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Acting Manager, Rules and Regulations Group.

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RAILROAD RETIREMENT BOARD

20 CFR Part 200

RIN 3220–AB 74

Guidance Documents

AGENCY: Railroad Retirement Board.

ACTION: Interim final rule.

SUMMARY: To implement the executive order ''Promoting the Rule of Law Through Improved Agency Guidance Documents,'' we are amending our regulations to set forth procedures for issuing guidance documents. The amendment defines ''guidance'' document and explains the procedures that the Railroad Retirement Board will follow in issuing a guidance document.

DATES: This Interim Final Rule takes effect August 28, 2020. Comments may be submitted until October 27, 2020.

ADDRESSES: You may submit comments, identified by RIN 3220–AB 74, by any of the following three methods: Internet, fax, or mail. Do not submit the same comments multiple times or by more than one method. Regardless of which method you choose, please state that your comments refer to RIN number 3220–AB 74.

Caution: You should be careful to include in your comments only information that you wish to make publicly available as comments are posted without change, with any personal information provided. We strongly urge you not to include in your comments any personal information such as social security numbers or medical information.

1. *Internet:* Email comments to the Secretary to the Board at *SecretarytotheBoard@rrb.gov.*

2. *Fax:* Fax comments to (312) 751–7102.

3. *Mail:* Address your comments to the Secretary to the Board, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–1275.

FOR FURTHER INFORMATION CONTACT: Marguerite P. Dadabo, Assistant General Counsel, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–1275, (312) 751–4945, TTD (312) 751–4701.

SUPPLEMENTARY INFORMATION: On October 9, 2019, the President issued Executive Order 13891, entitled ''Promoting the Rule of Law through Improved Agency Guidance Documents.'' Section 4 of the Executive Order requires each agency to finalize regulations or amend existing regulations to set forth processes and procedures for issuing guidance documents within 300 days of the date on which the Office of Management and Budget (OMB) issues an implementing memorandum under section 6 of the Executive Order. OMB issued its memorandum, M–20–02, on October 31, 2019. Section 4 of the Executive Order provides that the process set forth in each regulation shall be consistent with the Executive Order and shall include:

(i) A requirement that each guidance document clearly state that it does not bind the public, except as authorized by law or as incorporated into a contract;

(ii) Procedures for the public to petition for withdrawal or modification of a particular guidance document, including a designation of the officials to which petitions should be directed; and

(iii) For a significant guidance document, as determined by the Administrator of OMB's Office of Information and Regulatory Affairs (Administrator), unless the agency and the Administrator agree that exigency, safety, health, or other compelling cause warrants an exemption from some or all requirements, provisions requiring:

(A) A period of public notice and comment of at least 30 days before issuance of a final guidance document, and a public response from the agency to major concerns raised in comments, except when the agency for good cause finds (and incorporates such finding and a brief statement of reasons therefor into the guidance document) that notice and public comment thereon are impracticable, unnecessary, or contrary to the public interest;

(B) Approval on a non-delegable basis by the agency head or by an agency component head appointed by the President, before issuance;

(C) Review by the Office of Information and Regulatory Affairs (OIRA) under Executive Order 12866, before issuance; and

(D) Compliance with the applicable requirements for regulations or rules, including significant regulatory actions, set forth in Executive Orders 12866, 13563 (Improving Regulation and Regulatory Review), 13609 (Promoting International Regulatory Cooperation), 13771 (Reducing Regulation and Controlling Regulatory Costs), and 13777 (Enforcing the Regulatory Reform Agenda).

Rulemaking Analysis and Notices: Under the Administrative Procedure Act (APA), an agency may waive the normal notice and comment procedures if the action is a rule of agency organization, procedure, or practice. See 5 U.S.C. 553(b)(3)(A). This rule qualifies for this exemption under the APA as it deals exclusively with internal agency procedures. Accordingly, the Board is issuing the regulation as an Interim Final Rule. If we receive comments that warrant change(s) in the Interim Final Rule, we will make the change(s) and will publish the revised final rule.

A. Executive Order 12866

The Office of Management and Budget (OMB) has determined that this is not a significant regulatory action under Executive Order 12866, as amended. Therefore, no regulatory impact analysis is required. This is a rule of agency procedure and practice. The railroad industry and the public will benefit from these enhanced procedures through increased agency deliberations and more opportunities to comment on rulemakings and guidance documents.

B. Executive Order 13771 (Reducing Regulation and Controlling Regulator Costs)

This rule is not an Executive Order 13771 regulatory action because this rule is not significant under Executive Order 12866.

C. Regulatory Flexibility Act

Since notice and comment rulemaking is not necessary for this rule, the provisions of the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601–612) do not apply.

D. Executive Order 13132 (Federalism)

Executive Order 13132 requires agencies to ensure meaningful and timely input by State and local officials in the development of regulatory policies that may have a substantial, direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. This action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 (August 4, 1999), and the Board has determined that this action will not have a substantial direct effect or federalism implications on the States and would not preempt any State law or regulation or affect the States' ability to discharge traditional state governmental functions. Therefore, consultation with the States is not necessary.

E. Executive Order 13175

This rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13175, ''Consultation and Coordination with Indian Tribal Governments.'' Because this rulemaking does not significantly or uniquely affect the communities of the Indian tribal governments or impose substantial direct compliance costs on them, the funding and consultation requirements of Executive Order 13175 do not apply.

F. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 *et seq.*) requires that the Board consider the impact of paperwork and other information collection burdens imposed on the public and, under the provisions of PRA section 3507(d), obtain approval from OMB for each collection of information it conducts, sponsors, or requires through regulations. The Board has determined there are no new information collection requirements associated with this rule.

G. Congressional Review Act

The Congressional Review Act (CRA) (5 U.S.C. 801 *et seq.*) requires that before a ''rule'' can take effect, the Federal agency promulgating such rule shall submit to each House of Congress and to the Comptroller General a report containing a copy of the rule, a concise general statement pertaining to the rule, and the proposed effective date of the rule. ''Rule'' is defined by the CRA in 5 U.S.C. 804 to have the same meaning as in 5 U.S.C. 551, except that the term does not include ''any rule of agency organization, procedure, or practice that does not substantially affect the rights or obligations of non-agency parties.'' Because this rule is a rule of agency procedure and practice that does not substantially affect the rights or obligations of non-agency parties, no report is required under the CRA.

H. Unfunded Mandates Reform Act

This rule does not include a Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of more than $100,000,000 or more in any one year. Therefore, no analysis under the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*) is required.

I. Executive Order 12988

One of the stated purposes of Executive Order 12988, ''Civil Justice Reform,'' is to improve regulatory drafting to reduce needless litigation. Consistent with that purpose, the Board has reviewed this regulation to eliminate drafting errors and ambiguity.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publicizes the Unified Agenda in the spring and fall of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 20 CFR Part 200

Railroad employees, Railroad retirement, General administration.

For the reasons set out in the preamble, the Railroad Retirement Board amends title 20, chapter II, subchapter A, part 200 of the Code of Federal Regulations as follows:

PART 200—GENERAL ADMINISTRATION

■ 1. The authority citation for part 200 continues to read as follows:

Authority: 45 U.S.C. 231f(b)(5) and 45 U.S.C. 362; § 200.4 also issued under 5 U.S.C. 552; § 200.5 also issued under 5 U.S.C. 552a; § 200.6 also issued under 5 U.S.C. 552b; and § 200.7 also issued under 31 U.S.C. 3717.

■ 2. Add § 200.11 to read as follows:

§ 200.11 Guidance Documents.

(a) For purposes of this section, the term ''guidance'' document includes any statement of agency policy or interpretation concerning a statute, regulation, or technical matter within the jurisdiction of the Railroad Retirement Board that is intended to have general applicability and future effect, but which is not intended to have the force and effect of law in its own right. The term ''guidance'' document is not confined to formal written documents; guidance may come in a variety of forms, including (but not limited to) letters, memoranda, circulars, bulletins, and advisories, and may include video, audio, and web-based formats. As used in this section, ''Railroad Retirement Board'' or ''RRB'' refers to the agency, and ''Board'' refers to the three Presidential appointees who together serve as the head of the agency.

(b) ''Guidance'' document does not include the following:

(1) Advisory or legal opinions directed to particular parties about circumstance-specific questions; notices regarding particular locations or facilities; and correspondence with individual persons or entities, including congressional correspondence or notices of violation;

(2) Agency statements that do not set forth a policy on a statutory, regulatory, or technical issue or an interpretation of a statute or regulation. This exclusion excludes from the definition of ''guidance'' documents that merely communicate news updates about the agency;

(3) Regulations promulgated pursuant to notice and comment under 5 U.S.C. 553;

(4) Rules exempt from rulemaking requirements under 5 U.S.C. 553.

(5) Rules of agency organization, procedure, or practice;

(6) Decisions of agency adjudication;

(7) Legal briefs and other court filings;

(8) Contract solicitations and awards; and

(9) Purely internal agency policies or guidance directed solely to Railroad Retirement Board (RRB) employees or contractors or to other Federal agencies that are not intended to have substantial future effect on the behavior of regulated parties or the public.

(c) ''Significant guidance document'' means a guidance document that will be disseminated to the general public and that may reasonably be anticipated:

(1) To lead to an annual effect on the economy of $100 million or more or adversely affect in a material way the U.S. economy, a sector of the U.S. economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities;

(2) To create serious inconsistency or otherwise interfere with an action taken or planned by another Federal agency;

(3) To alter materially the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) To raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866, as amended.

(d) All guidance documents require review and clearance in accord with this section. Guidance proposed to be issued by an office or bureau within the RRB must be reviewed and cleared by the Office of General Counsel (OGC). OGC's review and clearance shall ensure that each guidance document proposed to be issued satisfies the following requirements:

(1) The guidance document complies with all relevant statutes and regulations, including any statutory deadlines for agency action.

(2) The guidance document identifies or includes:

(i) The term ''guidance'' or its functional equivalent;

(ii) The issuing office or bureau of the RRB;

(iii) A unique identifier, including, at a minimum, the date of issuance and title of the document;

(iv) The activity or entities to which the guidance applies;

(v) Citations to applicable statutes and regulations;

(vi) A statement noting whether the guidance is intended to revise or replace any previously issued guidance and, if so sufficient information to identify the previously issued guidance; and

(vii) A short summary of the subject matter covered in the guidance document at the top of the document.

(3) The guidance document avoids using mandatory language, such as ''shall,'' ''must,'' ''required,'' or ''requirement,'' unless the language is describing an established statutory or regulatory requirement or is addressed to RRB staff and will not foreclose the RRB's consideration of positions advanced by affected private parties;

(4) The guidance document is written in plain and understandable English;

(5) All guidance documents include a clear and prominent statement declaring that the contents of the document do not have the force and effect of law and are not meant to bind the public in any way, and the document is intended only to provide clarity to the public regarding existing requirements under the law or agency policies.

(e) In addition to the procedures governing the review and clearance of guidance documents, issuance of significant guidance documents must also be preceded by the requirements enumerated in this section unless the Board and OMB's Office of Information and Regulatory Affairs (OIRA) agree that exigency, safety, health, or other compelling cause warrants an exemption from some or all of the following requirements:

(1) Public notice of and a request for comment on the proposed issuance of a significant guidance document must be given at least 30 days before its issuance. The RRB will provide a public response to major concerns raised in comments, except when the RRB for good cause finds (and incorporates such finding and a brief statement of reasons therefor into the guidance document) that notice and public comment thereon are impracticable, unnecessary, or contrary to the public interest.

(2) A majority of the three-member Board (Board) that heads the RRB must approve the significant guidance document.

(3) OIRA makes the final significance determination for a significant guidance document. A significant guidance document must be reviewed by OIRA under Executive Order (E.O.) 12866 before issuance; and must demonstrate compliance with the applicable requirements for regulations or rules, including significant regulatory actions, set forth in E.O. 12866, E.O. 13563, E.O. 13609, E.O. 13771, and E.O. 13777.

(4) The Board may request a categorical determination that a class of guidance documents presumptively does not qualify as significant under Executive Order 13891 by submitting to OIRA a written request that is signed by the General Counsel and that explains why the proposed category of guidance document generally is only routine or ministerial, or is otherwise of limited importance to the public. Examples of documents in the category should be provided to OIRA with the written request for a categorical exemption.

(f) A member of the public may file a petition for withdrawal or modification of a particular guidance document by filing a written request with the Secretary to the Board at 844 N Rush Street, Chicago, Illinois 60611–1275. The Board will respond to each petition in a timely manner, but no later than 90 days after receipt of the petition with a decision and rationale for the decision.

(g) The Board will not cite, use, or rely on a guidance document that is rescinded, except to establish historical facts.

(h) The Board maintains on its website a guidance portal from which all guidance documents may be accessed. Unless a guidance document is on the website, it is not considered to be in effect.

Dated: August 24, 2020.

By Authority of the Board.

Stephanie Hillyard,

Secretary to the Board.

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9900]

RIN 1545–BP84

Carryback of Consolidated Net Operating Losses; Correcting Amendment

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correcting amendments.

SUMMARY: This document contains corrections to Treasury Decision 9900, which was published in the **Federal Register** on Wednesday, July 8, 2020. Treasury Decision 9900 contained temporary regulations that permit consolidated groups that acquire new members that were members of another consolidated group to elect in a year subsequent to the year of acquisition to waive all or part of the pre-acquisition portion of an extended carryback period under section 172 of the Internal Revenue Code (Code) for certain losses attributable to the acquired members if there is a retroactive statutory extension of the NOL carryback period under section 172.

DATES: *Effective date:* These corrections are effective on August 28, 2020.

Applicability date: For the date of applicability, see § 1.1502–21T(h)(9).

FOR FURTHER INFORMATION CONTACT: Jonathan R. Neuville, at (202) 317–5363 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The temporary regulations (TD 9900) that are the subject of this correction are issued under section 1502 of the Code.

Need for Correction

As published July 8, 2020 (85 FR 40892), the temporary regulations (TD 9900; FR Doc. 2020–14426) contained errors that need to be corrected.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Correction of Publication

Accordingly, 26 CFR part 1 is corrected by making the following correcting amendments:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

■ **Par. 2.** Section 1.1502–21T is amended by revising the second sentence of paragraph (b)(3)(ii)(C)(*1*), the first sentence of paragraph (b)(3)(ii)(C)(*5*)(*i*), the first sentence of paragraph (b)(3)(ii)(C)(*5*)(*ii*), the third sentence of paragraph (b)(3)(ii)(D)(*2*)(*ii*), and the second sentence of paragraph (b)(3)(ii)(D)(*4*)(*ii*) to read as follows:

§ 1.1502–21T Net operating losses (temporary).

(b) * * *

(3) * * *

(ii) * * *

(C) * * *

(*1*) * * * (See paragraph (b)(3)(ii)(C)(*2*) of this section for