Braunstein, Manager for Community Affairs (202–452–3378), Division of Consumer and Community Affairs; Larry Cunningham, Supervisory Financial Analyst, Division of Banking Supervision and Regulation (202–452–2701); for users of the Telecommunications Device for the Deaf (TDD) only, Dorothea Thompson (202–452–3544); Board of Governors of the Federal Reserve System, Washington, DC 20551.

SUPPLEMENTARY INFORMATION: Section 9(23) of the Federal Reserve Act (12 U.S.C. 338a) allows state member banks, under certain conditions, to make investments designed primarily to promote the public welfare. Section 9(23) provides that public welfare investments must not violate state law or expose the bank to unlimited liability. Section 9(23) limits the aggregate of the bank's public welfare investments to 5 percent of the bank's capital stock and surplus, but allows the Board to increase this limit to as much as 10 percent on a case-by-case basis.

The Board's Regulation H (12 CFR 208.21) permits state member banks to make public welfare investments without prior approval if the investment is one that is listed in the regulation and if the bank meets the regulation's capital and condition requirements. Specifically, a state member bank may make an investment, without prior approval, that the Board or the Comptroller of the Currency (OCC) previously has determined to be a public welfare investment or that is an investment in a community development financial institution.[1] In addition, Regulation H allows state member banks to invest without prior approval in an entity established solely to engage in certain community development activities, such as low- and moderate-income housing, nonresidential real estate development, small business development, and job training.

In order to make a public welfare investment without prior approval, a state member bank must (1) Limit any single investment to not more than 2 percent of the bank's capital stock and surplus, (2) be at least adequately capitalized, (3) be rated a composite CAMEL ''1'' or ''2,'' (4) be rated at least ''satisfactory'' (i.e., ''2'') in its last consumer compliance examination, and (5) not be subject to any written agreement, cease and desist order, capital directive, or prompt corrective action directive.

The Board is delegating to the Federal Reserve Banks the authority to approve certain public welfare investments by state member banks that do not meet the ''no-prior-approval'' conditions in Regulation H. Specifically, Reserve Banks may approve investments that meet all the conditions in § 208.21(b) of Regulation H, except that:

- The bank's compliance rating is ''3;''
- The investment would exceed 2 percent (but not 5 percent) of the bank's capital and surplus; or
- The aggregate of all such investments of the bank exceeds 5 percent (but not 10 percent) of its capital stock and surplus.

Administrative Procedure Act

The Administrative Procedure Act (5 U.S.C. 553(b)(A)) exempts ''rules of agency organization, procedure, or practice'' from the notice of proposed rulemaking and public comment requirements. As the Board's delegation rules fall under this exemption, the Board is adopting these amendments without notice-and-comment procedures.

List of Subjects in 12 CFR Part 265

Authority delegations (Government agencies), Banks, banking, Federal Reserve System.

For the reasons set forth in the preamble, the Board is amending 12 CFR Part 265 as set forth below:

PART 265—RULES REGARDING DELEGATION OF AUTHORITY

1. The authority citation for Part 265 continues to read as follows:

Authority: 12 U.S.C. 248 (i) and (k).

2. Section 265.11 is amended by adding a new paragraph (e)(12) to read as follows:

§ 265.11 Functions delegated to Federal Reserve Banks.

* * * * *

(e) * * *

(12) *Public welfare investments.* To permit a state member bank to make a public welfare investment that meets the conditions set forth in § 208.21(b) (1)–(8) of Regulation H (12 CFR 208), except that:

(i) The state member bank received an overall rating of ''3'' as of its most recent consumer compliance examination;

(ii) The investment exceeds 2 percent, but does not exceed 5 percent, of the state member bank's capital stock and surplus as defined under 12 CFR 250.162; or

(iii) The aggregate of all such investments of the state member bank exceeds 5 percent, but does not exceed 10 percent, of its capital stock and surplus as defined under 12 CFR 250.162.

* * * * *

By order of the Board of Governors of the Federal Reserve System, May 1, 1995.

William W. Wiles,

Secretary of the Board.

[FR Doc. 95–11087 Filed 5–4–95; 8:45 am]

BILLING CODE 6210–01–P

[1] ''Community development financial institution'' is defined in the Community Development Banking and Financial Institutions Act of 1994 (Title I of Pub. L. 103–325, 108 Stat. 2160, section 103(5)).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 2 and 35

[Docket No. PL95–1–000]

Ratemaking Treatment of the Cost of Emissions Allowances in Coordination Rates; Order No. 579

Issued April 26, 1995.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule amendment and confirmation of interim rules as final.

SUMMARY: On December 15, 1994, the Commission issued a Policy Statement and Interim Rule Regarding Ratemaking Treatment of the Cost of Emissions Allowances in Coordination Rates. In the Policy Statement, codified in § 2.25, the Commission set forth the elements of what generally constitutes appropriate ratemaking treatment of sulfur dioxide emissions allowances in coordination transactions under the Federal Power Act. The Interim Rule, codified in § 35.23, implemented the filing guidelines set forth in the Policy Statement.

This order is issued in response to comments on the Interim rule (§ 35.23). It clarifies the Policy Statement (§ 2.25) in certain respects and adopts the Interim Rule, without modification, as a Final Rule.

EFFECTIVE DATE: June 5, 1995.

FOR FURTHER INFORMATION CONTACT:

Wayne W. Miller (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, Telephone: (202) 208–0466

Moira Notargiacomo (Technical Information), Office of Electric Power Regulation, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, Telephone: (202) 208–1079.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in Room 3104, 941 North Capitol Street NE., Washington, DC 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 208–1397. To access CIPS, set your communications software to 19200, 14400, 12000, 9600, 7200, 4800, 2400, 1200 or 300 bps, full duplex, no parity, 8 data bits, and 1 stop bit. The full text of this document will be available on CIPS for 60 days from the date of issuance in ASC II and WordPerfect 5.1 format. After 60 days, the document will be archived, but still accessible. The complete text on diskette in WordPerfect format may also be purchased from the Commission's copy contractor, LaDorn Systems Corporation, also located in Room 3104, 941 North Capitol Street NE., Washington, DC 20426.

I. Introduction

On January 23, 1995, Illinois Power Company (Illinois Power), the Pennsylvania Public Utility Commission (Pennsylvania Commission), and the Edison Electric Institute (EEI) filed comments requesting clarification of the Policy Statement and Interim Rule issued on December 15, 1994.[1]

After considering the comments, the Federal Energy Regulatory Commission (Commission) is revising its Policy Statement on the Ratemaking Treatment of the Cost of Emissions Allowances in Coordination Transactions. Specifically, the Commission is revising the Policy Statement to provide that public utilities may require customers to declare, no later than the beginning of the coordination transaction, whether they will pay for the cost of emission allowances reflected in the purchased electric energy or, in the alternative, deliver emissions allowances in time for ''true-up,'' [2] and to provide that public utilities may structure arrangements when customers provide allowances so as to remain risk neutral (*i.e.*, neutral as to risks of non-delivery). The Commission rejects Illinois Power's request to clarify the Policy Statement and Interim Rule to provide that selling public utilities need not designate indices in their rate filings. The Commission also addresses the Pennsylvania Commission's concerns regarding Federal and state jurisdiction over emissions allowance costs in wholesale and retail rates.

II. Public Reporting Burden

The Final Rule would clarify how existing filing requirements apply to public utilities filing amendments to coordination rate schedules to provide for the recovery of emissions allowance costs. Because this Final Rule only clarifies, and does not amend, how existing filing requirements are to be implemented, the public reporting burden for these information collections (including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information) is not estimated to increase the number of hours per response for each public utility currently involved in the filing of rate schedule amendments. Send comments regarding these burden estimates or any other aspect of these collections of information, including suggestions for reducing the burden, by contacting the Federal Energy Regulatory Commission, 941 North Capitol Street NE., Washington, DC 20426 [Attention: Michael Miller, Information Services Division, (202) 208–1415], and to the Office of Management and Budget, Washington, DC 20503 (Attention: Desk Officer for the Federal Energy Regulatory Commission), FAX: (202) 395–5167.

III. Background

On October 14, 1994, EEI filed a petition under section 207 of the Commission's Rules of Practice and Procedure,[3] requesting a policy statement regarding the ratemaking treatment of emissions allowances in coordination transactions under the Federal Power Act (FPA). EEI also requested the Commission to clarify that the sale or transfer of emissions allowances does not require Commission authorization under section 203 of the FPA and does not require filing under section 205 of the FPA.

In the Policy Statement, the Commission adopted, with certain modifications to reflect the concerns raised by intervenors, EEI's proposals. Specifically, the Commission found that it would allow the recovery of incremental costs of emissions allowances in coordination rates whenever the coordination rate also provides for recovery of other variable costs on an incremental basis. If a coordination rate does not reflect incremental cost pricing for other costs, the Commission stated that it would require the seller to propose an alternative costing method for emissions allowances, or demonstrate that any inconsistency between the proposed costing method and the coordination rate does not produce unreasonable results.

In support of these determinations, the Commission made a number of related findings. First, it found that the cost to replace an allowance is an appropriate basis to establish incremental cost. Second, the Commission found that sellers of emissions allowances should be permitted to choose their own index or a combination of indices, if done consistently, in pricing allowances in coordination transactions. Third, the Commission found that the use of incremental costing for emissions allowances should be consistent with the use of incremental costing for economic dispatch decisions, and stated that any differences between incremental costing for coordination sales and dispatch decisions regarding emissions allowances should be explained and reconciled. Fourth, the Commission found that sellers of emissions allowances should explain how they will compute the amount of emissions allowances that will be attributed to each coordination transaction. Fifth, the Commission found that public utilities should provide information to purchasing utilities regarding the timing of opportunities for purchasers to stipulate whether they will purchase or return emissions allowances. The Commission stated that customers that choose to provide allowances in kind should be permitted to do so by the appropriate Environmental Protection Agency (EPA) reporting date.,[4] rather than at the time

[1] Policy Statement and Interim Rule Regarding Ratemaking Treatment of the Cost of Emissions Allowances in Coordination Rates, 59 FR 65930 (December 15, 1994), III FERC Stats. and Regs., Regulations Preambles ¶ 31,009 (1994).

[2] *See infra* note 4 (describing ''true-up'' requirements).

[3] 18 CFR 385.207.

[4] On January 30 (or the first subsequent business day) of each calendar year, EPA determines whether companies have the right number of emissions, allowances of appropriate vintage on hand for each ton of sulfur dioxide emitted during the previous calendar year. *See* Policy Statement and Interim Rule, III FERC States. and Regs., Regulations Preambles at 31,201, 31,203 n.18 Utilities must ''true up'' their emissions allowance accounts by the EPA reporting date so that they will have a sufficient number of allowances on hand to avoid EPA penalties. The penalty for not having the requisite number of allowances on hand by the EPA reporting date is $2,000 per ton plus surrender of

of the transaction. The Commission also stated that the seller should explain how fractional allowances will be handled, and suggested a ''rounding'' approach, *i.e.*, rounding up to the next whole number if the fraction is greater than one-half, or down if the fraction is less than one-half. Finally, the Commission stated that the ratemaking treatment of emissions allowance costs endorsed in the Policy Statement does not preclude other approaches proposed by individual public utilities on a case-by-case basis.

In the Interim Rule (codified in § 35.23 of its regulations), the Commission stated that if public utilities have rate schedules on file that expressly provide for the recovery of all incremental or out-of-pocket costs, these utilities may make abbreviated rate filings, limited to detailing how they would recover emissions allowance costs. Regarding coordination rates that do not provide for the recovery of all incremental costs, the Commission concluded that the public utility may include rate schedule amendments together with the abbreviated filing if customers agree to the rate change; if the customers do not agree to revise such rates, the Commission stated that the public utility must tender its emissions allowance proposal in a separate section 205 rate filing, fully justifying its proposal.

In a separate order disclaiming jurisdiction,[5] the Commission concluded that emissions allowances are not facilities subject to the Commission's jurisdiction under section 203. The Commission further concluded that a sale or transfer of emissions allowances does not require a filing under section 205 when that sale or transfer occurs outside of a sale by a public utility for resale in interstate commerce.

The Commission invited interested persons to submit additional written comments on the matters addressed in the Interim Rule by January 23, 1995. EEI, Illinois Power and the Pennsylvania Commission timely submitted comments. As explained in greater detail below, EEI and Illinois Power suggest clarification of the Policy Statement provision regarding timing. Illinois Power also suggests clarification of the Policy Statement and Interim Rule regarding the use of indices.[6]

The Pennsylvania Commission request clarification of the Interim Rule to state that the Rule applies to jurisdictional rates only, and does not contemplate preemption of the states' ratemaking treatment of emissions allowances.

IV. Discussion

A. Timing

EEI and Illinois Power maintain that the Policy Statement, as issued, could be construed to give customers the option of waiting until the ''true-up'' date to declare whether they will pay or return emissions allowances in kind.[7] Thus, EEI argues, utilities might not know how many allowances the customers would return until it is too late to avoid incurring EPA penalties.[8] EEI maintains that to assure that they have sufficient emissions allowances on hand, and thus avoid penalties, utilities would have to either: (1) tie up their own capital to create an allowance reserve, or (2) be prepared to purchase allowances at the last minute, possibly paying a premium in the form of a scarcity rent. To remedy this situation, EI suggests clarifying the Policy Statement to state that utilities may require customers, to declare, at or near the time of the coordination transaction (or earlier), whether they will pay or return emissions allowances in kind, and, if they return allowances in kind, the time at which they will do so.[9]

EEI further notes the public utilities face risks associated with the timing of the return of allowances in kind, including: (a) the risk that if a sale is arranged by a power broker or marketer, that entity may become insolvent and not deliver allowances; and (b) the risk associated with the failure of customers to settle their accounts within the standard billing period. For these reasons, EEI asks the Commission to clarify the Policy Statement to state that utilities may propose arrangements with their customers for indemnification from such risks.

Commission Ruling

In the Policy Statement and Interim Rule, the Commission stated that purchasing utilities that choose to return allowances in kind should be allowed to return the allowances by the appropriate EPA reporting date, rather than at the time of the transaction, *i.e.*, a ''timing option.'' However, if purchasing utilities wait until the time of ''true-up'' before declaring whether they will pay cash or return emissions allowances in kind, this accords the selling public utilities little, if any, opportunity to determine how many emissions allowances they will need to avoid EPA penalties. To remedy this situation, the Commission will clarify 18 CFR 2.25(e) to state that public utilities may require purchasing utilities to declare, no later than the beginning of the coordination transaction: (a) whether they will pay or return allowances in kind; and (b) if they return allowances in kind, to specify a date by which they will return the allowances.[10] The Commission also will clarify section 2.25(e) to state that public utilities may include, in their agreements, provisions to indemnify themselves if customers do not return allowances when they have declared they will do so.[11]

B. Use of Indices

Illinois Power argues that the requirement in the Policy Statement and Interim Rule (*see* 18 CFR 2.25(c)) that utilities use the same incremental cost index or indices in pricing coordination sales and in dispatch decisions (or

an emissions allowance equivalent in the following year, plus other possible punishments depending on the degree of violation. *Id.* at 31,201.

[5] Edison Electric Institute, 69 FERC ¶ 61,344 (1994).

[6] Illinois Power also refers to the findings in the Policy Statement and Interim Rule regarding the calculation of the amount of emissions allowances associated with a coordination transaction and reconciliation of inconsistencies in dispatch criteria, but does not suggest any modifications to these findings.

[7] Illinois Power notes the Commission's order in Southern Company Services, Inc., 69 FERC ¶61,437 (1994), *reh'g pending*, in which the Commission, consistent with the Policy Statement and Interim Rule, directed the Southern Companies to modify their submittal to allow customers that choose to return allowances in kind to do so up to the EPA reporting date rather than at the time of the transaction.

[8] *See supra* note 4.

[9] EEI emphasizes that because of EPA's administrative requirements, utilities must have the requisite number of allowances on hand several weeks before the ''true-up'' deadline. Similarly, Illinois Power argues that providing a utility the option to make an in-kind return of allowances ''up to the EPA reporting date,'' does not necessarily allow for sufficient time to complete a transfer through EPA's Allowance Tracking System. Illinois Power also argues that allowing customers who return allowances in kind to do so up to the EPA reporting date conflicts with payment terms previously established by mutual agreement of the affected parties.

[10] Such date should afford the selling public utility sufficient time to meet its requirements to EPA. The close of the calendar year would appear to be more than adequate. However, customers should be allowed to designate a date comparable to that which the utility itself would internally designate if it were purchasing allowances to meet its EPA requirements. In other words, the selling utility may not require its customers to provide allowances any earlier than the utility's internal deadlines for purchasing allowances to meet EPA requirements for the prior calendar year. Thus, if the public utility purchases allowances on, for example, January 15, we see no reason to require customers to provide allowances any earlier.

[11] Such indemnification provisions should be applied in a non-discriminatory manner. While EEI notes that power marketers and brokers may become insolvent, we note that such a entities are not the only entities that may become insolvent; a few traditional utilities have sought bankruptcy protection in recent years.

explain and justify the use of different indices for pricing coordination sales and dispatch) makes the source of the index irrelevant. Accordingly, Illinois Power argues, utilities should not be burdened with having to make rate filings with the Commission (*see* 18 CFR 35.23(b)) indicating their choice of indices.

Commission Ruling

We disagree. Public utilities must indicate their choice of indices so that the Commission can determine whether the selling utility is using consistent criteria for pricing coordination sales and in dispatch decisions. If the selling public utility is not using the same index in its dispatch decisions as in pricing coordination sales (or does not explain and justify the difference if it uses different indices), there is no assurance that the index reflects the utility's incremental costs. Also, if there is no requirement that the selling utility indicate the index or combination of indices to be used in its filing, the seller may simply choose an index with the highest price at the time of the transaction, rather than the index that best reflects its incremental cost. Finally, the index or indices must be filed since they are part of the formula rate. Accordingly, we will not clarify the Policy Statement and Interim Rule as Illinois Power requests.

C. Federal vs. State Jurisdiction

The Pennsylvania Commission commends this Commission for its prompt consideration of EEI's application and for expedited issuance in this proceeding of the Policy Statement and Interim Rule. Nevertheless, the Pennsylvania Commission expresses concern that the Commission did not fully address all jurisdictional issues arising from EEI's application.

Specifically, the Pennsylvania Commission expresses concern with the Commission's decision in the Policy Statement to allow utilities to value emissions allowances at their incremental price, based on a market index. The Pennsylvania Commission states that it fully understands, and does not challenge, the basis for this decision—to encourage the development of a vigorous trading market and to provide for consistent rate treatment for emissions allowances in coordination sales rates. The Pennsylvania Commission also states, however, that it is compelled under Pennsylvania state law to value emissions allowances on the basis of historic costs for retail ratemaking purposes. Citing ''jurisdictional uncertainty,'' the Pennsylvania Commission urges this Commission to clarify that the Policy Statement is limited in scope to Commission-jurisdictional rates and is not intended to preempt state ratemaking treatment of emissions allowances in state jurisdictional rates.

Commission Ruling

We clarify that the general jurisdictional pronouncements made in the Policy Statement and Interim Rule are intended to address only the Commission's consideration of FERC-jurisdictional rates. The Commission has not made any preemptive determination as to any ratemaking treatment of emissions allowances to be applied at the retail level by the States. Whether there would be any preemption would have to be determined based on the facts of a particular case.

V. Environmental Statement

Commission regulations require that an environmental assessment or an environmental impact statement be prepared for any Commission action that may have a significant adverse effect on the human environment.[12] The Commission has categorically excluded certain actions from this requirement as not having a significant effect on the human environment.[13] No environmental consideration is necessary for the promulgation of a rule that involves electric rate filings that public utilities submit under sections 205 and 206 of the FPA and the establishment of just and reasonable rates.[14] Because this final rule involves such filings submitted under sections 205 and 206 of the FPA and the establishment of just and reasonable rates, no environmental consideration is necessary.

VI. Regulatory Flexibility Act Certification

The Regulatory Flexibility Act (RFA)[15] requires rulemakings to either contain a description and analysis of the effect that the rule will have on small entities or to certify that the rule will not have a substantial economic impact on a substantial number of small entities. Because most, if not all, of the entities that would be required to comply with this rule are large public utilities that do not fall within the RFA's definition of small entities,[16] the Commission certifies that this rule will not have a ''significant impact on a substantial number of small entities.''

VII. Information Collection Statement

The Office of Management and Budget's (OMB) regulations[17] require that OMB approve certain information collection requirements imposed by an agency. This rule neither contains new information collection requirements nor significantly modifies any existing information collection requirements in Part 35; therefore, it is not subject to OMB approval. However, the Commission will submit a copy of this rule to OMB for information purposes only.

VIII. Effective Date

This document adopts the interim rule in part 35 as final and amends the policy statement in part 2 effective June 5, 1995.

List of Subjects

18 CFR Part 2

Administrative practice and procedure, Electric power, Natural gas pipelines, Reporting and recordkeeping requirements.

18 CFR Part 35

Electric power rates, Electric utilities, Reporting and recordkeeping requirements.

By the Commission.

Lois D. Cashell,

Secretary.

In consideration of the foregoing, the interim rule amending 18 CFR Part 35 which was published at 59 FR 65930 on December 22, 1994, is adopted as a final rule without change and 18 CFR Part 2 which was amended as a final rule at 59 FR 65930 is further amended as set forth below.

PART 2—GENERAL POLICY AND INTERPRETATIONS

1. The authority citation for part 2 continues to read as follows:

Authority: 15 U.S.C. 717–717w, 3301–3432; 16 U.S.C. 791a–825r, 2601–2645; 42 U.S.C. 4321–4361, 7101–7352.

2. Part 2, § 2.25, is amended by revising § 2.25(e) to read as follows:

[12] Regulations Implementing the National Environmental Policy Act, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs., Regulations Preambles 1986–90 ¶ 30,783 (1987).

[13] 18 CFR 380.4.

[14] 18 CFR 380.4(15).

[15] 5 U.S.C. 601–12.

[16] 5 U.S.C. 601(13) (citing section 3 of the Small Business Act, 15 U.S.C. 632). Section 3 of the Small Business Act defines a small business concern as a business that is independently owned and operated and that is not dominant in its field of operation. 15 U.S.C. 632(a).

[17] 5 CFR 1320.13.

§ 2.25 Ratemaking Treatment of Cost of Emissions Allowances in Coordination Transactions.

* * * * *

(e) *Timing.* (1) Public utilities should provide information to purchasing utilities regarding the timing of opportunities for purchasers to stipulate whether they will purchase or return emissions allowances. A public utility may require a purchasing utility to declare, no later than the beginning of the coordination transaction:

(i) whether it will purchase or return emissions allowances; and

(ii) if it will return emissions allowances, the date on which those allowances will be returned.

(2) Public utilities may include in agreements with purchasing utilities non-discriminatory provisions for indemnification if the purchasing utility fails to provide emissions allowances by the date on which it declares that the allowances will be returned.

* * * * *

[FR Doc. 95–10718 Filed 5–4–95; 8:45 am]
BILLING CODE 6717–01–M

RAILROAD RETIREMENT BOARD

20 CFR Parts 226 and 232

RIN 3220–AA58

Computing Employee, Spouse, and Divorced Spouse Annuities

AGENCY: Railroad Retirement Board.

ACTION: Final rule.

SUMMARY: The Railroad Retirement Board (Board) hereby revises its regulations dealing with the computation of retirement annuities under the Railroad Retirement Act of 1974 (Act). The regulations regarding the computation of these annuities, which are being replaced, were promulgated under the Railroad Retirement Act of 1937 and no longer reflect the computational provisions contained in the Act.

EFFECTIVE DATE: May 5, 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 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 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) (§ 226.10), the component based solely on railroad service (tier II) (§ 226.11); the vested dual benefit (§ 226.12), and a supplemental annuity (§ 226.16). Section 226.13 describes how cost-of-living increases apply to the annuity.

Subpart C (§§ 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. Section 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 (§§ 226.50–226.52) describes the Railroad Retirement Family Maximum which is a statutory ''cap'' placed upon the total benefits payable under the RRA. Section 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)). Section 226.52 describes how the ''reduction amount'' is computed when the maximum is exceeded and § 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 (§§ 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 §§ 226.11 and 226.32.

Subpart F (§§ 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 (§ 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 § 226.72.

The formula for the reduction amount is found at § 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. Section 226.73 explains what events cause a change in the reduction amount. Section 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 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 obsolete and is removed.

On February 9, 1995, the Board published this rule as a proposed rule (60 FR 7729), inviting comments on or before March 13, 1995. No comments were received.

The Board, in conjunction with the Office of Management and Budget, 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.