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RAILROAD RETIREMENT BOARD

20 CFR Part 206

RIN: 3220-AB56

Account Benefits Ratio

AGENCY: Railroad Retirement Board.

ACTION: Final rule.

SUMMARY: The Railroad Retirement Board (Board) amends 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 to determine the tier II tax rate for calendar years after 2003, the Board is issuing this regulation to clarify how we will compute the account benefits ratio.

DATES: This final rule is effective August 26, 2003.

FOR FURTHER INFORMATION CONTACT:

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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 Benefit 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 the Board 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 receivable 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 the proposed rule, the Board submitted this rule to the Office of Management and Budget (OMB) 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. The proposed rule was 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 final 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.

OBM determined that the final rule did not need to be reviewed again under Executive Order 12866. 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 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 final 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