comments postmarked or received on or before March 30, 1989.

ADDRESSES: Send an original and two copies of written comments to Helene R. Wright, Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, Room 866, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket Number 89-033. Comments received may be inspected at USDA, 14th and Independence Avenue SW., Room 1141-South Building, Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. Harvey A. Kryder, Senior Staff Veterinarian, Import-Export Products Staff, VS, APHIS, USDA, Room 753, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-7885.

SUPPLEMENTARY INFORMATION:

Background

The regulations on animal importations in 9 CFR Part 92 (referred to below as the regulations) restrict the importation of horses that could introduce various diseases, including contagious equine metritis (CEM), into the United States. CEM, a venereal disease, affects horses' fertility and breeding.

Section 92.2(i)(1) lists the countries in which CEM exists and, with certain exceptions, prohibits importation of horses from those countries and horses that have been in any of those countries within the 12 months immediately preceding their export to the United States.

In response to information published by the Government of Czechoslovakia that CEM has been diagnosed in that country, we are adding it to the list of countries in which CEM exists.

Emergency Action

James W. Glosser, Administrator of the Animal and Plant Health Inspection Service, has determined that an emergency situation exists warranting publication of this interim rule without prior opportunity for public comment. Immediate action is necessary to prevent carriers of CEM from introducing it into the United States.

Because prior notice and other public procedures with respect to this interim rule are impracticable and contrary to the public interest under these emergency conditions, there is good cause under 5 U.S.C. 553 to make the interim rule effective upon signature. We will consider comments postmarked or received within 60 days of publication of this interim rule in the **Federal Register**. A final rulemaking document, including any amendments we make to this interim rule as a result of any comment, will be published in the **Federal Register**.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this interim rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this action, the Office of Management and Budget has waived the review process required by Executive Order 12291.

Stallions and mares from Czechoslovakia that are older than 731 days must undergo testing and treatment in Czechoslovakia and the United States that is more extensive than is standard during a 3-day quarantine. The extra time required for this additional testing and treatment will delay the horses' importation into this country and therefore, increase the cost to importers of horses from Czechoslovakia. However, of the approximately 30,000 horses imported into the United States in 1988, only 1 came from Czechoslovakia. We estimate the number of horses affected by this interim rule to be small. We therefore expect this rule to have little or no effect on importers. Those deterred by the cost of testing and quarantining a stallion or mare affected by this interim rule could, instead, import geldings or, for breeding, horses younger than 731 days. Alternatively, they could import horses from any CEM-free country.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with state and local officials. (See 7 CFR Part 3015, Subpart V.)

List of Subjects in 9 CFR Part 92

Animal diseases, Canada, Imports, Livestock and livestock products, Mexico, Poultry and poultry products, Quarantine, Transportation, Wildlife.

Accordingly, 9 CFR Part 92 is amended as follows:

PART 92—IMPORTATION OF CERTAIN ANIMALS AND POULTRY AND CERTAIN ANIMAL AND POULTRY PRODUCTS; INSPECTION AND OTHER REQUIREMENTS FOR CERTAIN MEANS OF CONVEYANCE AND SHIPPING CONTAINERS THEREON

1. The authority citation for Part 92 continues to read as follows:

Authority: 7 U.S.C. 1622, 19 U.S.C. 1306; 21 U.S.C. 102-105, 111, 134a, 134b, 134c, 134d, 134f, and 135; 31 U.S.C. 9701; 7 CFR 2.17, 2.51, and 371.2(d).

§ 92.2 [Amended]

2. Section 92.2, paragraph (i)(1), is amended by adding "Czechoslovakia," immediately after "Belgium,".

Done in Washington, DC, this 24th day of March 1989.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 89-7412 Filed 3-28-89; 8:45 am]

BILLING CODE 3410-34-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 89-CE-06-AD; Amdt. 39-6174]

Airworthiness Directives; GROB WERKE GmbH & Company KG (Burkhart Grob) Model G103 TWIN II and Model G103 A TWIN II ACRO Gliders

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule, request for comments.

SUMMARY: This amendment adopts a new Airworthiness Directive (AD), applicable to Grob Werke GmbH & Co. G103 TWIN II and G103 A TWIN II ACRO gliders, which requires a visual inspection of the welded parts of the control system and reinforcement of these parts. This action is prompted by discovery of cracks in the welded area on these gliders. This condition, if not corrected, could ultimately result in loss of control of the glider.

EFFECTIVE DATES: April 27, 1989. Comments for inclusion in the Rules Docket must be received on or before May 30, 1989.

COMPLIANCE: As prescribed in the body of the AD.

ADDRESSES: The technical information and modification parts applicable to this AD may be obtained from Grob Systems, Incorporated, Aircraft Division, I-75 and Airport Drive, Bluffton, Ohio 45817, telephone (419) 358-9015. This information may be examined at the Rules Docket at the address below. Send comments on the AD in triplicate to the FAA, Central Region, Attention: Rules Docket No. 89-CE-06-AD, Office of the Assistant Chief Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

FOR FURTHER INFORMATION CONTACT: Mr. Heinz Hellebrand, Brussels Aircraft Certification Staff, AEU-100, FAA, c/o American Embassy, 15 Rue de la Loi B1040, Brussels, Belgium; Telephone 793.21.10 extension 2718; or Mr. James S. Kishi, ACE-106, Small Aircraft Certification Directorate, FAA, 601 East Twelfth Street, Room 1656, Kansas City, Missouri 64106; Telephone (816) 426-6933.

SUPPLEMENTARY INFORMATION: Grob Werke GmbH & Co. has determined that cracks may develop in the welded parts in the flight control System of the Models G103 TWIN II and G103 A TWIN II ACRO gliders. As a result, the manufacturer has issued Service Bulletin TM 315-37, dated July 22, 1988, which recommends a visual inspection of control system parts for weld cracks and reinforcement of certain control system parts. The Luftfahrt-Bundesamt (LBA), who has the responsibility and authority to maintain the continuing airworthiness of these gliders in the Federal Republic of Germany, has classified this service bulletin and the actions recommended therein by the manufacturer as mandatory to assure the continued airworthiness of the affected gliders. On gliders operated under Federal Republic of Germany registration, this action has the same effect as an AD on gliders certified for operations in the United States. The FAA relies upon certification of LBA combined with FAA review of pertinent documentation in finding compliance of the design of these gliders with the applicable United States airworthiness requirements and the airworthiness conformity of products of this type design certificated for operation in the United States. The FAA has examined the available information related to the issuance of Service Bulletin TM 315-37, dated July 22, 1988, and the mandatory classification of this service bulletin by the LBA. Based on the foregoing, the FAA believes that the condition addressed by the service bulletin is an unsafe condition that may exist on other products of this type design certificated for operation in the United States.

Since the FAA has determined that the unsafe condition described herein is likely to exist or develop in other gliders of the same type design, an AD is being issued requiring visual inspection of control system parts for weld cracks and reinforcement of certain control system parts on Models G103 TWIN II and G103 A TWIN II ACRO gliders in accordance with the aforementioned service bulletin. Because an emergency condition exists that requires the immediate adoption of this regulation, it is found that notice and public procedure hereon are impractical and contrary to the public interest, and good cause exists for making this amendment effective in less than 30 days. Although this action is in the form of a final rule which involves requirements affecting immediate flight safety and, thus, was not preceded by notice and public procedure, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in triplicate to the Rules Docket at the address specified above. All communications received on or before the closing date for comments will be considered and this rule may be amended in light of the comments received. Comments that provide a factual basis supporting the views and suggestions presented are particularly helpful in evaluating the effectiveness of the AD and determining whether additional rulemaking is needed. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket at the address given above. A report summarizing each FAA public contact concerned with the substance of this AD, will be filed in the Rules Docket.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation and that it is not major under Section 8 of Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation is not required). A copy of it, when filed, may be obtained by contacting the Rules Docket under the caption "**ADDRESSES**" at the location identified.

List of Subjects in 14 CFR 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the FAR as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new AD:

Grob Werke GMBH & Company KG (Burkhart Grob): Applies to Models G103 TWIN II and G103 A TWIN II ACRO (serial numbers 3501 through 3878, and 33879 through 34078) gliders.

Compliance: As indicated in the body of the AD.

To preclude failure of the flight control systems, accomplish the following:

(a) Within the next 10 hours time-in-service after the effective date of this AD, inspect the control systems for weld cracks in accordance with the instructions contained in Grob Service Bulletin (S/B) TM315-37, dated July 22, 1988.

(b) If weld cracks are found per the inspection specified in paragraph (a) of this AD, prior to further flight repair the cracks and modify the glider in accordance with the instructions in the above referenced S/B.

(c) If weld cracks are not found per the inspection specified in paragraph (a) of this AD, within the next 100 hours time-in-service after the effective date of this AD, modify the glider in accordance with the instructions in the above referenced S/B.

(d) An equivalent means of compliance with this AD may be used if approved by the Manager, Brussels Aircraft Certification Staff, AEU-100, FAA, c/o American Embassy, 15 Rue de la Loi B1040, Brussels, Belgium.

All persons affected by this directive may obtain copies of the documents referred to herein upon request to Grob Systems, Incorporated, Aircraft Division, I-75 and Airport Drive, Bluffton, Ohio 45817; or may examine these documents at the FAA, Office of the Assistant Chief Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

This amendment becomes effective on April 27, 1989.

Issued in Kansas City, Missouri, on March 20, 1989.

Don C. Jacobsen,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-7458 Filed 3-28-89; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 381

[Docket Nos. RM82-25-000, et al.]

Update of Commission Filing Fees

Issued March 24, 1989.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final rule; Update of Commission filing fees.

SUMMARY: In accordance with § 381.104 of the Commission's regulations, the Commission issues this update of its filing fees. This notice provides the yearly update by using data under the Commission's Time Distribution Reporting System and Payroll Utilization Reporting System to calculate the new fees.

EFFECTIVE DATE: April 28, 1989.

FOR FURTHER INFORMATION CONTACT: Lois D. Cashell, Secretary, (202) 357-8400.

SUPPLEMENTARY INFORMATION:

Notice of Update of Filing Fees Under the Independent Offices Appropriations Act of 1952

In the matter of: Fees applicable to producer matters under the Natural Gas Act, Docket No. RM82-25-000; Fees applicable to natural gas pipeline rate matters, Docket No. RM83-2-000; Fees applicable to the Natural Gas Policy Act, Docket No. RM82-30-000; Fees applicable to General Activities, Docket No. RM82-35-000; Fees applicable to Natural Gas Pipelines, Docket No. RM82-31-000; Fees applicable to Electric Utilities, Cogenerators, and Small Power Producers, Docket No. RM82-38-000; Revisions to the Purchased Gas Adjustment Regulations, Docket No. RM86-14-000; Filing Fees Under the Independent Offices Appropriations Act of 1952, Docket No. RM87-26-000; Revision of Filing Fees for Natural Gas Rate and Tariff Filings, Docket No. RM88-28-000.

The Federal Energy Regulatory Commission (Commission), by its designee the Executive Director,[1] is issuing this final rule to update the filing fees the Commission assesses for specific services and benefits provided to identifiable beneficiaries. The Independent Offices Appropriations Act of 1952 (IOAA) authorizes the Commission to establish and collect these fees [2] and the Commission's regulations require an annual update of the IOAA fees based on data from the previous fiscal year.[3] The Commission is establishing updated fees on the basis of the Commission's cost, completion, and work time data for fiscal year 1988. The adjusted fees announced in this final rule will become effective 30 days after publication in the **Federal Register**.

The new fee schedule is as follows:

Fees Applicable to Producer Matters Under the Natural Gas Act

1. Blanket certificates for small producers (codified at 18 CFR 381.201) $480
2. Producer certificates of public convenience and necessity (18 CFR 381.202) $1,840
3. Changes in producer rate schedules (18 CFR 381.203) $560

Fees Applicable to Natural Gas Pipeline Rate Matters [4]

1. Pipeline tariff filings for general changes in rates and for changes other than in rates
(a) For major natural gas companies (18 CFR 381.204(a)) $4,510
(b) For natural gas companies other than major natural gas companies (18 CFR 381.204(b)) $1,800

2. Pipeline tariff filings that track certain costs
(a) For major natural gas companies
(1) Annual filing under § 154.305 (18 CFR 381.205(a)(1)) $5,060
(2) Quarterly filing under § 154.308 (18 CFR 381.205(a)(2)) $1,330
(3) Interim adjustment filing under § 154.309 (18 CFR 381.205(a)(3)) $610
(4) Any other tariff filing that tracks costs (18 CFR 381.205(a)(4)) $1,330
(b) For natural gas companies other than major natural gas companies
(1) Annual filing under § 154.305 (18 CFR 381.205(b)(1)) $2,020
(2) Quarterly filing under § 154.308 (18 CFR 381.205(b)(2)) $530
(3) Interim adjustment filing under § 154.309 (18 CFR 381.205(b)(3)) $240
(4) Any other tariff filing that tracks costs (18 CFR 381.205(b)(4)) $530

Fees Applicable to the Natural Gas Policy Act

1. Adjustments under section 502(c) of the Natural Gas Policy Act (18 CFR 381.401) $4,300
2. Review of jurisdictional agency determinations (18 CFR 381.402) $80
3. Petitions for rate approval pursuant to § 284.123(b)(2) (18 CFR 381.403) $1,680
4. Initial or extension reports for Title III transactions (18 CFR 381.404) $240

Fees Applicable to General Activities

1. Request for interpretation by the Office of the Chief Accountant (18 CFR 381.301) $310
2. Petition for issuance of a declaratory order (except under Part I of the Federal Power Act) (18 CFR 381.302(a)) $9,260
3. Review of a Department of Energy remedial order:
Amount in controversy
$0-9,999 (18 CFR 381.303(b)) $100
$10,000-29,999 (18 CFR 381.303(b)) $600
$30,000 or more (18 CFR 381.303(a)) $9,590
4. Review of a Department of Energy denial of adjustment:
Amount in controversy
$0-9,999 (18 CFR 381.304(b)) $100
$10,000-29,999 (18 CFR 381.304(b)) $600
$30,000 or more (18 CFR 381.304(a)) $7,230
5. Written legal interpretations by the Office of the General Counsel (18 CFR 381.305(a)) $1,650

Fees Applicable to Natural Gas Pipelines

1. Pipeline certificate applications (18 CFR 381.207(b)) $26,280
2. Requests under the blanket certificate notice and protest procedures (18 CFR 381.208(a)) $1,470
3. Curtailment filings (18 CFR 381.209(b)) $5,330

Fees Applicable to Electric Utilities, Cogenerators, and Small Power Producers

1. Rate schedule filings under sections 205 and 206 of the Federal Power

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[1] 18 CFR 375.313(a) (1988).

[2] 31 U.S.C. 9701 (1982).

[3] 18 CFR 381.104 (1988).

[4] There is no fee for a tariff filing that responds to an order requiring compliance issued by the Commission to a specifically identified pipeline with respect to a specific tariff previously filed by that pipeline.

Act (18 CFR 381.502(a)) ..... [5] $6,630
2. Certification of qualifying status as a small power production facility (18 CFR 381.505(a)) $5,360
3. Certification of qualifying status as a cogeneration facility (18 CFR 381.505(a)) $6,350
4. Extension of equipment testing periods (18 CFR 381.506) $1,010
5. Applications to assume obligation or liability as guarantor or for the negotiated placement of securities (18 CFR 381.507) $4,470
6. Authorization to issue equity or debt securities (18 CFR 381.508) $1,550
7. Corporate applications involving one or more jurisdictional utilities (18 CFR 381.509) $8,800
8. Applications to hold interlocking positions (18 CFR 381.510) $2,510

Fees Applicable to the Public Utility Regulatory Policies Act of 1978

1. 5 Megawatt exemption application (18 CFR 381.601) $15,920

List of Subjects in 18 CFR Part 381

Natural gas, Reporting and recordkeeping requirements.

In consideration of the foregoing, the Commission amends Part 381 in Chapter I, Title 18, *Code of Federal Regulations,* as set forth below.

Kenneth F. Plumb,
Executive Director.

PART 381—FEES

1. The authority citation for Part 381 continues to read as follows:

Authority: Department of Energy Organization Act, 42 U.S.C. 7101–7352 (1982); E.O. 12009, 3 CFR 1978 Comp., p. 142; Independent Offices Appropriations Act, 31 U.S.C. 9701 (1982); Natural Gas Act, 15 U.S.C. 717–717W (1982); Federal Power Act, 16 U.S.C. 791–828c (1982); Public Utility Regulatory Policies Act, 16 U.S.C. 2601–2645 (1982); Interstate Commerce Act, 49 U.S.C. 1–27 (1976).

§ 381.201 [Amended]

2. Section 381.201 is amended by removing $540 and inserting $480 in its place.

§ 381.202 [Amended]

3. Section 381.202 is amended by removing $1,920 and inserting $1,840 in its place.

§ 381.203 [Amended]

4. Section 381.203 is amended by removing $510 and inserting $560 in its place.

§ 381.204 [Amended]

5. In § 381.204, paragraph (a) is amended by removing $4,320 and inserting $4,510 in its place and paragraph (b) is amended by removing $1,720 and inserting $1,800 in its place.

§ 381.205 [Amended]

6. In § 381.205, paragraph (a)(1) is amended by removing $4,440 and inserting $5,060 in its place; paragraph (a)(2) is amended by removing $910 and inserting $1,330 in its place; paragraph (a)(3) is amended by removing $910 and inserting $610 in its place; and paragraph (a)(4) is amended by removing $910 and inserting $1,330 in its place.

7. In § 381.205, paragraph (b)(1) is amended by removing $1,770 and inserting $2,020 in its place; paragraph (b)(2) is amended by removing $360 and inserting $530 in its place; paragraph (b)(3) is amended by removing $360 and inserting $240 in its place; and paragraph (b)(4) is amended by removing $360 and inserting $530 in its place.

§ 381.207 [Amended]

8. In § 381.207, paragraph (b) is amended by removing $19,450 and inserting $26,280 in its place.

§ 381.208 [Amended]

9. In § 381.208, paragraph (a) is amended by removing $2,120 and inserting $1,470 in its place.

§ 381.209 [Amended]

10. In § 381.209, paragraph (b) is amended by removing $4,060 and inserting $5,330 in its place.

§ 381.301 [Amended]

11. Section 381.301 is amended by removing $200 and inserting $310 in its place.

§ 381.302 [Amended]

12. In § 381.302, paragraph (a) is amended by removing $11,670 and inserting $9,260 in its place.

§ 381.303 [Amended]

13. In § 381.303, paragraph (a) is amended by removing $10,260 and inserting $9,590 in its place.

§ 381.304 [Amended]

14. In § 381.304, paragraph (a) is amended by removing $3,660 and inserting $7,230 in its place.

§ 381.305 [Amended]

15. In § 381.305, paragraph (a) is amended by removing $2,460 and inserting $1,650 in its place.

§ 381.401 [Amended]

16. Section 381.401 is amended by removing $2,430 and inserting $4,300 in its place.

§ 381.402 [Amended]

17. Section 381.402 is amended by removing $75 and inserting $80 in its place.

§ 381.403 [Amended]

18. Section 381.403 is amended by removing $1,990 and inserting $1,680 in its place.

§ 381.404 [Amended]

19. Section 381.404 is amended by removing $410 and inserting $240 in its place.

§ 381.502 [Amended]

20. In § 381.502, paragraph (a) is amended by removing $5,780 and inserting $6,630 in its place.

§ 381.505 [Amended]

21. In § 381.505, paragraph (a) is amended by removing $6,560 and inserting $5,360 in its place and by removing $4,310 and inserting $6,350 in its place.

§ 381.506 [Amended]

22. Section 381.506 is amended by removing $1,110 and inserting $1,010 in its place.

§ 381.507 [Amended]

23. Section 381.507 is amended by removing $3,430 and inserting $4,470 in its place.

§ 381.508 [Amended]

24. Section 381.508 is amended by removing $2,010 and inserting $1,550 in its place.

§ 381.509 [Amended]

25. Section 381.509 is amended by removing $8,420 and inserting $8,800 in its place.

§ 381.510 [Amended]

26. Section 381.510 is amended by removing $1,100 and inserting $2,510 in its place.

§ 381.601 [Amended]

27. Section 381.601 is amended by removing $16,430 and inserting $15,920 in its place.

FR Doc. 89–7402 Filed 3–28–89; 8:45 am]
BILLING CODE 6717-01-M

RAILROAD RETIREMENT BOARD

20 CFR Parts 225, 226, 227 and 232

Primary Insurance Amount Determinations

AGENCY: Railroad Retirement Board.

ACTION: Final rule.

[5] No fee is assessed for rate schedule filings that have no effect on the rate a utility charges or that involve only rate decreases.

SUMMARY: The Railroad Retirement Board [Board] hereby amends its regulations by adding a new part which explains primary insurance amounts used in computing employee, spouse, divorced spouse and survivor annuities, as well as how primary insurance amounts are affected by delayed retirement credits, cost-of-living increases, recomputation and adjustment. The subjects covered in this part contain rules not documented in current regulations.

EFFECTIVE DATE: March 29, 1989.

FOR FURTHER INFORMATION CONTACT: Michael Litt, Bureau of Law, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611, (312) 751–4929 (FTS 386–4929).

SUPPLEMENTARY INFORMATION: The Board hereby adds a new Part 225, Primary Insurance Amount Determinations. This change in the Board's regulations was published in the **Federal Register** as a proposed rule on September 7, 1983, and public comments were requested for a 60-day period (48 FR 40390). Although the Board received no comments on the proposed rule, certain revisions are required to conform Part 225 to current law. However, the topics covered in this part are essentially the same as those published in the proposed rule. Also, in keeping with the Board's effort to simplify and clarify its regulations, this final rule differs from the proposed rule in that: the text has been changed to put it into plainer English, titles have been made more descriptive, additional sections have been added for purposes of clarity and each major subpart begins with a "General" section to give the reader an orientation to its scope and contents. These changes in form and structure should make the part easier to use and understand. The Board has determined that a further period for public comment is unnecessary and is publishing this part as a final rule. Current Part 225 of the Board's regulations entitled "Computation of Annuity" is hereby redesignated as Part 226 and remains unchanged.

Part 225 is divided into seven Subparts A through G:

Subpart A, General (§§ 225.1 through 225.4), explains that the different primary insurance amount (PIA) computations used in the calculation of any retirement or survivor annuity are all based on certain formulas which are prescribed under section 215 of the Social Security Act. This subpart clearly and simply defines all of the terms relating to primary insurance amounts as they are used in this part. The proposed regulations did not define some of the terms. This subpart discusses PIA computation formulas and relates them to the PIA's which the Board uses. The limitation in the amount of earnings used to compute a PIA is also discussed in Subpart A.

Subpart B, PIA's Used in Computing Employee, Spouse and Divorced Spouse Annuities (§§ 225.10 through 225.15), describes the PIA's used by the Board in computing the annuity for an employee, spouse or divorced spouse who is entitled under the Railroad Retirement Act.

The 1983 Amendments to the Railroad Retirement Act, commonly referred to as the Railroad Retirement Solvency Act, changed the deeming provisions for employees who qualify for an age and service annuity based on 30 years of railroad service. The deeming provision affected the calculation of the Tier I PIA that is used in computing the tier I component of an annuity. Proposed Part 225 did not detail those changes in the Railroad Retirement Act affecting annuities based on 30 years of railroad service because the proposed part was written before passage of the Amendments.

Before the 1983 Amendments to the Railroad Retirement Act, an employee who was less than age 65 with 30 years of railroad service was deemed to be age 65 on his or her annuity beginning date for purposes of computing a Tier I PIA. The Railroad Retirement Act as amended affects the Tier I PIA of employees who acquire 30 years of railroad service or attain age 60 after June 30, 1984, and retire before age 62. For months before the first full month in which the employee is age 62, the average indexed monthly earnings on which the Tier I PIA is based is determined as if the employee's eligibility year were the year the annuity begins. Whereas, the benefit computation years used are based on the date of the employee's actual attainment of age 62. In addition, no cost-of-living increases in the Tier I PIA are payable before an employee attains age 62. The Tier I PIA is calculated in accordance with Social Security Act provisions when an employee with 30 years of railroad service retires in or after the month age 62 is attained.

Subpart C, PIA's Used in Computing Survivor Annuities and the Amount of the Residual Lump-Sum Payable (§§ 225.20 through 225.26), describes the PIA's used in computing survivor annuities and the amount of the residual lump-sum payable when retirement annuity payments were made.

Subpart D, Delayed Retirement Credits (§§ 225.30 through 225.36), discusses when an employee of retirement age can earn credit for months in which either the employee actually delayed retirement or all (or certain portions) of the employee's annuity was not paid due to earnings in excess of the exempt amount. Months for which delayed retirement credits (DRC's) are due, how the amount of credit is figured and the PIA's to which DRC's are added are discussed in this subpart. This subpart also discusses when a PIA used in computing a retirement annuity can be increased for DRC's and the effect of DRC's on survivor annuities.

The 1983 Amendments to the Social Security Act increased the percentage amounts used in figuring the amount of the credit to be applied to PIA's. Proposed Part 225 did not detail those changes in percentage amount.

The Social Security Act states that the amount of the delayed retirement credit is a percentage increase which is based on the year when an individual becomes eligible for old age benefits. The age of eligibility is 62. However, the part discusses the credit in terms of a percentage increase based on when the employee attains age 65 because, under the Social Security Act, that is the current age at which credit can be earned.

Before the 1983 Social Security Act Amendments, the delayed retirement credit percentage amount was one-fourth of one percent; and credit could be earned for any of the months beginning with the month of attainment of age 65 and ending with the month before attainment of age 72. This rate was applicable to employees who attained age 65 at any time after 1981. The 1983 Amendments provide that for individuals who attain age 65 in 1990 or later, the one-fourth of one percent rate will be increased by one-twenty-fourth of one percent in each even year until the rate reaches two-thirds of one percent for individuals attaining age 65 in 2008 or later. The Amendments also lowered the age at which credits can no longer be earned from 72 to 70. This lower age applies effective January 1984.

Subpart E, Cost-of-Living Increases (§§ 225.40 through 225.44), explains that a cost-of-living increase is an automatic increase in a PIA provided by the Social Security Act and that the Social Security Administration sets the percentage amount of any PIA cost-of-living increase paid by the Board.

This part details the changes in the cost-of-living increase caused by the 1983 Social Security Act Amendments. Prior to the 1983 Social Security Administration (Social Security) always based cost-of-living increases in rises in the consumer price index; and the cost-of-living increase was payable for June (paid in the July payment). In order to deal with expected deficits in the social security trust funds, the Amendments changed the method and time for computing cost-of-living increases. When the social security trust fund ratio is less than a specified amount, Social Security determines whether there will be a cost-of-living increase and the amount of the increase by using the smaller of the increase in either the consumer price index or the average wage index. Rather than using first quarter index figures as had previously been done, the Amendments changed the comparison so that it is made from the third quarter of one year to the third quarter of the next year. Also, the month for which a cost-of-living increase is effective was changed from June to December (paid in the January payment). Therefore, Subpart E states that, depending on the condition of the social security trust funds, the cost-of-living increase can be based on rises in either the consumer price index or the average wage index. Likewise, the subpart states that a cost-of-living increase is payable in December (paid in the January payment).

Subpart F, Recomputing PIA's (§§ 225.50 through 225.58), explains that after a person begins receiving an annuity, certain PIA's can be recomputed due to additional information and legislative changes. The 1983 Amendments to the Social Security Act estalished a reduced PIA computation for employees who are eligible for certin periodic pension payments. Employees who become eligible for periodic pension payments after 1985 based, in part or in whole, on their work after 1956 in service not covered by either the Social Security Act or the Railroad Retirement Act are affected. The reduction only applies when the employee attains age 62 after 1985 or become eligible for a disability benefit after 1985 and he or she has less than 30 years of combined railroad and social security coverage. The amendments affect the coputation of the Tier I PIA used in computing an employee, spouse or divorced spouse annuity as well as the Overall Minimum PIA.

Subpart G, Adjusting PIA's (§ 225.60), describes the adjustment in the Tier I PIA when an employee, who retires at age 60 or 61 based on 30 years of railroad service, attains age 62.

The Railroad Retirement Act provides an age and service annuity for employees with 30 years of railroad service who are at least age 60. As noted earlier, the 1983 Amendments to the Railroad Retirement Act made changes that affect the calculation of the Tier I PIA for these employees.

Before the 1983 Amendments to the Railroad Retirement Act, an employee with 30 years of railroad service was deemed to be age 65 when his or her annuity began. The deeming provision as it affected the Tier I PIA calculation remained in effect so long as the employee was entitled to an annuity based on age.

The Railroad Retirement Act as amended provides for an adjustment of the Tier I PIA when an employee, who retires at age 60 or 61 based on 30 years of railroad service, attains age 62. The change affects employees who acquire 30 years of railroad service or attain age 60 after June 30, 1984. The adjustment serves to compute a Tier I PIA based on Social Security Act provisions, thereby eliminating the Tier I PIA deeming provision of the Railroad Retirement Act. The adjusted Tier I PIA is paid beginning with the first full month the annuitant is age 62.

The Bureau of Law within the Board is currently involved in a project to revise all regulations for which it has responsibility. It is the aim of the project to incorporate the latest legislative, legal and policy changes while using plain English, in order to make the regulations easier to use and understand. As a result, this part has been written to be an integral part of the planned revised and reorganized regulations and may, in certain instances, refer to parts of regulations which are not currently in effect. The Board believes that any minor inconveniences that might arise as a result of publishing the regulations on a part-by-part basis are outweighed by the benefits derived from publishing current, more easily useable and understandable regulations on a consistent basis.

The Board has determined that this is not a major rule under Executive Order 12291. Therefore, no regulatory impact analysis is required. In addition, this part imposes no reporting or record keeping requirements requiring OMB clearance.

List of Subjects in 20 CFR Parts 225, 226, 227 and 232

Employee benefit plans, Railroad employees, Railroad Retirement, Railroads.

For the reasons set out in the preamble, Chapter II of Title 20 of the *Code of Federal Regulations* is amended as follows:

PART 225—COMPUTATION OF ANNUITY

1. Part 225 is redesignated as Part 226 and all internal references are changed accordingly.

2. The authority citation for newly redesignated Part 226 is revised to read as follows:

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

PART 227—COMPUTING SUPPLEMENTAL ANNUITIES

3. The authority citation for Part 227 is revised to read as follows:

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

§ 227.3 [Amended]

4. Section 227.3 is amended by removing the reference to "Part 225" and inserting "Part 226."

PART 232—SPOUSES' ANNUITIES

5. The authority citation for Part 232 is revised to read as follows:

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

§ 232.302 [Amended]

6. Section 232.302(a)(2) is amended by removing the reference to "§ 225.6" and inserting "§ 226.6."

7. A new 20 CFR Part 225 is added as follows:

PART 225—PRIMARY INSURANCE AMOUNT DETERMINATIONS

Subpart A—General

Subpart B—PIA's Used in Computing Employee, Spouse and Divorced Spouse Annuities

Subpart C—PIA's Used in Computing Survivor Annuities and the Amount of the Residual Lump-Sum Payable

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

Subpart A—General

§ 225.1 Introduction.

This part discusses Primary Insurance Amount, which is referred to as PIA throughout this part, and which is an important element in the calculation of any retirement or survivor annuity. There are a number of PIA computations based on different periods, amounts, and types of earnings. However, the formulas for computing any PIA are prescribed in section 215 of the Social Security Act and are described in detail in the regulations of the Social Security Administration (20 CFR 404, Subpart C). This part discusses PIA computation formulas and relates them to the PIA's which the Board uses. Descriptions of the majority of PIA's used in computing retirement or survivor annuities under the Railroad Retirement Act are contained in this part. Explanations are included of when delayed retirement credits and cost-of-living increases can be added to the PIA's used by the Board. This part also explains when and how a PIA is recomputed or adjusted. Since these regualtions are intended to address annuities currently being awarded, certain PIA's, not used in the computation of annuities awarded after August 13, 1981, are not included in these regulations. Parts 226, 228 and 229 of this chapter explain how PIA's are used in actual annuity computations.

§ 225.2 Definitions.

As used in this part:

"Average Indexed Monthly Earnings" means the result of dividing the total of the indexed earnings through the indexing year and the nonindexed earnings after the indexing year in the benefit computation years by the number of months in the benefit computation years. The indexing year for the Average Indexed Monthly Earnings PIA is the second year before the employee's eligibility year. Indexing of an employee's yearly earnings serves to put the earnings in proportion to the earnings level of all workers for the corresponding years, and to express the earnings in terms of a more recent dollar value. Indexed earnings are determined under section 215(b)(1) of the Social Security Act. The Average Indexed Monthly Earnings formula PIA is based on the Average Indexed Monthly Earnings amount.

"Average Monthly Earnings" means the average determined by dividing the acutal earnings used in computing the PIA by the total months in the benefit computation years. The Average Monthly Earnings is determined under section 215(b)(4) of the Social Security Act. The Average Monthly Earnings formula PIA is based on the Average Monthly Earnings amount.

"Base Years" means the years after 1950 (or 1936, if applicable) and up to the year in which the employee dies or is entitled to an annuity based on retirement or disability. When the employee's death occurs before he or she reaches retirement age as defined in section 216(l) of the Social Security Act, the Base Years include the year of the employee's death. Base Years are defined in sections 215(b)(2)(B)(ii) and 215(d) of the Social Security Act.

"Benefit Computation Years" means the years with the highest earnings used in computing the Average Indexed Monthly Earnings or Average Monthly Earnings. The number of Benefit Computation Years is determined in accordance with section 215(b)(2)(B)(i) of the Social Security Act and is based on the employee's age or when the employee becomes disabled or dies.

"Compensation" means "railroad compensation" which is the amount of creditable railroad earnings under the Railroad Retirement Act, as explained in Part 211 of this chapter.

"Earnings" means "compensation" creditable under the Railroad Retirement Act (other than compensation attributable to years of service prior to 1937) or "wages" creditable under the Social Security Act or both.

"Eligible" means that a person meets the necessary requirements and could qualify for payment if a valid application were filed.

"Eligibility Year" means the earliest of: the employee's year of attainment of age 62; The year of disability onset; or the year of death. The Eligibility Year determines the formula used to compute a Primary Insurance Amount. Eligibility Year is defined in section 215(a) of the Social Security Act.

"Employee" means any person who is working or has worked for a railroad employer who is eligible for a retirement annuity or on whose account a survivor is eligible for a survivor annuity, as explained in Part 216 of this chapter. For a detailed discussion of Employees under the Railroad Retirement Act, see Part 203 of this chapter.

"Entitled" means that a person meets the necessary requirements, files a valid application and establishes his or her right to payment.

"Indexed Earnings" means the employee's yearly earnings for the years after 1950 that have been adjusted to put the earnings in proportion to the earnings level of all workers for each of those years and to express the earnings in terms of a more recent dollar amount.

"Primary Insurance Amount" (PIA) means the result obtained by applying one of three formulas in the Social Security Act to the employee's earnings as prescribed under that Act. A PIA can be based on the Average Indexed Monthly Earnings formula, the Average Monthly Earnings formula or, in the case of the Special Minimum PIA, on a special formula based on years of coverage. Averaging earnings and PIA formulas are prescribed in section 215 of the Social Security Act.

"Social Security Act" means the Social Security Act as amended from time to time, unless the Act as in effect on a particular date is specified.

"Wages" means creditable wages or self-employment under sections 209 or 211, respectively, of the Social Security Act.

"Year of Service" means 12 months of railroad service credited in accordance with Part 210 of this chapter.

"Years of Coverage" means years after 1936 as defined in section 215(a)(1)(C)(ii) of the Social Security Act in which the employee had earnings over certain specified amounts. Years of Coverage is primarily a factor in determining the Special Minimum formula PIA amount.

§ 225.3 PIA computation formulas.

(a) *General.* PIA's are generally computed under one of two normal formulas determined by the employee's eligibility year. In addition, there is a special PIA formula, based on an employee's years of coverage, that is used when it produces a PIA that is higher than the PIA computed under the appropriate PIA formula. The two most common PIA formulas are the Average Indexed Monthly Earnings PIA formula and the Average Monthly Earnings PIA formula. The special PIA formula is called the Special Minimum PIA formula.

(b) *Average Indexed Monthly Earnings PIA formula.* When the employee's eligibility year is after 1978, the Tier I PIA, Overall Minimum PIA, Survivor Tier I PIA, Employee's Retirement Insurance Benefit PIA and Residual Lump-Sum PIA are computed under the Average Indexed Monthly Earnings PIA formula.

(c) *Average Monthly Earnings PIA formula.* The Average Monthly Earnings PIA formula is used to compute a PIA for one of two reasons: either the employee's eligibility year is before 1979 or the type of PIA requires that it always be computed under the Average Monthly Earnings PIA formula.

(1) *Use of Average Monthly Earnings PIA formula based on the employee's eligibility year.* The Average Monthly Earnings PIA formula is used in computing the Tier I PIA, the Overall Minimum PIA, the Employee Fictional Retirement Insurance Benefit PIA and the Residual Lump-Sum PIA when the employee's eligibility year is before 1979.

(2) *Types of PIA's always computed using the Average Monthly Earnings PIA formula.* The following PIA's used by the Board are determined under the Social Security Act as in effect on December 31, 1974, and are always computed using the Average Monthly Earnings PIA formula.

(i) Combined Earnings Dual Benefit PIA described in § 225.12.

(ii) Social Security Earnings Dual Benefit PIA described in § 225.13.

(iii) Railroad Earnings Dual Benefit PIA described in § 225.14.

(iv) Combined Earnings PIA described in § 225.23.

(v) Social Security Earnings PIA described in § 225.24.

(vi) Railroad Earnings PIA described in § 225.25.

(d) *Special Minimum PIA formula.* The Special Minimum PIA formula is based on the employee's years of coverage. The Special Minimum PIA formula usually applies when the employee had consistently low earnings during his or her working lifetime. The Special Minimum PIA formula is used when it is higher than the PIA calculated under the applicable Average Indexed Monthly Earnings formula or the Average Monthly Earnings formula.

§ 225.4 Limitation on amount of earnings used to compute a PIA.

Certain PIA's used by the Board are based on a combination of compensation and wages, while other PIA's used by the Board are based solely on either compensation or wages. For purposes of crediting earnings when computing any PIA, compensation is always treated as wages. Regardless of whether a PIA is based on a combination of compensation and wages or exclusively on either compensation or wages, the total earnings for each year used in computing a PIA cannot be higher than the maximum social security earnings creditable in that year under sections 209(a) and 211(b) of the Social Security Act. The various PIA's used by the Board are described in Subparts B and C of this part.

Subpart B—PIA's Used in Computing Employee, Spouse and Divorced Spouse Annuities

§ 225.10 General.

This subpart contains information about the PIA's that can be used in computing most employee, spouse and divorced spouse annuities. The Tier I PIA is used in computing the tier I component of an employee, spouse or divorced spouse annuity. The Combined Earnings Dual Benefit PIA, Social Security Earnings Dual Benefit PIA and Railroad Earnings Dual Benefit PIA are used in computing an employee's vested dual benefit component and a corresponding tier II component offset when entitlement to a vested dual benefit exists. Retirement annuity computations are discussed in Part 226 of this chapter. The Overall Minimum PIA is used in computing the overall minimum guaranty formula rate as discussed in Part 229 of this chapter.

§ 225.11 Tier I PIA.

(a) *General.* The Tier I PIA is used in computing an employee, spouse or divorced spouse tier I amount. Except for the cases described in paragraphs (b) through (d) of this section, a Tier I PIA is determined under sections 215 and 223 of the Social Security Act. Railroad and Social Security earnings are included in the calculation of a Tier I PIA.

(b) *Employee attains age 60 and/or acquires 30 years of service after June 30, 1984.* When an employee is entitled to an age and service annuity before the month of attaining age 62, as explained in Part 216 of this chapter, the following Railroad Retirement Act rules apply in addition to those in § 225.11(a) in computing the Tier I PIA.

(1) Four months before the first full month the employee is age 62, the Average Indexed Monthly Earnings is determined as if the employee's eligibility year were the year the annuity began.

(2) The benefit computation years used in computing the Tier I PIA are based on the date of the employee's actual attainment of age 62.

(3) The Tier I PIA is adjusted when the employee reaches age 62 to use the year in which the employee attains age 62 as the eligibility year.

(4) Cost-of-living increases and recomputations apply after the employee attains age 62.

(c) *Employee attains age 60 and acquires 30 years of service before July 1, 1984.* For purposes of determining the benefit computation years to be used in computing the Tier I PIA for an employee who is age 60 through 64, and who both has 30 years of service and attains age 60 prior to July 1, 1984, the employee is considered to be age 65 when the age and service annuity begins. For purposes of computing the Average Indexed Monthly Earnings, the eligibility year is the year the annuity begins or age 62, if earlier. Cost-of-living increases are paid from the year the annuity begins. Recomputations are paid after the employee actually attain age 62.

(d) *Disability annuity.* When an employee is entitled to a disability annuity, as explained in Subpart B of Part 216 of this chapter, the following Railroad Retirement Act rule applies in addition to those in § 225.11(a) in computing the Tier I PIA. The Tier I PIA is computed as if the employee were 62 years old on the date, as determined by the Board, of onset of disability, if the employee is under age 62 on that date.

§ 225.12 Combined Earnings Dual Benefit PIA.

(a) *General.* The Combined Earnings Dual Benefit PIA is used in computing the employee vested dual benefit when the employee meets certain eligibility requirements as described in Part 216 of this chapter. The Combined Earnings Dual Benefit PIA is also used in computing the employee's tier II annuity component when the employee becomes entitled to a vested dual benefit. This PIA is determined under section 215 of the Social Security Act as in effect on December 31, 1974. Railroad and social security earnings after 1950 (or after 1936, if applicable) and through December 31, 1974, or the last year of railroad service before 1974 are included in the calculation of this PIA.

(b) *Employee insured on own wage record on December 31, 1974.* Railroad and social security earnings after 1950 (or after 1936, if a higher PIA would result) and through 1974 are used in computing the Combined Earnings Dual Benefit PIA if the employee—

(1) Had at least 25 years of railroad service before January 1, 1975; or

(2) Had at least 10 years of railroad service as of December 31, 1974, and worked in the railroad industry anytime during calendar year 1974; or

(3) Had at least 10 years of railroad service as of December 31, 1974, and had a current connection with the railroad industry (as described in Part 216 of this chapter) on December 31, 1974, or when the employee annuity began.

(c) *Employee insured on own wage record in last year of railroad service.* Railroad and social security earnings after 1950 (or after 1936, if a higher PIA would result) and through December 31 of the year before 1974 in which the employee last worked in railroad service are used in computing the Combined Earnings Dual Benefit PIA if the employee—

(1) Had at least 10 but less than 25 years of railroad service through December 31, 1974; and

(2) Did not work in the railroad industry during 1974; and

(3) Did not have a current connection with the railroad industry (as described in Part 216 of this chapter) on December 31, 1974, or when the employee annuity began.

§ 225.13 Social Security Earnings Dual Benefit PIA.

(a) *General.* The Social Security Earnings Dual Benefit PIA is used in computing the employee vested dual benefit when the employee meets certain eligibility requirements as described in Part 216 of this chapter. The Social Security Dual Benefit PIA is also used in computing the employee's tier II annuity component when the employee becomes entitled to a vested dual benefit. This PIA is determined under section 215 of the Social Security Act as in effect on December 31, 1974. Social security earnings after 1950 (or after 1936, if applicable) and through December 31, 1974, or the last year of railroad service before 1974 are included in the calculation of this PIA.

(b) *Employee insured on own wage record on December 31, 1974.* Social security earnings after 1950 (or after 1936, if a higher PIA would result) and through 1974 are used in computing the Social Security Earnings Dual Benefit PIA if the employee—

(1) Had at least 25 years of railroad service before January 1, 1975; or

(2) Had at least 10 years of railroad service as of December 31, 1974, and worked in the railroad industry anytime during calendar year 1974; or

(3) Had at least 10 years of railroad service as of December 31, 1974, and has a current connection with the railroad industry (as described in Part 216 of this chapter) on December 31, 1974, or when the employee annuity began.

(c) *Employee insured on own wage record in last year of railroad service.* Social security earnings after 1950 (or after 1936, if a higher PIA would result) and through December 31 of the year before 1974 in which the employee last worked in the railroad industry are used in computing the Social Security Earnings Dual Benefit PIA if the employee—

(1) Had at least 10 but less than 25 years of railroad service through December 31, 1974; and

(2) Did not work in the railroad industry during 1974; and

(3) Did not have a current connection with the railroad industry (as described in Part 216 of this chapter) on December 31, 1974, or when the employee annuity began.

§ 225.14 Railroad Earnings Dual Benefit PIA.

(a) *General.* The Railroad Earnings Dual Benefit PIA is used in computing the employee vested dual benefit when the employee meets certain eligibility requirements as described in Part 216 of this chapter. The Railroad Earnings Dual Benefit PIA is also used in computing the employee's tier II annuity component when the employee becomes entitled to a vested dual benefit. This PIA is determined under section 215 of the Social Security Act as in effect on December 31, 1974. Railroad earnings after 1950 (or after 1936, if applicable) and through December 31, 1974, or the last year of railroad service before 1974 are included in the calculation of this PIA.

(b) *Employee insured on own wage record on December 31, 1974.* Railroad earnings after 1950 (or after 1936, if a higher PIA would result) and through 1974 are used in computing the Railroad Earnings Dual Benefit PIA if the employee—

(1) Had at least 25 years of railroad service before January 1, 1975; or

(2) Had at least 10 years of railroad service as of December 31, 1974, and worked in the railroad industry anytime during calendar year 1974; or

(3) Had at least 10 years of railroad service as of December 31, 1974, and had a current connection with the railroad industry (as described in Part 216 of this chapter) on December 31, 1974, or when the employee annuity began.

(c) *Employee insured on own wage record in last year of railroad service.* Railroad earnings after 1950 (or after 1936, if a higher PIA would result) and through December 31 of the year before 1974 in which the employee last worked in railroad service are used in computing the Railroad Earnings Dual Benefit PIA if the employee—

(1) Had at least 10 but less than 25 years of railroad service through December 31, 1974; and

(2) Did not work in the railroad industry during 1974; and

(3) Did not have a current connection with the railroad industry (as described in Part 216 of this chapter) on December 31, 1974, or when the employee annuity began.

§ 225.15 Overall Minimum PIA.

The Overall Minimum PIA is considered when the employee would be eligible for an old age insurance benefit or a disability insurance benefit under section 202 or 223 of the Social Security Act based on combined railroad and social security earnings. The Overall Minimum PIA is used in computing the social security overall minimum guaranty amount. The overall minimum guaranty rate annuity formula is discussed in Part 229 of this chapter. The Overall Minimum PIA is determined under the rules in sections 215 and 223 of the Social Security Act. Railroad and social security earnings are included in the calculation of the Overall Minimum PIA. The Overall Minimum PIA is used to determine the amount which is treated as a social security benefit for the purpose of taxation pursuant to section 86(d) of the Internal Revenue Code of 1986.

Subpart C—PIA's Used in Computing Survivor Annuities and the Amount of the Residual Lump-Sum Payable

§ 225.20 General.

The Survivor Tier I PIA and the Employee RIB PIA are used in computing the tier I component of a survivor annuity. The Combined Earnings PIA, Social Security Earnings

PIA and Railroad Earnings PIA may be used in computing a vested dual benefit offset in the survivor tier II component when the survivor tier II is based on a percentage of the employee annuity tier II. In addition, these three PIA's are identical to those dual benefit PIA's used in computing an employee retirement annuity, as described in Subpart B of this part, when the employee died after being entitled to an annuity. Survivor annuity computations are discussed in Part 228 of this chapter. The Residual Lump-Sum PIA (RLS PIA) is used in computing the amount of the residual lump-sum payable when retirement annuity payments were made, as explained in Part 234 of this chapter.

§ 225.21 Survivor Tier I PIA.

The Survivor Tier I PIA is used in computing the tier I component of a survivor annuity. This PIA is determined in accordance with section 215 of the Social Security Act using the deceased employee's combined railroad and social security earnings after 1950 (or after 1936 if a higher PIA would result) through the date of the employee's death.

§ 225.22 Employee RIB PIA used in survivor annuities.

The Employee Retirement Insurance Benefit PIA (Employee RIB PIA) is used to compute the employee RIB amount when the employee had received a retirement annuity which was reduced for early retirement. As explained in Part 228 of this chapter, the employee RIB amount may be used in the survivor tier I component. This PIA is computed in accordance with section 215 of the Social Security Act using the deceased employee's combined railroad and social security earnings. The Employee RIB PIA is the same as the Survivor Tier I PIA when the employee had no earnings in the year of death. Earnings in the year of death are used in the recomputed PIA beginning January 1 of the year after the employee's death. (See Subpart F of this part for a discussion of PIA recomputations.)

§ 225.23 Combined Earnings PIA used in survivor annuities.

The Combined Earnings PIA used in survivor annuities may be used in computing the tier II component when the survivor tier II is based on a percentage of the employee annuity tier II and the employee had been or would be, if he or she were still alive, entitled to a vested dual benefit. If the employee received a retirement annuity before death, this PIA is identical to the retirement Combined Earnings Dual Benefit PIA described in Subpart B of this part. If a retirement annuity was not paid before the employee's death, the PIA is determined as if the employee were 65 years old in the month of his or her death. The Combined Earnings PIA used in survivor annuities is determined in accordance with section 215 of the Social Security Act as in effect on December 31, 1974. It is computed using the deceased employee's combined railroad and social security earnings after 1950 (or after 1936 if a higher PIA would result) through December 31, 1974.

§ 225.24 SS Earnings PIA used in survivor annuities.

The Social Security Earnings PIA (SS Earnings PIA) used in survivor annuities may be used in computing the tier II component when the survivor tier II is based on a percentage of the employee annuity tier II and the employee had been or would be, if he or she were still alive, entitled to a vested dual benefit. If the employee received a retirement annuity before death, this PIA is identical to the retirement SS Earnings Dual Benefit PIA described in Subpart B of this part. If a retirement annuity was not paid before the employee's death, the PIA is determined as if the employee were 65 years old in the month of his or her death. The SS Earnings PIA used in survivor annuities is determined in accordance with section 215 of the Social Security Act as in effect on December 31, 1974. It is computed using the deceased employee's social security earnings after 1950 (or after 1936, if a higher PIA would result) through December 31, 1974.

§ 225.25 RR Earnings PIA used in survivor annuities.

The Railroad Earnings PIA (RR Earnings PIA) used in survivor annuities may be used in computing the tier II component when the survivor tier II is based on a percentage of the employee annuity tier II and the employee had been or would be, if he or she were still alive, entitled to a vested dual benefit. If the employee received a retirement annuity before death, this PIA is identical to the retirement RR Earnings Dual Benefit PIA described in Subpart B of this part. If a retirement annuity was not paid before the employee's death, the PIA is determined as if the employee were 65 years old in the month of his or her death. The RR Earnings PIA used in survivor annuities is determined in accordance with section 215 of the Social Security Act as in effect on December 31, 1974. It is computed using the deceased employee's railroad earnings after 1950 (or after 1936, if a higher PIA would result) through December 31, 1974.

§ 225.26 Residual Lump-Sum PIA.

The Residual Lump-Sum PIA (RLS PIA) is used to compute the regular retirement annuity amounts to be deducted from the gross residual lump-sum amount in determining the amount of the residual lump-sum payable, as explained in Part 234 of this chapter. The RLS PIA is determined in accordance with section 215 of the Social Security Act using the employee's railroad compensation after 1950 (or after 1936, if a higher PIA would result) as if it were social security earnings. The RLS PIA is computed just like the retirement Tier I PIA described in Subpart B of this part, except that social security earnings are not used to compute the RLS PIA.

Subpart D—Delayed Retirement Credits

§ 225.30 General.

(a) A delayed retirement credit (DRC) is a percentage increase in a PIA. An employee who would have an insured status in accordance with section 214(a) of the Social Security Act based on combined railroad and social security earnings can earn DRC's. A DRC can be earned by the employee for each month, in or after the month of attaining age 65 and before the month of attaining age 70 (72 before 1984), in which the employee does not receive either—

(1) An annuity because the employee did not apply for an annuity; or

(2) The tier I and vested dual benefit work deduction annuity components or the social security overall minimum annuity rate because they are not paid since the employee works and has earnings in excess of the exempt amount. (The tier I and vested dual benefit work deduction annuity components, the social security overall minimum annuity rate and the exempt amount are described in Parts 226, 229 and 230 of this chapter, respectively.)

(b) Any credit earned by the employee also extends to the employee's widow(er), remarried widow(er) or surviving divorced spouse when he or she receives a survivor annuity that is based on age or disability.

(c) Credit earned by the employee does not extend to the employee's spouse or divorced spouse.

§ 225.31 PIA's to which DRC's are added.

(a) DRC's can be added to the following PIA's when used in computing the following benefits:

(1) Tier I PIA used in computing a retirement employee annuity.

(2) Overall Minimum PIA used in computing a retirement employee annuity.

(3) Survivor Tier I PIA used in computing a widow(er), remarried widow(er) or surviving divorced spouse annuity based on age or disability.

(4) Employee RIB PIA used in computing a widow(er), remarried widow(er) or surviving divorced spouse annuity based on age or disability.

(5) RLS PIA used in computing the amount of the residual lump-sum payable (as explained in Part 234 of this chapter).

§ 225.32 DRC's and the Special Minimum PIA.

Delayed retirement credits cannot be added to the Special Minimum PIA. Delayed retirement credits can only be added to the regular PIA's used in computing the benefits outlined in § 225.31.

§ 225.33 Months for which DRC's are due.

(a) A DRC is due for each month after 1970 in which the employee is—

(1) Age 65 years old or older and under age 70 (72 before 1984); and

(2) Fully insured under section 214(a) of the Social Security Act based on combined railroad and social security earnings; and either—

(i) Is not entitled to an annuity because he or she did not apply for an annuity; or

(ii) Is entitled to an annuity but has the full amount of the tier I and vested dual benefit work deduction component (described in Part 226 of this chapter) or the social security overall minimum rate (described in Part 229 of this chapter) withheld because of earnings in excess of the exempt amount (as explained in Part 230 of this chapter).

(b) The months for which credit is due need not be consecutive.

§ 225.34 How the amount of the DRC is figured.

(a) The amount of the DRC depends on—

(1) The year the employee reaches age 65; and

(2) The number of months for which the credit is due, as explained in § 225.33.

(b) The percent given in paragraphs (b) (i), (ii), or (iii) of this section is multiplied by the PIA; that product is then multiplied by the number of months for which credit is due and rounded to the next lowest multiple of $0.10, if the answer is not already a multiple of $0.10. The result is the DRC which is added to the PIA.

(i) *Employee attained age 65 before 1982.* The DRC equals one-twelfth of one percent of the PIA times the number of months after 1970 in which the employee is age 65 or older and for which credit is due.

(ii) *Employee attains age 65 after 1981 and before 1990.* The DRC equals one-fourth of one percent of the PIA times the number of months in which the employee is age 65 or older and for which credit is due.

(iii) *Employee attains age 65 in 1990 or later.* The rate of the DRC (one-fourth of one percent) is increased by one-twenty-fourth of one percent in each even year through 2008. Therefore, depending on when the employee attains age 65, the DRC percent will be as follows—

Year employee attains age 65	Delayed retirement credit percent
1990	7/24 of 1 percent.
1991	Do.
1992	1/3 of 1 percent.
1993	Do.
1994	3/8 of 1 percent.
1995	Do.
1996	5/12 of 1 percent.
1997	Do.
1998	11/24 of 1 percent.
1999	Do.
2000	1/2 of 1 percent.
2001	Do.
2002	13/24 of 1 percent.
2003	Do.
2004	7/12 of 1 percent.
2005	Do.
2006	5/8 of 1 percent.
2007	Do.
2008 and later	2/3 of 1 percent.

The delayed retirement credit equals the appropriate percent of the PIA times the number of months in which the employee is age 65 or older and for which credit is due.

(c) *Example.* Mr. Jones was qualified for a full age and service annuity when he reached age 65 in January 1985, but decided not to apply for an annuity because he was still working. Mr. Jones stopped working on December 31, 1985, and applied for his annuity to begin January 1, 1986. Based on his earnings, his PIA was $350.50. Since Mr. Jones did not receive an annuity for the 12 months from the month in which he became 65 (January 1985) until the month following the month he stopped working (January 1986), he is due credit for each of those 12 months. The total amount of his DRC's is calculated as follows:

Percent		PIA		No. of months		Unrounded result		Total amount of DRC's
.25%	X	350.50	X	12	=	10.51	=	$10.50

Mr. Jones' PIA increase for DRC's is $361.00 (350.50 + 10.50).

§ 225.35 When a PIA used in computing a retirement annuity can be increased for DRC's.

Delayed retirement credits earned at different times are added to the PIA used in computing a retirement annuity as follows:

DRC's earned for month in	Are added to PIA
Years before the year the employee annuity begins.	On the date the annuity begins.
Year the annuity begins	On January 1 of the year after the annuity begins.
Years after the annuity begins, and before the year the employee attains age 70 (72 before 1984).	On January 1 of the year after the credits are earned.
Year the employee attains age 70 (72 before 1984).	In the month age 70 (or 72) is attained.

§ 225.36 Effect of DRC's on survivor annuities.

(a) *Widow(er), remarried widow(er) or surviving divorced spouse.* Delayed retirement credits that the employee earned are used in computing the tier I component of a widow(er), remarried widow(er) or surviving divorced spouse annuity. All DRC's, including credits earned in the year of death, can be used in computing the widow(er) or surviving divorced spouse annuity beginning with the month of death. Delayed retirement credits for months up to, but not including, the month of death are used.

(b) *Other survivor annuities.* Delayed retirement credits cannot be used in computing any other survivor annuity based on the deceased employee's record.

Subpart E—Cost-of-Living Increases

§ 225.40 General.

A cost-of-living increase is an automatic increase in a PIA provided under section 215(i) of the Social Security Act. The Social Security Administration determines the percentage amount of any cost-of-living increase paid by the Board.

§ 225.41 How a cost-of-living increase is determined and applied.

Depending on the condition of the social security trust funds, the increase can be based on rises in either the consumer price index as published by the Department of Labor or the average wage index which is the average of the annual total wages used for computing a PIA. The increase is payable when the appropriate index for the third calendar quarter of one year shows an increase of at least three percent over the same index for the third calendar quarter of the previous year (or the last calendar quarter within which a legislated general benefit increase became effective). No increase is payable for the calendar year that immediately follows a year in which a legislated general benefit increase was effective. The increase amount is determined by multiplying the PIA by the percentage increase in the appropriate quarter of a previous year.

§ 225.42 Notice of the percentage amount of a cost-of-living increase.

The percentage amount of the cost-of-living increase is published in the **Federal Register** by the Secretary of Health and Human Services within 45 days of the end of the measuring period used in finding the increase.

§ 225.43 PIA's subject to cost-of-living increases.

The Retirement Tier I, Overall Minimum, Survivor Tier I, Employee RIB and RLS PIA's are adjusted for cost-of-living increases. The remaining PIA's described in Subparts B and C of this part are frozen at the amounts determined under the Social Security Act as in effect on December 31, 1974.

§ 225.44 When a cost-of-living increase is payable.

A cost-of-living increase is payable beginning with December of the year for which the increase is due. The increase is paid in the January payment.

Subpart F—Recomputing PIA's

§ 225.50 General.

After an annuitant begins receiving an annuity, the PIA's may be recomputed as explained in § 225.52. Most recomputations result in an increase in the PIA. The Board pays a recomputed PIA when an increase of at least $1 results. Most recomputations are processed automatically and require no action by the annuitant.

§ 225.51 PIA's that are subject to recomputation.

The following PIA's are subject to recomputation—

(a) Tier I PIA;

(b) Survivor Tier I PIA;

(c) Overall Minimum PIA;

(d) Employee RIB PIA; and

(e) Residual Lump-Sum PIA.

§ 225.52 Reasons for recomputing a PIA.

There are three major reasons for recomputing a PIA:

(a) Recomputation to consider additional earnings.

(b) Recomputation when an employee is eligible for periodic pension payments based on other than railroad or social security earnings.

(c) Recomputation to use a new or different PIA formula, as provided in section 215(f) of the Social Security Act.

§ 225.53 Recomputation to consider additional earnings.

(a) *Additional earnings that cause a recomputation.* (1) *Earnings not included in earlier computation or recomputation.* The most common reason for recomputing a PIA is to include earnings that were not used previously, as described in paragraphs (a)(2) through (a)(4) of this section. The inclusion of these earnings may result in a revised Average Monthly Earnings or revised Average Indexed Monthly Earnings amount and, consequently, cause recomputation of the PIA.

(2) *Earnings in the year an employee becomes entitled to an age annuity or becomes disabled.* Earnings in the year an employee becomes entitled to an age annuity or becomes disabled are not used in the initial computation of the PIA. However, the Board does consider those earnings in a recomputation of the PIA and begins paying the higher benefits at the time described in paragraph (b) of this section.

(3) *Earnings not reported in time to use them in the computation of the PIA.* Because of the way reports of earnings are made, the earnings an employee has in the year before he or she becomes entitled to an annuity, becomes disabled, or dies, might not be reported in time to use them in computing the PIA. The Board recomputes the PIA with the new earnings information and begins paying annuitants the higher benefits based on the additional earnings at the time described in paragraph (b) of this section.

(4) *Earnings after entitlement that are used in a recomputation.* Earnings for a year after an employee becomes entitled to an annuity are used in a recomputation of a PIA when the earnings are higher than those for a year used in the previous PIA computation.

(b) *Effective date of recomputation to consider additional earnings.* A PIA that is recomputed to include additional earnings becomes payable at the latest of the following times:

(1) Date the annuity begins.

(2) January of the year following the year an employee receiving an age annuity attains age 62.

(3) January of the year following the year an employee becomes disabled.

(4) January of the year following the year in which the earnings are earned.

Example: Mr. Jones, a railroad employee, becomes entitled to an age annuity in June 1986, at the age of 62. Although Mr. Jones has earnings of $23,000 in the first five months of 1986, those earnings cannot be used in the initial computation of the Tier I PIA. However, effective with January 1, 1987, the Tier I PIA is recomputed to include the earnings for 1986.

§ 225.54 Recomputation when an employee is eligible for periodic pension payments based on other than railroad or social security earnings.

(a) *Description.* This recomputation serves as a reduction in the PIA for entitlement to a periodic pension based, in part or in whole, on earnings after 1956 not covered under either the Social Security Act or the Railroad Retirement Act. A recomputation for a periodic pension is made in accordance with sections 215(a)(7) and 215(f)(9) of the Social Security Act. A recomputation affecting the Retirement Tier I, Overall Minimum, or Residual Lump-Sum PIA is required when all the following conditions exist—

(1) The employee has less than 30 years of coverage as defined in section 215(a) of the Social Security Act. The years of coverage include railroad and social security earnings;

(2) The employee becomes eligible for an annuity after 1985; and

(3) The employee becomes eligible for the periodic pension payments after 1985 based, in part or in whole, on earnings after 1956 not covered under either the Social Security Act or the Railroad Retirement Act.

(b) *Effective date of recomputation.* The Retirement Tier I, Overall Minimum or Residual Lump-Sum PIA is recomputed when the employee becomes eligible for a periodic pension payment based on other than railroad or social security earnings. However, payment of the recomputed PIA is effective with the month in which the employee becomes entitled to the periodic pension.

§ 225.55 Recomputation to use a new or different PIA formula.

(a) *Description*—(1) *New computation formula.* If a new formula for computing or recomputing PIA's is enacted into law and the annuitant is eligible for the recomputation, the Board will recompute the PIA under the new formula.

(2) *Recomputation under different formula.* In some cases, a PIA may be recomputed under a computation formula different from the formula used in the computation (or earlier recomputation) of the PIA. The annuitant must be eligible for a computation or recomputation under the different formula.

(b) *Effective date of recomputation*—(1) *New computation formula.* A PIA recomputed under a newly enacted formula is effective with the month as directed in the legislation that establishes the new formula. The new PIA formula applies when it produces a PIA that is higher than the amount on which the existing annuity is based.

(2) *Different computation formula.* A PIA recomputed under a different formula is effective with the first month that the different formula produces a PIA that is higher than the PIA on which the existing annuity is based.

§ 225.56 Automatic recomputation.

Periodically, the Board reviews the earnings record of every retired, disabled and recently deceased employee to see if a recomputation of the PIA is necessary. When a recomputation is called for due to a change in the reported railroad or social security earnings, the Board processes it automatically. Increased benefits resulting from a recomputation are paid from the earliest month that the recomputation is effective. The annuitant does not have to request a recomputation to consider additional earnings, although the annuitant may request a recomputation before the automatic recomputation is processed. However, the effective date of the recomputation is the same, whether the recomputation is done automatically or at the request of the annuitant.

§ 225.57 Requesting a recomputation.

An annuitant who meets the conditions for a recomputation may request that his or her PIA be recomputed sooner than it would be recomputed automatically. Providing inclusion of the additional earnings increases the PIA, the Board will recompute the PIA from the earliest permissible date as described in this part.

§ 225.58 Waiver of recomputation.

If the employee or the employee's family are disadvantaged in any way by a recomputation of a PIA to consider additional earnings, a request can be made to waive or give up the right to the recomputation. Such a request must be in writing and be made by every entitled family member. A request for waiver of a recomputation applies only to that recomputation for which the request is made.

Subpart G—Adjusting PIA's

§ 225.60 Adjustment at age 62 when employee is entitled to an annuity based on 30 years of railroad service.

(a) *Description.* The Tier I PIA of an employee who is entitled to an age annuity based on 30 years of railroad service is adjusted when the employee reaches age 62. The Average Indexed Monthly Earnings on which the PIA is based is adjusted by using the year in which the employee attains age 62 as the eligibility year. This adjustment applies to any employee who attained age 60 or acquired 30 years of railroad service after June 30, 1984. The adjustment affects the tier I of the employee and spouse annuity.

(b) *Effective date of adjustment.* A PIA adjustment based on the employee's attainment of age 62 is effective with the first full month in which the employee is age 62. For purposes of a spouse age annuity tier I, the adjusted PIA is used beginning with the first full month both the employee and spouse are age 62.

Dated: March 22, 1989.

By Authority of the Board.

Beatrice Ezerski,

Secretary to the Board.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 60 and 61

[FRL-3545-1]

Delegation of New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAPs); States of Connecticut, Massachusetts, New Hampshire, and Rhode Island

AGENCY: Environmental Protection Agency (EPA).

ACTION: Delegation of authority.

SUMMARY: Sections 111(c) and 112(d) of the Clean Air Act permit EPA to delegate to the States the authority to implement and enforce, respectively, the New Source Performance Standards (NSPS) set out in 40 CFR Part 60, Standards of Performance for New Stationary Sources, and emissions standards for hazardous air pollutants set out in 40 CFR Part 61, National Emission Standards for Hazardous Air Pollutants (NESHAPs). The EPA hereby notifies the public that it has delegated the authority over certain NSPS and NESHAPs source categories to the State Air Pollution Control Agencies in Region I.

EFFECTIVE DATE: See supplementary information.

ADDRESSES: Application and/or reports required under all NSPS/NESHAPs source categories for which EPA has delegated authority to respective States should be addressed to:

State of Connecticut

Air Compliance Unit, Department of Environmental Protection, 165 Capitol Avenue, Hartford, CT 06106.

State of Massachusetts

Division of Air Quality Control, Department of Environmental Quality Engineering, One Winter Street, Boston, MA 02108.

State of New Hampshire

Air Resources Division, Department of Environmental Services, 64 North Main Street, Caller Box 2033, Concord, NH 03302-2033.

State of Rhode Island

Division of Air and Hazardous Materials, Department of Environmental Management, 75 Davis Street, Providence, RI 02908.

FOR FURTHER INFORMATION CONTACT: Lorenzo Thantu (APS-2311), Environmental Protection Agency, Region I, Air Management Division, JFK