

motions must be filed at least 60 days before the five-year period expires.

(vi) Except as provided in paragraph (e)(1)(viii) of this section, all attorney work product containing confidential information may be retained indefinitely. Notwithstanding such retention, the Commission shall not be responsible for enforcing the governing protective order with respect to the work product for more than five years after the exhaustion of all appeals or the expiration of all remedial orders, whichever is later. If information that may be contained in the work product will still be confidential after the five-year period has expired, the supplier of the information may file a motion to have the Commission extend its enforcement of the protective order with respect to the work product beyond the prescribed five-year period. Such motions must be filed at least 60 days before the five-year period expires.

(vii) All confidential information supplied by third parties may be retained until all appeals are exhausted or all remedial orders have expired, whichever is later. If the third party's information appears in a document other than a pleading, a document issued by an administrative law judge or the Commission, or a document constituting attorney work product, the document shall be returned to the supplier or destroyed, and written certification of such return or destruction shall be provided to each supplier and the Commission within 30 days after all appeals are exhausted or all remedial orders have expired, whichever is later. If the third party's information appears in a pleading, a document issued by an administrative law judge or the Commission, or a document constituting attorney work product, the document may be retained indefinitely in accordance with paragraph (e)(1)(iv), (e)(1)(v), or (e)(1)(vi) of this section. However, the third party may request that its information be expurgated from the document pursuant to paragraph (e)(1)(viii).

(viii) If the third-party supplier so requests at the time that its confidential information is supplied and if the third-party supplier's confidential information is contained in pleadings, documents issued by an administrative law judge or the Commission, or attorney work product, within 30 days after all appeals are exhausted or all remedial orders have expired, whichever is later, any law firm in possession of such pleadings, documents, or work product shall expurgate the third-party supplier's confidential information from the

pleadings, documents, or work product and provide written certification of the expurgation to the third-party supplier and the Commission.

(2) Except as required by law or as provided in a written agreement with the supplier, the confidential information contained in the materials enumerated in paragraph (e)(1) of this section shall not be used during the retention periods specified in paragraph (e)(1) of this section for any purposes other than those relating to the subject investigation or a related proceeding under this part.

(3) On or before the commencement of the retention periods specified in paragraph (e)(1) of this section, each law firm whose attorneys are signatories to a protective order in an investigation or a related proceeding under this part shall designate one attorney signatory from the firm as the custodian of the information and the person responsible for ensuring that the requirements of paragraphs (e)(1)–(e)(2) of this section are satisfied. Notice of the designation shall be served on the parties, the appropriate third-party suppliers (if any) and the Secretary.

(4) Parties and suppliers may agree to retention time limits, uses, custodial arrangements, or other conditions that differ from those set forth in paragraphs (e)(1)–(e)(3) of this section. When such an agreement is reached, a copy must be filed with the Commission or the presiding administrative law judge (as the case may be). Neither the Commission nor the administrative law judge shall be responsible, however, for policing the retention, uses, custodial arrangements, and other conditions relating to the subject confidential information in accordance with the agreement.

Issued: February 3, 1995.

By Order of the Commission.

**Donna R. Koehnke,**

*Secretary.*

[FR Doc. 95–3140 Filed 2–8–95; 8:45 am]

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## RAILROAD RETIREMENT BOARD

### 20 CFR Part 217

RIN 3220–AB08

#### Application for Annuity or Lump Sum

**AGENCY:** Railroad Retirement Board.

**ACTION:** Proposed rule.

**SUMMARY:** The Railroad Retirement Board (Board) proposes to amend its regulations to enable the Board to pay the following benefits without requiring

additional applications therefor: (1) An accrued annuity due at the death of a spouse or former spouse to a railroad employee receiving an annuity based on the same earnings record; and (2) a full-time student's annuity if the student was entitled to a child's annuity in the month before the month the child attained age 18.

**DATES:** Comment shall be submitted on or before March 13, 1995.

**ADDRESSES:** Secretary to the Board, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611.

**FOR FURTHER INFORMATION CONTACT:** Michael C. Litt, Bureau of Law, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611, (312) 751–4929, TDD (312) 751–4701.

**SUPPLEMENTARY INFORMATION:** Section 217.8 of the Board's regulations specifies a list of benefits paid by the Board which may be paid based on a previously-filed application (*i.e.*, where a new application is not required). The proposed rule would add to that list the cases where an accrued annuity is due at the death of a spouse or former spouse to a railroad employee receiving an annuity based on the same earnings record as the spouse or former spouse and where a full-time student's annuity is payable if the student was entitled to a child's annuity in the month before the month the child attained age 18. In those cases there is no additional information contained in the applications and there is no utility to the Board in requiring additional applications. Using the earlier application reduces paperwork and the burden on persons claiming benefits.

The Board, in conjunction with the Office of Management and Budget, has determined that this is not a significant regulatory action for purposes of 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 217

Railroad employees, Railroad retirement.

For the reasons set out in the preamble, title 20, chapter II, part 217 of the Code of Federal Regulations is proposed to be amended as follows:

#### PART 217—APPLICATION FOR ANNUITY OR LUMP SUM

1. The authority citation for part 217 continues to read as follows:

**Authority:** 45 U.S.C. 231d and 45 U.S.C. 231f.

2. Section 217.8 is amended by adding paragraphs (t) and (u) to read as follows:

**§ 217.8 When one application satisfies the filing requirement for other benefits.**

\* \* \* \* \*

(t) An accrued annuity due at the death of a spouse or divorced spouse if the claimant is entitled to an employee annuity on the same claim number.

(u) A full-time student's annuity if the student was entitled to a child's annuity in the month before the month the child attained age 18.

Dated: January 31, 1995.

By Authority of the Board.

**Beatrice Ezerski,**

*Secretary to the Board.*

[FR Doc. 95-3168 Filed 2-8-95; 8:45 am]

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**20 CFR Parts 226 and 232**

RIN 3220-AA58

**Computing Employee, Spouse, and Divorced Spouse Annuities**

**AGENCY:** Railroad Retirement Board.

**ACTION:** Proposed rule.

**SUMMARY:** The Railroad Retirement Board (Board) proposes to revise its regulations dealing with the computation of retirement annuities under the Railroad Retirement Act of 1974 (Act). The Board's current regulations regarding the computation of these annuities were promulgated under the Railroad Retirement Act of 1937 and no longer reflect the computational provisions contained in the Act.

**DATES:** Comments must be received by the Secretary to the Board on or before March 13, 1995.

**ADDRESSES:** Secretary to the Board, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611.

**FOR FURTHER INFORMATION CONTACT:** Thomas W. Sadler, Assistant General Counsel, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611, telephone (312) 751-4513, TTD (312) 751-4701.

**SUPPLEMENTARY INFORMATION:** The proposed revision to Part 226 (formerly "Computation of Annuity") provides the rules for computing the amount of the employee, spouse and divorced spouse annuity, under the Railroad Retirement Act of 1974. In general, the annuity consists of two components or tiers. The first tier (tier I) is a social security level benefit that is computed under social security rules based on the employee's earnings under both the

railroad retirement and the social security systems and is reduced by the amount of any social security benefit payable. The second tier (tier II) is based solely on the employee's railroad earnings.

In limited circumstances the employee annuity may be increased by a "vested dual benefit". An employee who has completed 25 years of railroad service may also be eligible for a supplemental annuity.

The proposed rule is divided into seven (7) subparts:

Subpart A sets forth definitions and lists other regulations related to this part.

Subpart B describes the computation of the employee annuity which includes the social security level component (tier I) (proposed § 226.10), the component based solely on railroad service (tier II) (proposed § 226.11); the vested dual benefit (proposed § 226.12), and a supplemental annuity (proposed § 226.16). Proposed § 226.13 describes how cost-of-living increases apply to the annuity.

Subpart C (proposed §§ 226.30-226.35) parallels subpart B and describes the computation of the spouse and divorced spouse annuities. However, the divorced spouse is not entitled to a tier II benefit and no supplemental annuity or vested dual benefits are payable to spouses. Proposed § 226.31 explains how the spouse and divorced spouse annuity are reduced due to receipt of a public pension which was not based upon employment covered by the Social Security Act on the last day of employment.

Subpart D (proposed §§ 226.50-226.52) describes the Railroad Retirement Family Maximum which is a statutory "cap" placed upon the total benefits payable under the RRA. Proposed § 226.51 describes how the maximum is determined (the higher of \$1,200 or an amount based upon the employee's final average monthly compensation (FAMC)). Proposed § 226.52 describes how the "reduction amount" is computed when the maximum is exceeded and proposed § 226.50 describes how the spouse, then the employee annuity is reduced until the total employee and spouse annuity equal the maximum. The railroad retirement maximum is computed at the employee's annuity beginning date but will be recomputed if the spouse later divorces the employee or the employee later becomes entitled to a vested dual benefit or supplemental annuity. A divorced spouse annuity is not counted in determining whether the RRA maximum is exceeded.

Subpart E (proposed §§ 226.60-226.63) explains how years of service and average monthly compensation (AMC) are determined. The tier II of the employee annuity is seven tenths of 1% (.007) times the product of an employee's years of service times his or her AMC. The spouse's tier II is 45% of the employee's tier II. See proposed § 226.11 and 226.32.

Subpart F (proposed §§ 226.70-226.74) describes the reduction required due to receipt of workers' compensation benefits. The tier I of an employee, spouse, or divorced spouse annuity is reduced if the employee is under age 65 and is entitled to a disability annuity and another periodic benefit based upon disability pursuant to some other Federal or state law or plan (proposed § 226.70). The reduction amount is first applied to the tier I of any spouse or divorced spouse annuity payable, then to the employee tier I (§ 226.71). Certain disability payments do not cause a reduction. These are listed in proposed § 226.72.

The formula for the reduction amount is found at proposed § 226.71. The reduction provided for in this part applies if the total tier I components payable to the employee and spouse (or divorced spouse) plus workers' compensation or public disability benefit exceed 80% of the employee's prior average current earnings. Proposed § 226.73 explains what events cause a change in the reduction amount. Proposed § 226.74 provides that "average current earnings" must be recomputed periodically to take into account inflation. The redetermined average current earnings are used only if it results in a lower reduction amount.

Subpart G of the proposed rule (§§ 226.90-226.92) explains how and when an annuity is recomputed to take into account railroad service and social security earnings after an annuitant retires.

Part 232—Spouses' Annuities is now obsolete; it is proposed to be removed.

The Board 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 226 and Part 232**

Pensions, Railroad employees, Railroad retirement.

1. For the reasons set out in the preamble, Part 226 of Title 20 of the Code of Federal Regulations (formerly "Computation of Annuity") is proposed to be revised as follows: