

**PART 750—[AMENDED]**

24. The authority citation for 15 CFR part 750 is revised to read as follows:

**Authority:** 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 7, 2003, 68 FR 47833, August 11, 2003.

25. Section 750.7 is amended by revising paragraph (c)(1)(viii) to read as follows:

**§ 750.7 Issuance of licenses.**

\* \* \* \* \*

(c) \* \* \*

(1) \* \* \*

(viii) Change in ECCN, unit of quantity, or unit price, where necessary only for the purpose of conforming to an official revision in the CCL; or wording of the item description. This does not cover an actual change in the item to be shipped, or an increase in the total price or quantity on the license; or

\* \* \* \* \*

**PART 752—[AMENDED]**

26. The authority citation for 15 CFR part 752 is revised to read as follows:

**Authority:** 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 13020, 61 FR 54079, 3 CFR, 1996 Comp., p. 219; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 7, 2003, 68 FR 47833, August 11, 2003.

27. Section 752.3 is amended by revising paragraphs (a)(2) and (a)(3) to read as follows:

**§ 752.3 Eligible items.**

(a) \* \* \*

(2) Items controlled by ECCNs 1C351, 1C352, 1C353, 1C354, 1C991, 1E001, 2B352, 2E001, 2E002, and 2E301 on the CCL controlled for CB reasons;

(3) Items controlled by ECCNs 1C350, 1C995, 1D390, 1E350, 1E351, 2B350, and 2B351 on the CCL that can be used in the production of chemical weapons precursors and chemical warfare agents, to destinations listed in Country Group D:3 (*see* Supplement No. 1 to part 740 of the EAR);

\* \* \* \* \*

Dated: January 13, 2004.

**Peter Lichtenbaum,**

*Assistant Secretary for Export Administration.*

[FR Doc. 04-1737 Filed 2-5-04; 8:45 am]

**BILLING CODE 3510-33-P**

**SOCIAL SECURITY ADMINISTRATION****20 CFR Part 404**

**RIN 0960-AF82**

**Interrelationship of Old-Age, Survivors and Disability Insurance Program With the Railroad Retirement Program**

**AGENCY:** Social Security Administration (SSA).

**ACTION:** Final rule.

**SUMMARY:** We are issuing these final rules to conform our regulations to a self-implementing provision in current law that affects benefit coordination between the Railroad Retirement Act and title II of the Social Security Act. The amendments modified a Railroad Retirement Act requirement involving the period of service in the railroad industry needed to satisfy certain annuity eligibility requirements. We refer to that requirement herein as the “vesting requirement.” For affected persons, this provision established a Railroad Retirement Act vesting requirement of 5 or more years of service, all of which accrue after December 31, 1995, as an alternative to the existing vesting requirement of 10 years of service. As a result of this provision, certain railroad workers who meet the alternative 5-year vesting requirement, and other affected persons, will now receive benefits under the Railroad Retirement Act rather than under title II of the Social Security Act. The amendments made by this provision were effective on or after January 1, 2002, for all individuals in the affected categories. Railroad retirement benefits payable on the basis of this provision are not retroactive and are not payable for months prior to January 2002, but are payable beginning January 1, 2002, to those with 5 years of service after 1995. Railroad employees previously denied benefits for insufficient service would have to file a new application for railroad benefits in order to be considered under the new vesting rules.

**DATES:** These regulations are effective February 6, 2004.

*Electronic Version:* The electronic file of this document is available on the date of publication in the **Federal Register** on the Internet site for the Government Printing Office, <http://www.gpoaccess.gov/fr/index.html>. It is also available on the Internet site for SSA (*i.e.*, Social Security Online) at <http://policy.ssa.gov/pnpublic.nsf/LawsRegs>.

**FOR FURTHER INFORMATION CONTACT:** Marylin Buster, Social Insurance

Specialist, Office of Income Security Programs, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235-6401, (410) 965-2490 or TTY (410) 966-5609. For information on eligibility, claiming benefits, or coverage of earnings, call our national toll-free number, 1-800-772-1213 or TTY 1-800-325-0778.

**SUPPLEMENTARY INFORMATION:****Background**

The Railroad Retirement Act provides a system of benefits for railroad employees, their dependents and survivors. It is integrated with the Social Security Act to provide a coordinated system of retirement, survivor, dependent, and disability benefits payable on the basis of an individual's work in the railroad industry and in employment and self-employment covered by the Social Security Act.

The Railroad Retirement Act distinguishes between “career” railroad workers and individuals who may be considered “casual” railroad workers by vesting people who have specified amounts of railroad work. For a vested worker, railroad compensation generally remains under the Railroad Retirement Board (RRB) and is used to compute railroad retirement and survivor annuities for the worker. For a non-vested worker, railroad compensation is transferred from RRB to SSA and is combined with any social security covered wages and self-employment to determine the worker's eligibility for and the amount of title II benefits. Section 103 of Pub. L. 107-90, the Railroad Retirement and Survivors' Improvement Act of 2001, modified the rules involving the period of railroad industry service needed in order to satisfy certain annuity eligibility requirements under section 2 of the Railroad Retirement Act. It affects individuals who have attained retirement age as defined in the Social Security Act. It also affects individuals who have attained age sixty-two and have completed less than 30 years of railroad service, and individuals whose permanent physical or mental condition is such that they are unable to engage in any regular employment. The new vesting requirement similarly affects the eligibility and entitlement of spouses of individuals who performed railroad service. Finally, the amendments affect the eligibility and entitlement of survivors; *i.e.*, widows, children, and parents of deceased individuals who performed railroad service.

Under the new amendments, the vesting requirement for affected individuals is either 10 years of railroad service or, for individuals with less than

10 years of service, at least 5 years of service, all of which accrue after December 31, 1995. Railroad retirement benefits payable on the basis of this provision are not retroactive and are not payable for months prior to January 2002, but are payable beginning January 1, 2002, to those with 5 years of service after 1995. Employees previously denied benefits for insufficient service would have to file a new application for benefits in order to be considered under the new vesting rules. SSA must use the revised vesting requirement in determining eligibility for, or the amount of benefits under, title II of the Social Security Act in cases involving potential or actual entitlement to a railroad annuity. It also affects certification by SSA for payment purposes, under appropriate circumstances to RRB as required by the Social Security Act.

#### Explanation of Changes

We are deleting § 404.1403 and revising §§ 404.1401, 404.1402, 404.1405, and 404.1413 to make it clear that the railroad vesting requirement is either 10 years of service under the Railroad Retirement Act or 5 or more years of service, all of which accrue after December 31, 1995. Railroad retirement benefits payable on the basis of this provision are not retroactive and are not payable for months prior to January 2002, but are payable beginning January 1, 2002, to those with 5 years of service after 1995. Employees previously denied benefits for insufficient service would have to file a new application for benefits in order to be considered under the new vesting rules.

#### Regulatory Procedures

Pursuant to section 702(a)(5) of the Social Security Act, 42 U.S.C. 902(a)(5), SSA follows the Administrative Procedure Act (APA) rulemaking procedures specified in 5 U.S.C. 553 in the development of its regulations. The APA provides exceptions to its prior notice and public comment procedures when an agency finds there is good cause for dispensing with such procedures on the basis that they are impracticable, unnecessary, or contrary to the public interest.

In the case of these final rules, we have determined that, under 5 U.S.C. 553 (b)(B), good cause exists for dispensing with the notice and public comment procedures on these rules because such procedures are unnecessary. Good cause exists because these regulations merely conform our rules on title II benefits for railroad workers to the self-implementing

vesting provisions in section 103 of Public Law 107-90 that we have been following operationally since January 2002. Therefore, opportunity for prior comment is unnecessary, and we are issuing these regulations as final rules.

In addition, we find good cause for dispensing with the 30-day delay in the effective date of a substantive rule, provided for by 5 U.S.C. 553(d). As explained above, these revisions conform our rules on title II benefits for railroad workers to current law. However, without these changes, our rules will conflict with current law and may mislead the public. Therefore, we find that it is in the public interest to make these rules effective upon publication.

*Executive Order 12866, as Amended by Executive Order 13258*

We have consulted with the Office of Management and Budget (OMB) and determined that these final rules do not meet the criteria for a significant regulatory action under Executive Order 12866, as amended by Executive Order 13258. Thus, they were not subject to OMB review. We have also determined that these rules meet the plain language requirement of Executive Order 12866, as amended by Executive Order 13258.

#### Regulatory Flexibility Act

We certify that these final regulations will not have a significant economic impact on a substantial number of small entities. Therefore, a regulatory flexibility analysis as provided in the Regulatory Flexibility Act, as amended, is not required.

#### Paperwork Reduction Act

These final regulations will impose no additional reporting or record keeping requirements requiring OMB clearance.

(Catalog of Federal Domestic Assistance Program Nos. 96.001, Social Security-Disability Insurance; 96.002, Social Security-Retirement Insurance; 96.004, Social Security-Survivors Insurance)

#### List of Subjects in 20 CFR Part 404

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

Dated: January 29, 2004.

**Jo Anne B. Barnhart,**  
*Commissioner of Social Security.*

For the reasons stated in the preamble, subpart O of part 404 is amended as follows:

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

### Subpart O—[Amended]

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

**Authority:** Secs. 202(l), 205(a), (c)(5)(D), (i), and (o), 210(a)(9) and (1)(4), 211(c)(3), and 702(a)(5) of the Social Security Act (42 U.S.C. 402(l), 405(a), (c)(5)(D), (i), and (o), 410(a)(9) and (l)(4), 411(c)(3), and 902(a)(5)).

2. § 404.1401 is revised to read as follows:

#### **§ 404.1401 What is the interrelationship between the Railroad Retirement Act and the Old-Age, Survivors and Disability Insurance Program of the Social Security Act?**

(a) *Background.* The Railroad Retirement Act provides a system of benefits for railroad employees, their dependents and survivors, and is integrated with the Social Security Act to provide a coordinated system of retirement, survivor, dependent and disability benefits payable on the basis of an individual's work in the railroad industry and in employment and self-employment covered by the Social Security Act. With respect to the coordination between the two programs, the Railroad Retirement Act distinguishes between "career" or "vested" railroad workers and those individuals who may be considered "casual" or "non-vested" railroad workers based on the total amount of railroad service credited to the worker, as explained in paragraph (b) of this section. The Railroad Retirement Board transfers to the Social Security Administration (SSA) the compensation records of workers who at the time of retirement, onset of disability or death, are non-vested and meet certain other requirements. Any compensation paid to non-vested workers for service after 1936 becomes wages under the Social Security Act (to the extent they do not exceed the annual wage limitations described in § 404.1047). Any benefits payable to non-vested workers, their dependents, and their survivors, are computed on the basis of the combined compensation and social security covered earnings creditable to the workers' records. Once a railroad worker meets the vesting requirements, the record of the worker's railroad service and compensation generally may not be used for benefit purposes under the Social Security Act, but under certain circumstances may be transferred after the worker's death to SSA for use in determining social security benefit entitlement for the

railroad worker's survivors (see § 404.1407). Under certain circumstances (see § 404.1413), certification of benefits payable under the provisions of the Social Security Act will be made to the Railroad Retirement Board. The Railroad Retirement Board will certify such benefits to the Secretary of the Treasury.

(b) *Who is a vested railroad worker?* You are a vested railroad worker if you have:

(1) Ten years or more of service in the railroad industry, or

(2) Effective January 1, 2002, you have at least 5 years of service in the railroad industry, all of which accrue after December 31, 1995.

(c) *Definition of years of service.* As used in paragraph (b) of this section, the term *years of service* has the same meaning as assigned to it by section 1(f) of the Railroad Retirement Act of 1974, as amended, (45 U.S.C. 231(f)).

3. § 404.1402 is revised to read as follows:

**§ 404.1402 When are railroad industry services by a non-vested worker covered under Social Security?**

If you are a non-vested worker, we (the Social Security Administration) will consider your services in the railroad industry to be "employment" as defined in section 210 of the Social Security Act for the following purposes:

(a) To determine entitlement to, or the amount of, any monthly benefits or lump-sum death payment on the basis of your wages and self-employment income;

(b) To determine entitlement to, or the amount of, any survivor monthly benefit or any lump-sum death payment on the basis of your wages and self-employment income provided you did not have a "current connection" with the railroad industry, as defined in section 1(o) of the Railroad Retirement Act of 1974, as amended, (45 U.S.C. 231(o)), at the time of your death; (in such cases, survivor benefits are not payable under the Railroad Retirement Act);

(c) To determine entitlement to a period of disability (see subpart B of this part) on the basis of your wages and self-employment income; or

(d) To apply the provisions of section 203 of the Social Security Act concerning deductions from benefits under the annual earnings test (see subpart E of this part).

4. § 404.1403 is removed.

5. § 404.1405 is amended by revising the section heading and paragraph (b) to read as follows:

**§ 404.1405 If you have been considered a non-vested worker, what are the situations when your railroad industry work will not be covered under Social Security?**

\* \* \* \* \*

(b) *You continue to work in the railroad industry after establishing entitlement to old-age insurance benefits under section 202(a) of the Social Security Act.* If your service in the railroad industry is used to establish your entitlement to, or to determine the amount of, your old-age insurance benefits under section 202(a) of the Social Security Act, but you become vested after the effective date of your benefits, your railroad service will no longer be deemed to be in "employment" as defined in section 210 of the Act. Your benefits and any benefits payable to your spouse or child under section 202(b), (c), or (d) of the Act will be terminated with the month preceding the month in which you become a vested worker. However, if you remain insured (see subpart B of this part) without the use of your railroad compensation, your benefits will instead be recalculated without using your railroad compensation. The recalculated benefits will be payable beginning with the month in which you become a vested worker. Any monthly benefits paid prior to the month you become a vested worker are deemed to be correct payments.

6. § 404.1413 is revised to read as follows:

**§ 404.1413 When will we certify payment to the Railroad Retirement Board (RRB)?**

(a) *When we will certify payment to RRB.* If we find that you are entitled to any payment under title II of the Social Security Act, we will certify payment to the Railroad Retirement Board if you meet any of the following requirements:

(1) You are a vested worker; or

(2) You are the wife or husband of a vested worker; or

(3) You are the survivor of a vested worker and you are entitled, or could upon application be entitled to, an annuity under section 2 of the Railroad Retirement Act of 1974, as amended, (45 U.S.C. 231(a)); or

(4) You are entitled to benefits under section 202 of the Social Security Act on the basis of the wages and self-employment income of a vested worker (unless you are the survivor of a vested worker who did not have a current connection, as defined in section 1(o) of the Railroad Retirement Act of 1974, as amended, (45 U.S.C. 231(o)) with the railroad industry at the time of his or her death).

(b) *What information does certification include?* The certification

we make to the Railroad Retirement Board for individuals entitled to any payment(s) under title II will include your name, address, payment amount(s), and the date the payment(s) should begin.

(c) *Applicability limitations.* The applicability limitations in paragraphs (a)(1) through (4) of this section affect claimants who first become entitled to benefits under title II of the Social Security Act after 1974. (See also § 404.1810.)

[FR Doc. 04-2410 Filed 2-5-04; 8:45 am]

BILLING CODE 4191-02-P

**LIBRARY OF CONGRESS**

**Copyright Office**

**37 CFR Parts 262 and 263**

[Docket Nos. 2002-1 CARP DTRA3 and 2001-2 CARP DTNSRA]

**Digital Performance Right in Sound Recordings and Ephemeral Recordings**

**AGENCY:** Copyright Office, Library of Congress.

**ACTION:** Final rule.

**SUMMARY:** The Copyright Office of the Library of Congress is announcing final regulations that set rates and terms for the public performance of a sound recording made pursuant to a statutory license by means of certain eligible nonsubscription transmissions and digital transmissions made by a new type of subscription service. The final rule also announces rates and terms for the making of related ephemeral recordings. The rates and terms are for the 2003 and 2004 statutory licensing period, except in the case of a new subscription service, in which case the license period runs from 1998 through 2004.

**DATES:** *Effective Date:* March 8, 2004.

*Applicability Dates:* The regulations govern the license period which commenced on January 1, 2003, and ends on December 31, 2004, except in the case of a new subscription service, in which case the regulations govern the license period which commenced on October 28, 1998, and ends on December 31, 2004.

**FOR FURTHER INFORMATION CONTACT:** David O. Carson, General Counsel, or Tanya M. Sandros, Senior Attorney, Copyright Arbitration Royalty Panel (CARP), P.O. Box 70977, Southwest Station, Washington, DC 20024. Telephone: (202) 707-8380; Telefax: (202) 252-3423.