

RAILROAD RETIREMENT BOARD**20 CFR Part 206**

RIN 3220-AB56

Account Benefits Ratio**AGENCY:** Railroad Retirement Board.**ACTION:** Proposed rule.

SUMMARY: The Railroad Retirement Board (Board) proposes to amend its regulations to add a new part to explain how it will compute the account benefits ratio. The Railroad Retirement and Survivors' Improvement Act of 2001 amended the Railroad Retirement Act to require that on an annual basis the Board compute an account benefits ratio for the most recent 10 preceding fiscal years and a projection of the account benefits ratio for the next 5 succeeding fiscal years. In determining the account benefits ratio, the Board has interpreted several terms utilized in that computation. Since the account benefits ratio will be used in determining the tier II tax rate for calendar years after 2003, we propose to issue this regulation to clarify how we will compute the account benefits ratio.

DATES: Comments should be submitted on or before February 18, 2003.

ADDRESSES: Any comments should be submitted to Beatrice Ezerski, Secretary to the Board, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611-2092.

FOR FURTHER INFORMATION CONTACT: Marguerite P. Dadabo, Assistant General Counsel, (312) 751-4945, TDD (312) 751-4701.

SUPPLEMENTARY INFORMATION: Effective for calendar years after 2003, the tier II tax rate will be determined in accord with a formula that relies on the average account benefits ratio. See section 3241 of the Internal Revenue Code as amended by section 204 of Public Law 107-90. The Board has decided to set forth how it will compute the account benefits ratio so that all parties, rail labor, rail management and the public, will be aware of how we intend to compute the account benefits ratio. Part 206 of the Board's regulations deals with the manner by which the account benefits ratio will be computed. Section 206.1 contains definitions of the terms that are used to compute the account benefits ratio. In making these calculations, the Board based its definitions on the language of the statute and the purpose of computing the account benefits ratio.

The term "total benefits and administrative expenses paid" is computed on a cash basis, since the use

of the word "paid" demonstrates that the computation should be made on a cash basis. In addition, "total benefits paid" is computed on the basis of net benefits paid, *i.e.* the gross benefits paid in a particular fiscal year minus any benefit overpayments actually recovered in that fiscal year. The purpose of computing the account benefits ratio is to ensure that there are adequate funds to pay benefits due under the Railroad Retirement Act. Using net benefits paid more accurately reflects the amount of benefits paid in a given year.

The term "assets" is defined in the regulation as the total of the market value of all cash and investments held in the Railroad Retirement Account and the National Railroad Retirement Investment Trust (and for years before 2002, the Social Security Equivalent Benefits Account). Excluded from "assets" is the amount of accounts receivable. While a receivable may be viewed as an asset under certain circumstances, the language of the Railroad Retirement and Survivors' Improvement Act of 2001 leads us to conclude that Congress did not contemplate inclusion of accounts receivable in the computation of the account benefits ratio. By providing that the computation is to be made based on the fair market value of the assets in the Investment Trust and the accounts, Congress signaled that the computation should be made based on the amount of cash and the value of investments in the Investment Trust and the accounts. Moreover, disregarding accounts receivables in computing the account benefits ratio is consistent with the cash basis being used to determine total benefits and administrative expenses paid in a given fiscal year. The term "administrative expenses paid" is also defined in the regulation. All Railroad Retirement Board administrative expenses are currently paid from a single administrative account. The only amounts recorded in the Railroad Retirement Account are "cash transfers" to that administrative account. The amount used for calculating the administrative expenses paid will be the amount of those cash transfers from the Railroad Retirement Account in each fiscal year. Also included in total administrative expenses will be those amounts transferred from the Railroad Retirement Account to the Limitation on the Office of Inspector General. The expenses of the Inspector General are appropriate railroad retirement program expenses that must be considered in determining total administrative expenses. Finally, the administrative expenses of the National Railroad

Retirement Investment Trust will also be included in this term.

Collection of Information Requirements

This rule does not impose additional information collection and record keeping requirements. Consequently, it need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995.

Regulatory Impact Statement

Prior to publication of this proposed rule, the Board submitted this rule to the Office of Management and Budget for review pursuant to Executive Order 12866. Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for rules that constitute significant regulatory action, including rules that have an economic effect of \$100 million or more annually. This proposed rule is not a major rule in terms of the aggregate costs involved. The costs associated with the addition of a new part to the Board's regulations are administrative in nature, and include the costs associated with drafting and publishing the regulation as a proposed and then a final rule. We have determined that this proposed rule is not a major rule with economically significant effects because it would not result in increases in total expenditures of \$100 million or more per year.

The proposed rule is significant. Part 206 explains how the Railroad Retirement Board will compute the account benefits ratio in accordance with sections 108 and 204 of the Railroad Retirement and Survivors' Improvement Act of 2001. The purpose of the proposed regulation is to provide a written explanation so that all parties, rail labor, rail management, and the public, will be aware of how the Board intends to compute the account benefits ratio. Thus, the proposed rule will benefit the agency's constituents, who will be aware of how the account benefits ratio is computed.

Both the Regulatory Flexibility Act and the Unfunded Mandates Act of 1995 define "agency" by referencing the definition of "agency" contained in 5 U.S.C. 551(1). Section 551(1)(E) excludes from the term "agency" an agency that is composed of representatives of the parties or of representatives of organizations of the

parties to the disputes determined by them. The Railroad Retirement Board falls within this exclusion (45 U.S.C. 231f(a)) and is therefore exempt from the Regulatory Flexibility Act and the Unfunded Mandates Act.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a rule that imposes substantial direct compliance costs on State and local governments, preempts State law, or otherwise has Federalism implications. We have reviewed this proposed rule under the threshold criteria of Executive Order 13132 and have determined that it would not have a substantial direct effect on the rights, roles, and responsibilities of States or local governments.

In accordance with the provisions of Executive Order 12866, this regulation has been reviewed by the Office of Management and Budget.

List of Subjects in 20 CFR part 206

Railroad retirement.

For the reasons set out in the preamble, the Railroad Retirement Board proposes to add Part 206 to Title 20, chapter II of the Code of the Federal Regulations to read as follows:

PART 206—ACCOUNT BENEFITS RATIO

Sec.

206.1 Definitions.

206.2 Computations.

Authority: 45 U.S.C. 231f(b)(5); 45 U.S.C. 231u(a).

§ 206.1 Definitions.

Except as otherwise expressly noted, as used in this part—

Account benefits ratio means the amount determined by the Railroad Retirement Board by dividing the fair market value of the assets in the Railroad Retirement Account and the National Railroad Retirement Investment Trust (and for years prior to 2002, the Social Security Equivalent Benefits Account) as of the close of each fiscal year by the total benefits and administrative expenses paid from those accounts during the fiscal year.

Administrative expenses paid means the amount of the cash transfers from the Railroad Retirement Account to the agency's single administrative fund. Also included in this term is the amount of the cash transfers from the Railroad Retirement Account to the Limitation on the Office of Inspector General and the administrative expenses paid by the National Railroad Retirement Investment Trust.

Assets means the market value of cash and investments in the Railroad

Retirement Account and the National Railroad Retirement Investment Trust (and for years before 2002, the Social Security Equivalent Benefits Account).

Average account benefits ratio means for any calendar year, the average of the account benefits ratio for the 10 most recent fiscal years ending before such calendar year. If the amount computed is not a multiple of 0.1, such amount shall be increased to the next highest 0.1.

Total benefits paid means the total amount of benefits paid from the Railroad Retirement Account and the National Railroad Retirement Investment Trust in a fiscal year minus any benefit overpayments actually recovered during that fiscal year.

§ 206.2 Computation.

(a) On or before November 1, 2003, the Railroad Retirement Board shall:

(1) Compute the account benefits ratios for each of the most recent 10 preceding fiscal years; and

(2) Certify the account benefits ratio for each such fiscal year to the Secretary of the Treasury.

(b) On or before November 1 of each year after 2003, the Railroad Retirement Board shall:

(1) Compute the account benefits ratio for the fiscal year ending in such year; and

(2) Certify the account benefits ratio for such fiscal year to the Secretary of the Treasury.

(c) No later than May 1 of each year, beginning in 2003, the Board shall compute its projection of the account benefits ratio and the average account benefits ratios for each of the next succeeding 5 fiscal years.

Dated: December 12, 2002.

By Authority of the Board,

Beatrice Ezerski,

Secretary to the Board.

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RAILROAD RETIREMENT BOARD

20 CFR Part 217

RIN 3220-AB55

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 permit the filing of applications via the Internet. The Government Paperwork Elimination Act provides that federal agencies are

required by October 21, 2003, to provide "for the option of the electronic maintenance, submission, or disclosure of information, when practicable as a substitute for paper". The proposed changes to part 217 will permit the filing of applications for benefits under the Railroad Retirement Act electronically.

DATES: Submit comments on or before February 18, 2003.

ADDRESSES: Address any comments concerning this proposed rule to Beatrice Ezerski, Secretary to the Board, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611-2092.

FOR FURTHER INFORMATION CONTACT: Marguerite P. Dadabo, Assistant General Counsel, (312) 751-4945, TTD (312) 751-4701.

SUPPLEMENTARY INFORMATION: The amendments would revise part 217 of the Board's regulations (20 CFR 217) to permit the filing of applications via the Internet. The Government Paperwork Elimination Act, Pub. L. 105-277 §§ 1701-1710 (codified as 44 U.S.C. § 3504n), provides that Federal agencies are required by October 21, 2003, to provide "for the option of the electronic maintenance, submission, or disclosure of information, when practicable as a substitute for paper". The proposed changes to part 217 will permit the filing of applications under the Railroad Retirement Act electronically.

The change to § 217.5 provides that the application may be filed electronically. That section is further amended to provide that if the application is filed electronically, the applicant's proper use of the Board's User ID/PIN/Password system is an acceptable signature.

The Board currently uses a User ID/PIN/Password system that allows railroad employers access to RRBLINK to make electronic tax deposits and electronically submit Form DC-1, "Employer's Quarterly Report of Contributions Under the Railroad Unemployment Insurance Act". A User ID/PIN/Password system is used to access the <http://www.pay.gov> site. The U.S. Department of the Treasury operates the <http://www.pay.gov> site. Such a system also is consistent with the guidance provided by the Department of Justice regarding the use of electronic processes.

The change to § 217.6 makes an electronic submission of an application through the Board's system a valid application for benefits under the Railroad Retirement Act. Section 217.15 is amended to permit a claimant to file