

Regulation and Regulatory Review

RAILROAD RETIREMENT BOARD

ACTION PLAN

Executive Order 13563 was issued January 18, 2011, and calls for agencies to develop and implement a plan for the regular review and amendment of agency regulations. The Executive Order stresses the importance of obtaining public participation in the regulatory review process and encourages agencies to ensure that regulations are not overly burdensome to business.

The Railroad Retirement Board administers the Railroad Retirement and Railroad Unemployment Insurance Acts. Under these two Federal statutes the Railroad Retirement Board pays benefits to retired railroad workers and their families and to unemployed and sick railroad employees. The Agency's regulations, for the most part, provide a framework for determining entitlement to benefits and expand on the statutory criteria for receipt of benefits. The Railroad Retirement Board is not a regulatory agency and its regulations reflect its statutory functions under the Acts it administers. It is also important to note that the Railroad Retirement Board is headed by a three-member Board with one member appointed by the President upon the recommendation of railroad employees, one member appointed by the President upon the recommendation of railroad employers and a third member appointed by the President as the independent, public member of the Board. Regulations of the Railroad Retirement Board must be approved by the three-member Board and represent the interests of rail employees, rail employers, and the general public.

The Railroad Retirement Board's plan under Executive Order 13563 sets forth a list of "triggering events" which will create the review of regulations within the agency and the process for increasing public involvement in the Agency's rulemaking process. The triggering events represent the list of actions that organizations or individuals may take which have the greatest potential to affect the applicability of the Railroad Retirement Board's Regulations. Depending on which triggering event occurs, the Railroad Retirement Board will take the appropriate action, according to the Action Plan, to route information and recommendations to the department of the Agency with the best working knowledge of the affected regulations. This will allow the knowledgeable department (referred to as "Responsible Bureau") to provide the Office of General Counsel with appropriate feedback on necessary updates to the regulations based upon the import of the triggering event.

The Railroad Retirement Board's Action Plan is divided into several sections highlighting the specifics of the Action Plan. Triggering Events will be specifically described. The Structure and Staffing of the steps taken during the Action Plan have been laid out in detail. The Action Plan describes how the Railroad Retirement Board

will encourage and receive Public Participation in the Regulatory Review Process. The Action Plan also touches on the general manner in which specific triggering events will receive a cost/benefit analysis and how the Agency will continue to conduct retroactive review of existing regulations in coordination with existing regulatory review cycles.

Triggering Events

In accordance with Executive Order 13563, the following list represents the events that will trigger a review of the Railroad Retirement Board's Regulations.

- 1 The Railroad Retirement Act (45 USC 231 et seq) or the Railroad Unemployment Insurance Act (45 USC 351 et seq) is amended by Congress.
- 2 An Act affecting the Railroad Retirement Board is amended (e.g. Social Security Act, Railroad Retirement Tax Act, Freedom of Information Act, Privacy Act, Internal Revenue Code).
- 3 New legislation is enacted with nationwide effect (i.e. promulgations similar to the Recovery Act, Trade Act, etc.).
- 4 Issuance of an Executive Order with impact upon the Railroad Retirement Board (e.g. Executive Order 13563).
- 5 Internal policy change by the three-member Board or issuance of a new Board Order or a seminal Board Decision (e.g. important Board coverage decision).
- 6 Public demand for review or update to regulations is received through one of the channels described in the Public Participation section of this Action Plan.
- 7 A U.S. Supreme Court or U.S. Court of Appeals Decision is published which creates a change in the Judicial Interpretation of the Railroad Retirement Act or Railroad Unemployment Insurance Act.
- 8 Internal Department Review Request by a Railroad Retirement Board section or bureau.

Structure and Staffing

As part of the overall duties of the Office of General Counsel (OGC), the OGC, including the Office of Legislative Affairs, is the office which most frequently becomes aware of the triggering events previously listed. As a result, the General Counsel and Assistant General Counsel are the agency officials responsible for overseeing and coordinating the regulatory review process. Once the OGC is notified of or determines that a triggering event has occurred, the following process for regulatory review will occur:

Regulatory Review Process:

1. The OGC reviews the specific triggering event and summarizes in writing the event (e.g. a new statute, Board policy, comments from the public, etc.) as well as the change requested.
2. After review, the OGC determines if there is a specific bureau of the agency with responsibility for the content of the regulation(s) affected by the triggering event. If necessary, the OGC sends a copy of the triggering event along with the summary memo to the bureau with responsibility for the regulations affected by the event.
3. The Responsible Bureau (RB) reviews the information packet and current regulations. The RB then drafts an analysis of how the event would affect regulations and a proposal as to whether or not the current regulations need to be changed. In connection with this review, the RB should consider the costs and benefits of revising the regulations.
4. The OGC reviews the analysis of the RB and determines whether a formal analysis of costs and benefits is necessary. The OGC puts together a draft regulation for the Board's review and includes any comments from the RB's proposal and forwards the complete draft regulation to the three-member Board for a final decision.
5. The Board issues a decision as to whether or not the current regulations should be changed based upon the triggering event, the draft regulation from the OGC and any comments from the RB.
6. If no amendments are necessary, the OGC will file the compiled information for future reference.
7. If amendments are necessary, the approved draft is sent to the Office of Regulatory Affairs (OIRA) for Code of Federal Regulation (CFR) public posting and comment period. The OGC follows standard OIRA procedures for amending regulations.
8. The regulation is amended per the OIRA process and rules.

Public Participation

Section 2 of Executive Order 13563 emphasizes the importance of public participation. It requires agencies to "afford the public a meaningful opportunity to comment through the Internet on any proposed regulation". In addition, it requires an "open exchange" of

information among government officials, experts, stakeholders and the public. As noted above, the Railroad Retirement Board that heads the agency is composed of three members appointed by the President and confirmed by the Senate. One member is appointed based upon the recommendation of railroad labor; one is appointed based upon the recommendation of railroad management; and the Chairman is appointed to represent the interests of the public at large. The composition of the three-member Board affords the public the opportunity to voice their opinions through the Chairman who represents the public at large; however, to broaden the public's opportunity for comment, the Railroad Retirement Board will take the following steps:

The Railroad Retirement Board's current "Notices Published in the Federal Register" page already links to the official website of the Government Printing Office (GPO) where proposed regulations are posted for reading and instructions for the points of contact are listed in the event the public has any comments to the Railroad Retirement Board. The following steps will be taken to afford the public greater opportunity to comment on regulations or offer suggestions prior to the proposed regulation stage.

- On www.rrb.gov, the current webpage entitled "RRB Proposed Regulations" will be taken down and replaced with a page that will solicit comments from the public on suggestions for regulations to be amended, drafted, or eliminated. This page could be titled "Regulations Suggestion Inbox." The "Contact Us" link will lead users to this one page web location. Additionally, the following pages will also have a link back to the regulation public comment page: "Legal Information"; "Public Forms and Publications"; and each of the three Board Office home pages. Comments posted to this page will then be routed to a regulatory review inbox which will be monitored by the OGC.
- The offices of the Labor Member and Management Member hold regular meetings with their respective constituents. At these meetings, Railroad Retirement Board officials may solicit requests for regulatory review and forward them to the OGC when appropriate.
- The Office of Public Affairs sends monthly Q&A press releases which are sent to rail labor unions, railroads and publications as well as posted on the Railroad Retirement Board website. Information regarding the regulatory review process and solicitation of comments will be regularly incorporated into these releases.

Analysis of Costs and Benefits

Whenever the OGC determines that a formal cost-benefit analysis is necessary, the OGC will consult with the Bureau of the Actuary in order to conduct an analysis of the costs and benefits of possible new regulations. The OGC may also conduct an analysis of the costs and benefits of existing regulations that are being reviewed as part of the Railroad Retirement Board's continuing obligation to conduct a retrospective analysis of regulations. (See Coordination with other Forms of Retroactive Analysis and Review).

In conducting a cost-benefit analysis, the OGC may consider both actual costs to the agency, such as additional staff hours and training, as well as costs to the National Railroad Retirement Investment Trust ("Trust") such as increased expenditures for annuities. Additionally, the OGC may consider other types of costs to covered employers and annuitants, such as time spent on additional steps that must be taken by annuitants to obtain their benefits or additional tax forms that must be completed by covered employers.

The OGC may also consider benefits to annuitants and covered employers such as time saved through streamlined reporting requirements or money saved by the Trust through reduced overpayments.

Coordination with other Forms of Retroactive Analysis and Review

The Railroad Retirement Board is already subject to the requirement to regularly review its regulations pursuant to Executive Order 12866. Executive Order 13563 affirms and supplements the previous Executive Order's requirements. Along with the above-mentioned triggering events, the Railroad Retirement Board will periodically review its existing significant regulations to determine whether any of the regulations should be modified. The agency will, in particular, look for rules that have been made obsolete due to changes in technology or circumstances.