods include recovery by cash payment (§ 255.5), recovery by setoff from any subsequent payment determined to be payable on the basis of the same record of compensation (§ 255.6), recovery by deduction in the computation of a residual lump-sum death benefit payable under the Railroad Retirement Act (§ 255.7), and recovery by actuarial adjustment of an annuity (§ 255.8). These sections are substantially similar to the current §§ 255.5-255.8. However, § 255.8, unlike the current section, provides that an actuarial adjustment is not effective until the overpaid annuitant negotiates the first check which reflects the actuarially adjusted rate.

Section 255.9 provides that where recovery of an overpayment is by setoff which can be effected within 5 months and the individual from whom recovery is sought is an enrollee under Medicare Part B, the individual's monthly

Medicare premium will be paid and the balance of the annuity amount will be applied toward recovery of the overpayment. This section is new and is intended both to save the agency the administrative costs of billing an annuitant for his or her Part B Medicare premium where his or her annuity would be offset in its entirety to recover an overpayment and also to avoid lapse of Medicare coverage.

Section 255.10 sets out the general requirements for waiver of recovery of an overpayment as set forth in the Railroad Retirement Act and replaces the present §§ 255.10 and 255.11.

Section 255.11, as currently in effect, would be removed because it is redundant. The new section 255.11 would define "fault" and gives examples of when an individual is or is not at fault based upon past agency decisions. Section 255.12 defines when recovery is contrary to the purpose of the Railroad Retirement Act, based upon past agency decisions. Section 255.13 defines when recovery is against equity or good conscience. Each of these sections is new and together they expand on the present § 255.12.

Sections 255.14, 255.15, and 255.16 are new sections which describe special situations where waiver of recovery of an overpayment is not available. Specifically, § 255.14 provides that waiver is not available under certain circumstances when recovery can be made from an accrual of social security benefits. Section 255.15 provides that waiver is not available to the estate of an individual.

Section 255.16 would provide that recovery of a small overpayment of less than \$500 will never be considered contrary to the purpose of the Railroad Retirement Act or against equity or good conscience. Under this rule, waiver of recovery would not be applicable for debts under \$500. This proposed rule is similar to the rule contained in § 340.10(e)(2) of the Board's regulations with respect to recovery of overpayments under the Railroad Unemployment Insurance Act (20 CFR 340.10(e)(2)).

Section 255.17 sets out internal Board policy governing those situations where recovery of an overpayment may not be waived under section 10(c) of the Railroad Retirement Act, thus extinguishing the debt, but where recovery will not be sought for equitable reasons. The regulations do not currently contain such a provision.

Section 255.18 is new and explains how an overpayment is recovered when that overpayment was made to a representative payee under part 266 of this chapter.