section, that is established pursuant to an agreement reached through collective bargaining between the employer and employees, within the meaning of paragraph (c) of this section.

(b) Definition of supplemental pension plan—(1) In general. A plan is a supplemental pension plan covered by the section 3221(d) exception described in paragraph (a) of this section only if it meets the requirements of paragraphs (b)(2) through (b)(4) of this section.

(2) Pension benefit requirement. A plan is a supplemental pension plan within the meaning of this section only if the plan is a pension plan within the meaning of §1.401–1(b)(1)(i) of this chapter. Thus, a plan is a supplemental pension plan only if the plan provides for the payment of definitely determinable benefits to employees over a period of years, usually for life, after retirement. A plan need not be funded through a qualified trust that meets the requirements of section 401(a) or an annuity contract that meets the requirements of section 403(a) in order to meet the requirements of this paragraph (b)(2). A plan that is a profit-sharing plan within the meaning of §1.401–1(b)(1)(i) of this chapter or a stock bonus plan within the meaning of §1.401–1(b)(1)(ii) of this chapter is not a supplemental pension plan within the meaning of this paragraph (b).

(3) Railroad Retirement Board determination with respect to the plan. A plan is a supplemental pension plan within the meaning of this paragraph (b) with respect to an employee only if, in accordance with the rules of §1.410(b)(4)(ii)(D) of this chapter, the employee is included in a unit of employees covered by an agreement that the Secretary of Labor finds to be a collective bargaining agreement between employee representatives and one or more employers, provided that there is evidence that retirement benefits were the subject of good faith bargaining between employee representatives and the employer or employers.

(d) Substitute section 3221(d) excise tax. Section 3221(d) imposes an excise tax on any employer who has been excepted from the excise tax imposed under section 3221(c) by the application of section 3221(d) and paragraph (a) of this section with respect to an employee. The excise tax is equal to the amount of the supplemental annuity paid to that employee under 45 U.S.C. 231a(b), plus a percentage thereof determined by the Railroad Retirement Board to be sufficient to cover the administrative costs attributable to such payments under 45 U.S.C. 231a(b).

(e) Effective date—(1) In general. Except as provided in paragraph (e)(2) of this section, this section applies beginning on October 1, 1998.

(2) Delayed effective date for collective bargaining agreement provisions. Paragraph (c) of this section applies beginning on January 1, 2000.

[T.D. 8832, 64 FR 42833, Aug. 6, 1999]

GENERAL PROVISIONS

§31.3231(a)–1 Who are employers.

(a) Each of the following persons is an employer within the meaning of the act:

(1) Any carrier, that is, any express carrier, sleeping car carrier, or rail carrier providing transportation subject to subchapter I of chapter 105 of title 49;

(2) Any company—

(i) Which is directly or indirectly owned or controlled by one or more employers as defined in paragraph (a)(1) of this section, or under common control therewith, and

(ii) Which operates any equipment or facility or performs any service (except trucking service, casual service, and the casual operation of equipment or facilities) in connection with

(a) The transportation of passengers or property by railroad, or

(b) The transportation of passengers or property as a carrier by water, or

(c) The transportation of property as a common carrier by parcel post service under the Postal Laws and Regulations of the United States, or

(d) The transportation of passengers or property by air or other means of transportation.

(3) Other requirements. [Reserved]
§ 31.3231(b)–1  

Who are employees.

(a) In general. (1) An individual who is in the service of one or more employers for compensation is an employee within the meaning of the act. (For definitions of the terms “employer”, “service”, and “compensation”, see subsections (a), (d), and (e), respectively, of section 3231.) An individual is in the service of an employer, with respect to services rendered for compensation, if—

(i) He is subject to the continuing authority of the employer to supervise and direct the manner in which he renders such services; or

(ii) He is rendering professional or technical services and is integrated into the staff of the employer; or

(iii) He is rendering, on the property used in the employer's operations,