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Washington, Friday, April 7, 1939

The President

CHILD HEALTH DAY—1939

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA

A PROCLAMATION

WHEREAS the Congress by joint resolution of May 18, 1928 (45 Stat. 617), has authorized and requested the President of the United States to issue annually a proclamation setting apart May 1 as Child Health Day; and

WHEREAS the health of children is of great concern to all citizens:

NOW, THEREFORE, I, FRANKLIN D. ROOSEVELT, President of the United States of America, do hereby designate May 1, 1939, as Child Health Day, and urge each community to consider how the knowledge of the best methods of promoting health may be spread among all those responsible for the care of children and how proper provision may be made to insure care for the health of all children. And I also call upon the children of each community to celebrate this year's gains in health and growth, and to consider how they may do their part in promoting their own health and the health of the Nation.

IN WITNESS WHEREOF I have hereunto set my hand and caused the seal of the United States to be affixed.

DONE at the City of Washington this 4th day of April in the year of our Lord nineteen hundred and thirty-nine, and of the Independence of the United States of America the one hundred and sixty-third.

[SEAL]

FRANKLIN D ROOSEVELT

By the President:

CORDELL HULL
Secretary of State.

[No. 2328]

[F. R. Doc. 39-1173; Filed, April 6, 1939; 12:19 p. m.]

EXECUTIVE ORDER

AMENDING THE FOREIGN SERVICE REGULATIONS OF THE UNITED STATES

By virtue of and pursuant to the authority vested in me by section 1752 of the Revised Statutes of the United States (22 U. S. C. § 132), it is ordered that the Foreign Service Regulations of the United States be, and they are hereby, amended by prescribing the following as Chapter VIII thereof:

CHAPTER VIII

RELATIONS WITHIN THE SERVICE

VIII–1. *Supervisory powers of diplomatic representatives.* A diplomatic representative shall exercise, under the Department of State, general supervision over the consular officers in the territory to which he is accredited.

In countries where there is a consul general with supervisory powers, the general supervision of the diplomatic representative over the consular officers in the territory to which he is accredited shall be exercised through the consul general.

Consular officers shall endeavor to comply with the requests and wishes of diplomatic representatives; but they are not required to make any expenditures unless specific authorization has been received in advance from the Department of State. When the affairs of the mission and consulate overlap, every effort shall be made to exchange information on all essential matters.

VIII–2. *Jurisdiction of supervising consuls general.* Each consulate general is hereby established as a sub-administrative office of the Department of State functioning under the general supervision of the mission accredited to the same country, except in those colonial possessions of certain countries where distance from the mission renders this impossible.

Unless otherwise provided, a consul general shall exercise supervisory power,

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FEDERAL REGISTER

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except in matters pertaining to accounts, over all the consular offices within his supervisory district. Where there are two or more consuls general serving in the same country or colony, the limits of their districts shall be determined by the Secretary of State. If need therefor arises, the Secretary of State may give a consul general supervisory power over consular offices not in the same territorial or political jurisdiction.

The supervising consul general is the immediate superior of the consular officers within his jurisdiction. Every consular officer shall comply with supervisory instructions in so far as they apply to him. Supervising consuls general shall report to the Department of State any failure to observe this provision.

VIII–3. *Method of exercising supervisory power of consuls general.* Supervisory powers shall ordinarily be exercised by correspondence. However, consuls general may visit the several consular offices in their respective supervisory districts for the purpose of making formal inspections, or for other purposes, provided advance authorization for the trip has been received from the Secretary of State.

VIII–4. *General duties of supervising consuls general.* Every supervisory consulate general shall act as a clearing house for consular information. Wherever possible, it shall furnish information and make suggestions to the mission on administrative, political, and commercial matters.

Supervising consuls general shall make reports and recommendations tending to the improvement of the service under their supervision.

VIII–5. *Jurisdiction of consulates.* In the absence of instructions specifically defining the consular district, such district shall include all places nearer to the seat of the consulate than to the seat of any other consulate within the same allegiance.

A consular officer shall not, except under special authorization from the Department of State, take jurisdiction of consular business outside of the limits of his consular district.

VIII–6. *Relative rank in the Service.* Foreign Service officers assigned to a mission shall rank in the following order of precedence: (a) counselors; (b) first secretaries; (c) second secretaries; (d) third secretaries; and (e) language officers.

Consular officers shall rank as follows: (a) consuls general; (b) consuls; (c) Foreign Service officers commissioned as vice consuls; (d) Foreign Service officers detailed for language study; (e) vice consuls; and (f) consular agents.

If two or more officers at the same post are within one of the above-named groups, the officer holding a commission in the higher or highest class of Foreign Service officers shall take precedence. If two or more officers holding commissions in the same class of Foreign Service officers are at the same post, the one receiving the higher or highest salary shall take precedence; but as to two or more officers receiving the same salary, precedence shall be taken as follows:

(a) *At missions*—in accordance with the earliest or earlier date of assignment to post

(b) *At consulates*—in accordance with the earliest or earlier dated consular commission assigning officer to post

(c) *At combined offices*—in accordance with the date of assignment to post as secretary or date of consular commission assigning officer to post, whichever is earlier.

Seniority among vice consuls shall be governed by priority of dates of consular commissions to the post.

Cancellation of Certain Sections of Regulations

The following sections of the Foreign Service Regulations of the United States are hereby canceled:

Part I

Section VIII–14.

Part II

Section I–26, I–27, VI–94, VI–95, VI–96, VII–101, VII–105, VII–106, XXIV–440, and XXIV–442.

FRANKLIN D ROOSEVELT

THE WHITE HOUSE,
April 4, 1939.

[No. 8076]

[F. R Doc. 39–1161; Filed, April 5, 1939; 2:34 p. m.]

EXECUTIVE ORDER

AMENDING THE FOREIGN SERVICE REGULATIONS OF THE UNITED STATES

By virtue of and pursuant to the authority vested in me by section 1752 of the Revised Statutes of the United States (22 U. S. C. § 132), it is ordered that the Foreign Service Regulations of the United States be, and they are hereby, amended as follows:

1. Chapter XII of the Foreign Service Regulations is prescribed as follows:

CHAPTER XII

INTERCOURSE WITH FOREIGN GOVERNMENTS

XII–1. *Correspondence with the governments of foreign countries.* The diplomatic representative shall conduct all direct correspondence with the government of the country to which he is accredited.

In the absence of a diplomatic representative, a consular officer may, when necessary, correspond directly with the government of the country to which he is assigned.

XII–2. *Condolences and felicitations.* When an occasion arises in a foreign country calling for condolences or felicitations of an official nature, diplomatic representatives shall be governed by the current rules on the subject established by the Department of State.

XII–3. *Representation of foreign interests by diplomatic and consular officers.* Diplomatic and consular officers may, upon request and with the approval of the Department of State, temporarily assume the representation of foreign interests. They may not, however, perform any duty for a foreign government which involves the acceptance of an office.

2. That portion of the first sentence of section V–21 which reads "provisions of sections 174 and 453 of Part II of the Foreign Service Regulations", is amended to read "provisions of section XII–3 of the Foreign Service Regulations".

Sections of Regulations Canceled

The following provisions of the Foreign Service Regulations of the United States are hereby canceled:

Part I

Sections XV–8 and VIII–18.
Chapter XIX.

Part II

Sections X–174, XXIV–437, and XXIV–453.

FRANKLIN D ROOSEVELT

THE WHITE HOUSE,
April 4, 1939.

[No. 8077]

[F. R. Doc. 39–1163; Filed, April 5, 1939; 2:35 p. m.]

EXECUTIVE ORDER

AMENDING THE FOREIGN SERVICE REGULATIONS OF THE UNITED STATES

By virtue of and pursuant to the authority vested in me by section 1752 of the Revised Statutes of the United States (22 U. S. C., sec. 132), it is ordered that the Tariff of United States Foreign Service Fees, as prescribed by section V–15 of the Foreign Service Regulations of the United States be, and it is hereby, amended as follows:

1. Item 8 is amended by inserting after the words,

"Renewal of an American passport_$5.00
Exceptions—
Same as respects issue of passports if bearer of passport has status held by him at time of issue of passport.",

the following:

"Issuance of Chinese certificate__$10.00."

2. Item 9 is amended by inserting before the words,

"Transit certificate",

the following:

"Limited entry certificate:
Preparation of application and administering of oath_____ No fee
Granting of limited entry certificate_____ No fee"

3. Item 41 is amended to read as follows:

"For certifying to the correctness of a copy of, or extract from, a document, official or private_ $2.00
Each copy certified is to be considered an original, and a fee charged for the certification.
Exception—
For the certification of a document, or copy thereof, the original of which is authorized to be furnished without charge___ No fee"

FRANKLIN D ROOSEVELT

THE WHITE HOUSE,
April 4, 1939.

[No. 8078]

[F. R. Doc. 39–1162; Filed, April 5, 1939; 2:34 p. m.]

EXECUTIVE ORDER

CHANGING THE NAME OF THE CUSTOMS PORT OF ENTRY OF MARS HILL, MAINE, TO BRIDGEWATER, MAINE

By virtue of and pursuant to the authority vested in me by section 1 of the act of August 1, 1914, 38 Stat. 609, 623 (U. S. C., title 19, sec. 2), it is ordered that the name of the customs port of entry of Mars Hill, Maine, in Customs Collection District No. 1 (Maine and New Hampshire), be, and it is hereby, changed to Bridgewater, Maine.

It is further ordered that the townships of Bridgewater, Blaine, Mars Hill, and Easton be, and they are hereby, included within the limits of the customs port of Bridgewater.

Executive Order No. 4340, approved November 11, 1925, which created the customs port of Mars Hill, is hereby amended accordingly.

This order shall become effective thirty days from the date hereof.

FRANKLIN D ROOSEVELT

THE WHITE HOUSE,
April 4, 1939.

[No. 8079]

[F. R. Doc. 39–1160; Filed, April 5, 1939; 2:34 p. m.]

EXECUTIVE ORDER

REVOKING THE DESIGNATION OF FAIR HAVEN, NEW YORK, AS A CUSTOMS PORT OF ENTRY

By virtue of and pursant to the authority vested in me by the act of August 1, 1914, 38 Stat. 609, 623 (U. S. C., title 19, sec. 2), it is ordered that the designation of Fair Haven, New York, as a customs port of entry in Customs Collection District No. 8 (Rochester), be, and it is hereby, revoked.

This order shall become effective thirty days from the date hereof.

FRANKLIN D ROOSEVELT

THE WHITE HOUSE,
April 4, 1939.

[No. 8080]

[F. R. Doc. 39–1164; Filed, April 5, 1939; 2:35 p. m.]

EXECUTIVE ORDER

ESTABLISHING THE ANCLOTE MIGRATORY BIRD REFUGE

FLORIDA

By virtue of and pursuant to the authority vested in me as President of the United States, and by the act of June 25, 1910, c. 421, 36 Stat. 847, as amended by the act of August 24, 1912, c. 369, 37 Stat. 497, and in order to effectuate further the purposes of the Migratory Bird Conservation Act (45 Stat. 1222), it is ordered that all lands within the following-described areas on Bath House Island, Bird Island, Round Island, and Ancote Keys, containing approximately 197 acres, owned or controlled by the United States, in Pasco and Pinellas Counties, Florida, be, and they are hereby, reserved and set apart, subject to valid existing rights, for the use of the Department of Agriculture, as a refuge and breeding ground for migratory birds and other wildlife:

Tallahassee Meridian

T. 26 S., R. 14 E.,
sec. 24, lot 1,
sec. 25, lot 1,
sec. 36, lot 1;
T. 26 S., R. 15 E.,
sec. 19, lot 3,
sec. 30, lots 1 and 2,
sec. 31, that part of lot 1 lying north of a line bearing east and west through a point which is north 500 feet distant from the center of Anclote Key Lighthouse,
sec. 33, Bird Island, unsurveyed,
sec. 34, Bath House and Bird Islands, unsurveyed;
T. 27 S., R. 15 E.,
sec. 3, Round Island, unsurveyed,
sec. 4, Round Island, unsurveyed.

The Executive order of February 1, 1886, reserving certain public lands as the Anclote Keys Lighthouse Reservation, is hereby revoked in so far as it affects any of the above-described lands.

This reservation shall be known as the Anclote Migratory Bird Refuge.

FRANKLIN D ROOSEVELT

THE WHITE HOUSE,
April 5, 1939.

[No. 8081]

[F. R. Doc. 39–1172; Filed, April 6, 1939; 11:26 a. m.]

Rules, Regulations, Orders

TITLE 16—COMMERCIAL PRACTICES

FEDERAL TRADE COMMISSION

[Docket No. 3495]

IN THE MATTER OF ILLINOIS BAKING CORPORATION

SEC. 3.99 (b) *Using or selling lottery devices—In merchandising.* Selling, etc.,

in connection with offer, etc., in commerce, of ice cream cones or any other merchandise, ice cream cones so packed and assembled that sales thereof are to be, or may be, made by means of a game of chance, gift enterprise or lottery scheme, prohibited. (Sec. 5, 38 Stat. 719, as amended by Sec. 3, 52 Stat. 112; 15 U. S. C., Supp. IV, sec. 45b) [Cease and desist order, Illinois Baking Corporation, Docket 3495, March 27, 1939]

SEC. 3.99 (b) *Using or selling lottery devices—In merchandising.* Selling, etc., in connection with offer, etc., in commerce, of ice cream cones or any other merchandise, ice cream cones, together with coupons so designed or printed that use of said coupons in sale, etc., of said cones constitutes the operation or a game of chance, gift enterprise or lottery scheme, prohibited. (Sec. 5, 38 Stat. 719, as amended by Sec. 3, 52 Stat. 112; 15 U. S. C., Supp. IV, sec. 45b) [Cease and desist order, Illinois Baking Corporation, Docket 3495, March 27, 1939]

SEC. 3.99 (b) *Using or selling lottery devices—In merchandising.* Selling, etc., in connection with offer, etc., in commerce, of ice cream cones or any other merchandise, any merchandise by means of a game of chance, gift enterprise or lottery scheme, prohibited. (Sec. 5, 38 Stat. 719, as amended by Sec. 3, 52 Stat. 112; 15 U. S. C., Supp. IV, sec. 45b) [Cease and desist order, Illinois Baking Corporation, Docket 3495, March 27, 1939]

United States of America—Before Federal Trade Commission

At a regular session of the Federal Trade Commission, held at its office in the City of Washington, D. C., on the 27th day of March, A. D. 1939.

Commissioners: Robert E. Freer, Chairman; Garland S. Ferguson, Charles H. March, Ewin L. Davis, William A. Ayres.

ORDER TO CEASE AND DESIST

This proceeding having been heard[1] by the Federal Trade Commission upon the complaint of the Commission and the answer of respondent, in which answer respondent admits all the material allegations of the complaint to be true, and states that it waives all intervening procedure and further hearing as to said facts, and the Commission having made its findings as to the facts and conclusion that said respondent has violated the provisions of the Federal Trade Commission Act;

It is ordered, That the respondent, Illinois Baking Corporation, its officers, representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of ice cream cones or any other merchandise in commerce, as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

(1) Selling or distributing ice cream cones so packed and assembled that sales of such cones are to be made or may be made by means of a game of chance, gift enterprise or lottery scheme;

(2) Selling or distributing ice cream cones together with coupons so designed or printed that the use of said coupons in the sale or distribution of said cones constitutes the operation of a game of chance, gift enterprise or lottery scheme;

(3) Selling or otherwise disposing of any merchandise by means of a game of chance, gift enterprise or lottery scheme.

It is further ordered, That the respondent shall, within sixty days after service upon it of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which it has complied with this order.

By the Commission.

[SEAL] OTIS B. JOHNSON, *Secretary.*

[F. R. Doc. 39-1167; Filed, April 6, 1939; 10:35 a. m.]

[Docket No. 3562]

IN THE MATTER OF TRAFFIC INSPECTORS TRAINING CORPORATION ET AL.

SEC. 3.6 (f) *Advertising falsely or misleadingly—Demand or business opportunities:* SEC. 3.6 (g) *Advertising falsely or misleadingly—Earnings:* SEC. 3.72 (c) *Offering deceptive inducements to purchase—Excessive earnings.* Representing, in connection with offer, etc., in interstate commerce, etc., of correspondence courses of instruction for training traffic inspectors, that trained men and women are constantly needed as traffic inspectors, earn substantial salaries, have steady employment, and may elect to travel or work near their homes, or that the field of traffic inspection is new and uncrowded, prohibited. (Sec. 5, 38 Stat. 719, as amended by Sec. 3, 52 Stat. 112; 15 U. S. C., Supp. IV, sec. 45b) [Cease and desist order, Traffic Inspectors Training Corporation et al., Docket 3562, March 27, 1939]

SEC. 3.6 (a) 3) *Advertising falsely or misleadingly—Business status, advantages or connections of advertiser—Business connections:* SEC. 3.6 (h) *Advertising falsely or misleadingly—Fictitious guarantees:* SEC. 3.72 (g) *Offering deceptive inducements to purchase—Job guarantee.* Representing, in connection with offer, etc., in interstate commerce, etc., of correspondence courses of instruction for training traffic inspectors, that positions are guaranteed by the respondents because of their connections with passenger carriers, prohibited. (Sec. 5, 38 Stat. 719, as amended by Sec. 3, 52 Stat. 112; 15 U. S. C., Supp. IV, sec. 45b) [Cease and desist order, Traffic Inspectors Training Corporation et al., Docket 3562, March 27, 1939]

SEC. 3.6 (t) *Advertising falsely or misleadingly—Qualities or properties of product:* SEC. 3.6 (x) *Advertising falsely or misleadingly—Results.* Representing, in connection with offer, etc., in interstate commerce, etc., of correspondence courses of instruction for training traffic inspectors, that the traffic inspectors training course can be completed within a period of three months or less, or that students are enabled to secure positions and earn salaries before said course of instruction is completed, prohibited. (Sec. 5, 38 Stat. 719, as amended by Sec. 3, 52 Stat. 112; 15 U. S. C., Supp. IV, sec. 45b) [Cease and desist order, Traffic Inspectors Training Corporation et al., Docket 3562, March 27, 1939]

United States of America—Before Federal Trade Commission

At a regular session of the Federal Trade Commission, held at its office in the City of Washington, D. C., on the 27th day of March, A. D. 1939.

Commissioners: Robert E. Freer, Chairman; Garland S. Ferguson, Charles H. March, Ewin L. Davis, William A. Ayres.

IN THE MATTER OF TRAFFIC INSPECTORS TRAINING CORPORATION, A CORPORATION, AND FRED J. KAVANAGH, AND CHARLES VAN BUREN

ORDER TO CEASE AND DESIST

This proceeding having been heard[1] by the Federal Trade Commission upon the complaint of the Commission and the answers of respondents, in which answers respondents admit all the material allegations of fact set forth in said complaint, and state that they waive all intervening procedure and further hearing as to said facts, and the Commission having made its findings as to the facts and conclusion that said respondents have violated the provisions of the Federal Trade Commission Act;

It is ordered, That the respondents, Traffic Inspectors Training Corporation, a corporation, its officers, agents, representatives and employees, and Frank J. Kavanagh, named in the complaint as Fred J. Kavanagh, and Charles Van Buren, their agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of correspondence courses of instruction for the purpose of training traffic inspectors, in interstate commerce or in the District of Columbia, do forthwith cease and desist from representing, directly or by implication:

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[1] 3 F. R. 2477 DI.

[1] 4 F. R. 490 DI.

1. That trained men and women are constantly needed as traffic inspectors, earn substantial salaries, have steady employment, and may elect to travel or work near their homes;

2. That the field of traffic inspection is new and uncrowded;

3. That positions are guaranteed by the respondents because of their connections with passenger carriers;

4. That the traffic inspectors training course can be completed within a period of three months or less;

5. That students are enabled to secure positions and earn salaries before said course of instruction is completed.

It is further ordered, That the respondents shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which they have complied with this order.

By the Commission.

[SEAL] OTIS B. JOHNSON, *Secretary.*

[F. R. Doc. 39-1168; Filed, April 6, 1939; 10:36 a. m.]

[Docket No. 3700]

IN THE MATTER OF HERSHEY CREAMERY COMPANY

SEC. 3.99 (b) *Using or selling lottery devices—In merchandising.* Selling, etc., in connection with offer, etc., in commerce, of frozen confections or any other merchandise, frozen confections or other merchandise so designed that sale thereof by retail merchants constitutes, or may constitute, the operation of a game of chance, gift enterprise or lottery scheme, prohibited. (Sec. 5, 38 Stat. 719, as amended by Sec. 3, 52 Stat. 112; 15 U. S. C., Supp. IV, sec. 45b) [Cease and desist order, Hershey Creamery Company, Docket 3700, March 27, 1939]

SEC. 3.99 (b) *Using or selling lottery devices—In merchandising.* Supplying, etc., in connection with offer, etc., in commerce, of frozen confections or any other merchandise, others with frozen confections or other articles of merchandise which are, or may be, used without alteration or rearrangement thereof to conduct a lottery, etc., when distributed to the consuming public, prohibited. (Sec. 5, 38 Stat. 719, as amended by Sec. 3, 52 Stat. 112; 15 U. S. C., Supp. IV, sec. 45b) [Cease and desist order, Hershey Creamery Company, Docket 3700, March 27, 1939]

SEC. 3.99 (b) *Using or selling lottery devices—In merchandising.* Supplying, etc., in connection with offer, etc., in commerce, of frozen confections or any other merchandise, others with any lottery device which is to be, or may be, used in sale, etc., of merchandise to the consuming public, prohibited. (Sec. 5, 38 Stat. 719, as amended by Sec. 3, 52 Stat. 112; 15 U. S. C., Supp. IV, sec. 45b) [Cease and desist order, Hershey Creamery Company, Docket 3700, March 27, 1939]

United States of America—Before Federal Trade Commission

At a regular session of the Federal Trade Commission, held at its office in the City of Washington, D. C., on the 27th day of March, A. D. 1939.

Commissioners: Robert E. Freer, Chairman; Garland S. Ferguson, Charles H. March, Ewin L. Davis, William A. Ayres.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the answer of respondent, in which answer respondent admits all the material allegations of fact set forth in said complaint, and states that it waives all intervening procedure and further hearing as to the said facts, and the Commission having made its findings as to the facts and conclusion that said respondent is violating the provisions of the Federal Trade Commission Act;

It is ordered, That the respondent, Hershey Creamery Company, its officers, representatives, agents and employees, directly or through any corporate or other device in connection with the offering for sale, sale and distribution of frozen confections or any other merchandise in commerce as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

(1) Selling and distributing frozen confections or other merchandise so designed that the sale thereof by retail merchants constitutes or may constitute the operation of a game of chance, gift enterprise or lottery scheme;

(2) Supplying to, or placing in the hands of, others, frozen confections or other articles of merchandise which are used or which may be used without alteration or rearrangement thereof, to conduct a lottery, game of chance or gift enterprise when distributed to the consuming public;

(3) Supplying to, or placing in the hands of, others any lottery device which is to be used or may be used in the sale and distribution of merchandise to the consuming public.

It is further ordered That the respondent shall, within sixty (60) days after service upon it of this order, file with the Commission a report in writing setting forth in detail the manner and form in which it has complied with this order.

By the Commission.

[SEAL] OTIS B. JOHNSON, *Secretary.*

[F. R. Doc. 39-1169; Filed, April 6, 1939; 10:36 a. m.]

TITLE 20—EMPLOYEES' BENEFITS

RAILROAD RETIREMENT BOARD

REGULATIONS UNDER THE RAILROAD RETIREMENT ACT OF 1937

Authority for Regulations

Parts 201 to 265 of these regulations are issued by the Railroad Retirement Board under the general authority contained in Section 10 of the Act of June 24, 1937. (Sec. 10, 50 Stat. 314; 45 U. S. C. Sup. III, 228j.) These regulations constitute a complete reissue of the regulations of June 1, 1938 (3 F. R. 1478 et seq.). They shall be effective as of June 1, 1938, except as otherwise stated, and shall supersede all the previous regulations promulgated on November 22, 1937, December 10, 1937, December 31, 1937, January 17, 1938, March 22, 1938, April 4, 1938 and June 1, 1938.[1]

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PART 201—DEFINITIONS

SEC. 201.01 *Words and phrases.* For the purposes of these regulations, except where the language or context indicates otherwise:

(a) *Act.* The term "Act," or "1937 Act," means the Railroad Retirement Act of 1937. The term "1935 Act," means the Railroad Retirement Act of 1935.

(b) *Employer.* The term "employer" means an employer as defined in the Act and Part 202 of these regulations.

(c) *Employee.* The term "employee" means an employee as defined in the Act and Part 203 of these regulations.

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[1] 3 F. R. 1478 DI.

(d) *Service.* The term "service" means service as defined in the Act and Part 220 of these regulations.

(e) *Compensation.* The term "compensation" means compensation as defined in the Act and Part 222 of these regulations.

(f) *Board.* The term "Board" means the Railroad Retirement Board.

(g) *Company.* The term "company" means a partnership, association, joint stock company, corporation, or institution.

(h) *United States.* The term "United States" where used in a geographical sense, means the States, Alaska, Hawaii, and the District of Columbia.

(i) *Carrier.* The term "carrier" means an express company, sleeping-car company, or carrier by railroad, subject to Part I of the Interstate Commerce Act.

(j) *Person.* The term "person" includes an individual, trust, estate, partnership, association, joint stock company, company and corporation.

(k) *General Committee.* The term "General Committee" as used in Section 1 of the Railroad Retirement Act of 1937 is construed to include any subordinate unit of a national railway labor organization, defined as an employer in the 1937 Act, regardless of the title or designation of such unit, which, under the constitution and bylaws of the organization of which it is a unit, is properly authorized to and does represent that organization on all of a particular railroad or on a substantial portion thereof (such as on that portion of a railroad under the jurisdiction of the General Manager) in negotiating with the management of that railroad with respect to the wages and working conditions of the employees represented by such organization.

(l) *Local lodges and divisions—Local lodge or division.* The term "local lodges and divisions" and the term "local lodge or division" as used in Section 1 (a) and 1 (b), respectively, of the 1937 Act, shall be construed to include any subordinate unit of a national railway labor organization defined as an "employer" under the 1937 Act, which unit functions in the same manner as, or similar to "local lodges" as that term is ordinarily used, irrespective of the designation of such unit by its national organization. (Secs. 1, 10, 50 Stat. 307, 314; 45 U. S. C. Sup. III, 228a, 228j)

PART 202—EMPLOYERS UNDER THE ACT

Sec.

SEC. 202.01 *Statutory provisions.* "The term 'employer' means any carrier (as defined in subsection (m) of this section), and any company which is directly or indirectly owned or controlled by one or more such carriers or under common control therewith, and 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 the transportation of passengers or property by railroad, or the receipt, delivery, elevation, transfer in transit, refrigeration or icing, storage, or handling of property transported by railroad, and any receiver, trustee, or other individual or body, judicial or otherwise, when in the possession of the property or operating all or any part of the business of any such employer: *Provided, however,* That the term 'employer' shall not include any street, interurban, or suburban electric railway, unless such railway is operating as a part of a general steam-railroad system of transportation, but shall not exclude any part of the general steam-railroad system now or hereafter operated by any other motive power. The Interstate Commerce Commission is hereby authorized and directed upon request of the Board, or upon complaint of any party interested, to determine after hearing whether any line operated by electric power falls within the terms of this proviso. The term 'employer' shall also include railroad associations, traffic associations, tariff bureaus, demurrage bureaus, weighing and inspection bureaus, collection agencies and other associations, bureaus, agencies, or organizations controlled and maintained wholly or principally by two or more employers as hereinbefore defined and engaged in the performance of services in connection with or incidental to railroad transportation; and railway labor organizations, national in scope, which have been or may be organized in accordance with the provisions of the Railway Labor Act, as amended, and their State and National legislative committees and their general committees and their insurance departments and their local lodges and divisions, established pursuant to the constitution and by-laws of such organizations." (Sec. 1 (a), 50 Stat. 307; 45 U. S. C. Sup. III, 228a)

SEC. 202.02 *Company or person principally engaged in carrier business.* Any company or person principally engaged in carrier business is an employer. (Secs. 1, 10, 50 Stat. 307, 314; 45 U. S. C. Sup. III, 228a, 228j)

SEC. 202.03 *Company or person principally engaged in non-carrier business.* With respect to any company or person principally engaged in business other than carrier business, but which, in addition to such principal business, engages in some carrier business, the Board will require submission of information pertaining to the history and all operations of such company or person with a view to determining whether some identifiable and separable enterprise conducted by the person or company is to be considered to be the employer. The determination will be made in the light of considerations such as the following:

(a) the primary purpose of the company or person on and since the date it was established;

(b) the functional dominance or subservience of its carrier business in relation to its non-carrier business;

(c) the amount of its carrier business and the ratio of such business to its entire business;

(d) whether its carrier business is a separate and distinct enterprise.

In the event that the employer is found to be an aggregate of persons or legal entities or less than the whole of a legal entity or a person operating in only one of several capacities, then the unit or units competent to assume legal obligations shall be responsible for the discharge of the duties of the employer. (Secs. 1, 10, 50 Stat. 307, 314; 45 U. S. C. Sup. III, 228a, 228j)

SEC. 202.04 *Control.* A company or person is controlled by one or more carriers, whenever there exists in one or more such carriers the right or power by any means, method or circumstance, irrespective of stock ownership, to direct, either directly or indirectly, the policies and business of such a company or person and in any case in which a carrier is in fact exercising direction of the policies and business of such a company or person. (Secs. 1, 10, 50 Stat. 307, 314; 45 U. S. C. Sup. III, 228a, 228j)

SEC. 202.05 *Company or person under common control.* A company or person is under common control with a carrier, whenever the control (as that term is used in section 202.04 above) of such company or person is in the same person, persons or company as that by which such carrier is controlled. (Secs. 1, 10, 50 Stat. 307, 314; 45 U. S. C. Sup. III, 228a, 228j)

SEC. 202.06 *Casual service and the casual operation of equipment or facilities.* The service rendered or the operation of equipment or facilities by a controlled company or person in connection with the transportation of passengers or property by railroad is "casual" whenever such service or operation is so ir-

regular or infrequent as to afford no substantial basis for an inference that such service or operation will be repeated, or whenever such service or operation is insubstantial. (Secs. 1, 10, 50 Stat. 307, 314; 45 U. S. C. Sup. III, 228a, 228j)

SEC. 202.07 *Service or operation in connection with railroad transportation.* The service rendered or the operation of equipment or facilities by persons or companies owned or controlled by or under common control with a carrier is in connection with the transportation of passengers or property by railroad, or the receipt, delivery, elevation, transfer in transit, refrigeration or icing, storage or handling of property transported by railroad, if such service or operation is reasonably directly related, functionally or economically, to the performance of obligations which a company or person or companies or persons have undertaken as a common carrier by railroad, or to the receipt, delivery, elevation, transfer in transit, refrigeration or icing, storage, or handling of property transported by railroad. (Secs. 1, 10, 50 Stat. 307, 314; 45 U. S. C. Sup. III, 228a, 228j)

SEC. 202.08 *Controlled company or person principally engaged in service or operation in connection with railroad transportation.* Any company or person owned or controlled by one or more carriers or under common control therewith, whose principal business is the operation of equipment or facilities or the performance of service (other than trucking service) in connection with the transportation of passengers or property by railroad, shall be an employer. (Secs. 1, 10, 50 Stat. 307, 314; 45 U. S. C. Sup. III 228a, 228j)

SEC. 202.09 *Controlled company or person not principally engaged in service or operation in connection with railroad transportation.* With respect to any company or person owned or controlled by one or more carriers or under common control therewith, performing a service or operating equipment in connection with the transportation of passengers or property by railroad, or the receipt, delivery, elevation, transfer in transit, refrigeration or icing, storage, or handling of property transported by railroad, but which is principally engaged in some other business, the Board will require the submission of information pertaining to the history and all operations of such company or person with a view to determining whether it is an employer or whether some identifiable and separable enterprise conducted by the person or company is to be considered to be the employer, and will make a determination in the light of considerations such as the following:

(a) the primary purpose of the company or person on and since the date it was established;

(b) the functional dominance or subservience of its business which constitutes a service or operation of equipment or facilities in connection with the transportation of passengers or property by railroad in relation to its other business;

(c) the amount of its business which constitutes a service or operation of equipment or facilities in connection with the transportation of passengers or property by railroad and the ratio of such business to its entire business;

(d) whether such service or operation is a separate and distinct enterprise;

(e) whether such service or operation is more than casual, as that term is defined in section 202.06.

In the event that the employer is found to be an aggregate of persons or legal entities or less than the whole of a legal entity or a person operating in only one of several capacities, then the unit or units competent to assume legal obligations shall be responsible for the discharge of the duties of the employer. (Secs. 1, 10, 50 Stat. 307, 314; 45 U. S. C. Sup. III, 228a, 228j)

SEC. 202.10 *Commencement of employer status of receiver or trustee, etc.* A receiver, trustee, or other individual or body, judicial or otherwise, in the possession of the property or operating all or any part of the business of a carrier, or of a company or person owned or controlled by or under common control with such a carrier, which operates any equipment or facility or performs any service in connection with the transportation of passengers or property by railroad, shall be deemed to be an employer beginning as of whichever of the following three dates is the earliest:

(a) the date that it takes possession of such property; or

(b) the first date on which it has authority to operate all or any part of the business of such a carrier, company or person; or

(c) the date that it begins operating without appointment or authorization all or any part of the business of such a carrier, company or person;

Provided, however, That the receiver, trustee, or other individual or body, judicial or otherwise, shall be an employer only with respect to such individuals as would be employees if the preceding employer had continued in the possession of the property or the operation of the business. (Secs. 1, 10, 50 Stat. 307, 314; 45 U. S. C. Sup. III, 228a, 228j)

SEC. 202.11 *Termination of employer status of receiver or trustee, etc.* Such employer status shall terminate as of whichever of the following four dates shall be the latest:

(a) the effective date of a discharge duly given by the court or authority which made the appointment or issued the authorization; or

(b) the effective date of a certificate of public convenience and necessity authorizing abandonment; or

(c) the date that the receiver, trustee or other individual or body ceases operating the business of such carrier, company or person; or

(d) the date that possession of all property of such carrier, company or person is relinquished;

Provided, however, That if there be in fact a complete cessation and abandonment of operations and if no certificate authorizing abandonment is applied for nor is any discharge necessary, such employer status shall cease as of the date of such complete cessation and abandonment. (Secs. 1, 10, 50 Stat. 307, 314; 45 U. S. C. Sup. III, 228a, 228j)

SEC. 202.12 *Termination of employer status of other employers.* The applicable provisions of section 202.11 concerning the termination of an employer status shall apply to all other employers, provided, however, that in the absence of evidence establishing an earlier date when factual cessation and abandonment of operations occurred the employer status of a carrier employer shall cease as of the date that tariffs, concurrences, or powers of attorney on file with the Interstate Commerce Commission are cancelled. (Secs. 1, 10, 50 Stat. 307, 314; 45 U. S. C. Sup. III, 228a, 228j)

SEC. 202.13 *Electric railways.* The General Counsel will require the submission of information pertaining to the history and operations of an electric railway with a view to determining whether it is an employer and will inquire into and make his recommendations upon the following considerations:

(a) whether the electric railway is more than a street, suburban or interurban electric railway; or

(b) whether it is operating as a part of a general steam-railroad system of transportation; or

(c) whether it is part of the national transportation system.

If in the opinion of the General Counsel an electric railway has the characteristics set forth in either (a), (b) or (c), he will conclude that it is an employer under the Act and if the operator concurs in such opinion, the decision will be made final by the Board. If the operator does not concur in the conclusion reached the question will be submitted to the Interstate Commerce Commission for determination. (Secs. 1, 10, 50 Stat. 307, 314; 45 U. S. C. Sup. III, 228a, 228j)

SEC. 202.14 *Service incidental to railroad transportation.* An organization, association, bureau or agency is performing a service in connection with or incidental to railroad transportation whenever it is engaged in the performance of functions which would normally be per-

formed by the constituent employers in the absence of such organization, association, bureau or agency. (Secs. 1, 10, 50 Stat. 307, 314; 45 U. S. C. Sup. III, 228a, 228j)

SEC. 202.15 *Railway labor organizations.* Railway labor organizations, national in scope, which have been or may be organized in accordance with the provisions of the Railway Labor Act, as amended, and their State and National legislative committees and their general committees and their insurance departments and their local lodges and divisions, established pursuant to the constitution and bylaws of such organizations, shall be employers within the meaning of the Act.

(a) An organization doing business on or after June 21, 1934, which establishes, in accordance with (1), (2) or (3) of this paragraph, a right, under Section 3 First (a) of the Railway Labor Act, as amended, to participate in the selection of labor members of the National Railroad Adjustment Board, will be presumed, in the absence of clear and convincing evidence to the contrary, to be, from and after the date on which such right is thus established, a labor organization, national in scope and organized in accordance with the provisions of the Railway Labor Act, as amended. Such an organization can establish that it is an employer by establishing, in accordance with paragraph (b) of this section, that, as a labor organization national in scope and organized in accordance with the provisions of the Railway Labor Act, as amended, it is a "railway" organization. An organization, doing business on or after June 21, 1934, which has not established such a right of participation, will be presumed not to be a labor organization, national in scope and organized in accordance with the provisions of the Railway Labor Act, as amended, and such presumption can be rebutted only by clear and convincing evidence satisfactory to the Board showing that the reasons for the organization's failure to establish such a right have no relation to its being a labor organization, national in scope and organized in accordance with the provisions of the Railway Labor Act, as amended. Only after such presumption has thus been rebutted will further evidence as to whether the organization is an employer be considered, (the establishment or non-establishment of such a right of participation will not raise any presumption as to whether an organization is, or is not, a "railway" organization. The existence of this qualification shall be determined in accordance with paragraph (b) of this section). An organization will have established such a right of participation if:

(1) It has in fact participated in the seelction of labor members of the National Railroad Adjustment Board and has continued to participate in such selection; or

(2) It has been found, under Section 3 First (f) of the Railway Labor Act, as amended, to be qualified to participate in the selection of labor members of the National Railroad Adjustment Board; or

(3) It is recognized by all organizations, qualified under (1) or (2) immediately above, as having the right to participate in the selection of labor members of the National Railroad Adjustment Board.

(b) The question as to whether a labor organization, national in scope, and organized in accordance with the provisions of the Railway Labor Act, as amended, is, as such a national labor organization, a "railway" labor organization, will be determined by the Board on the basis of considerations such as the following:

(1) The extent to which it is, and has been recognized as, representative of crafts or classes of employees in the railroad industry.

(2) The extent to which its purposes and business are and have been to promote the interests of employees in the railroad industry.

(c) A labor organization which ceased doing business before June 21, 1934, will have been an employer if its characteristics were substantially the same as those of labor organizations, doing business on or after June 21, 1934, which are established as employers in accordance with paragraphs (a) and (b) of this section.

(d) An organization which establishes, to the satisfaction of the Board, that it is a labor organization, as defined in paragraph (e) of this section, and that is composed of labor organizations which are established as employers in accordance with paragraphs (a), (b) and (c) of this section, is thereby established as being an employer.

(e) For the purposes of these regulations, a labor organization is an organization whose business is to promote the interests of employees, in their capacity as employees, either directly or through their organizations. (Secs. 1, 10, 50 Stat. 307, 314; 45 U. S. C. Sup. III, 228a, 228j)

PART 203.—EMPLOYEES UNDER THE ACT

Sec.

SEC. 203.01 *Statutory provision.* "The term 'employee' means (1) any individual in the service of one or more employers for compensation, (2) any individual who is in the employment relation to one or more employers, and (3) an employee representative. The term 'employee' shall include an employee of a local lodge or division defined as an employer in subsection (a) only if he was in the service of or in the employment relation to a carrier on or after the enactment date." (Sec. 1 (b) 50 Stat. 308; 45 U. S. C. Sup. III, 228a)

"The term 'employee' includes an officer of an employer." (Sec. 1 (1) 50 Stat. 309; 45 U. S. C. Sup. III, 228a)

SEC. 203.02 *General definition of employee.* An individual shall be an employee whenever (a) he is engaged in performing compensated service for an employer or (b) he is in an employment relation to an employer, or (c) he is an employee representative, or (d) he is an officer of an employer. (Secs. 1, 10, 50 Stat. 308, 314; 45 U. S. C. Sup. III, 228a, 228j)

SEC. 203.03 *When an individual is engaged in performing service.* An individual shall be engaged in performing service for an employer if he is subject to the continuing authority of the employer to supervise and direct the manner of rendition of that service, irrespective of whether such supervision and direction is exercised and irrespective of whether such service is performed on a part-time basis. (Secs. 1, 10, 50 Stat. 308, 314; 45 U. S. C. Sup. III, 228a, 228j)

SEC. 203.04 *When is service "compensated."* Service shall be "compensated" if it is performed for compensation, as that term is defined in the Act and Part 222 of these regulations. (Secs. 1, 10, 50 Stat. 308, 314; 45 U. S. C. Sup. III, 228a, 228j)

SEC. 203.05 *Service outside the United States.* An individual shall not be an employee by reason of rendition of service to an employer not conducting the principal part of its business in the United States except while engaged in performing for it service in the United States. (Secs. 1, 10, 50 Stat. 308, 314; 45 U. S. C. Sup. III, 228a, 228j)

SEC. 203.06 *Immaterial factors.* The age, citizenship, or residence of an individual, or his designation as other than an "employee" shall be of no force or effect in determining whether or not such individual is an employee within the meaning of the Act. (Secs. 1, 10, 50 Stat. 308, 314; 45 U. S. C. Sup. III, 228a, 228j)

SEC. 203.07 *Local lodge employee.* An individual who, prior to January 1, 1937, shall have rendered service to a local lodge or division of a railway labor organization included as an employer under Section 1 (a) of the Act, shall be an employee with respect to such service to such local lodge or division only if he was on August 29, 1935, in the service of or in an employment relation to an employer which was a carrier. An indi-

vidual who, subsequent to December 31, 1936, shall have rendered service to a local lodge or division of a railway labor organization included as an employer under Section 1 (a) of the Act, shall be an employee with respect to such service to such local lodge or division only with respect to such service as was preceded by service, or an employment relation, on or after August 29, 1935, to an employer which was a carrier. (Secs. 1, 10, 50 Stat. 308, 314; 45 U. S. C. Sup. III, 228a, 228j)

PART 204—EMPLOYMENT RELATION

Sec.

SEC. 204.01 *Statutory provision.* "An individual is in the employment relation to an employer if he is on furlough, subject to call for service within or outside the United States and ready and willing to serve, or on leave of absence, or absent on account of sickness or disability; all in accordance with the established rules and practices in effect on the employer: Provided, however, That an individual shall not be deemed to have been on the enactment date in the employment relation to an employer not conducting the principal part of its business in the United States unless during the last pay roll period in which he rendered service to it prior to the enactment date, he rendered service to it in the United States." (Sec. 1 (d), 50 Stat. 308; 45 U. S. C. Sup. III, 228a)

SEC. 204.02 *Employment relation—Determination by the Board.* The existence or non-existence of an employment relation as defined in Section 1 (d) of the Railroad Retirement Act of 1937 is a conclusion which must be reached by the Board or its authorized representatives upon the basis of the evidence before it; the burden of formulating the conclusion may not be delegated to the employer or to the individual or to any representative of either; the employer or the individual or their representatives are the principal sources of evidence with respect to the established rules and practices in effect on the employer and with respect to the facts constituting the conditions under which the individual was not in active service, but the Board will not make a determination on the basis of a conclusion of the employer or of the individual or of a representative of either to the effect that the individual had or had not an employment relation.

(a) *Importance of rule or practice.* An employment relation exists if there was, at the time in question, in effect on the employer an established rule or practice in accordance with which the individual was either (1) on furlough (subject to call for service and ready and willing to serve) or (2) on leave of absence, or (3) absent on account of sickness or disability.

(b) *Furlough, leave of absence, etc.* A furlough, leave of absence, or absence on account of sickness or disability, within the scope of these regulations or the Railroad Retirement Act of 1937, does not exist unless the terms of the established rule or practice in accordance with which the individual is out of active service are such that they would operate to restore him to active service upon the occurrence of definite and ascertainable events or conditions. Within the limitations of the preceding sentence: A furlough is an involuntary absence from active service which is brought about by action of the employer. A leave of absence is action of the employer permitting or requiring the employee to remain away from active service and relieving the employee from the obligations or conditions attached to active service, or to a furlough relationship or to absence on account of sickness or disability; absence on account of sickness or disability is an interruption of active service, or of a furlough, by reason of sickness or disability. An individual on furlough can have an employment relation only if at the time in question he was subject to call for service and ready and willing to serve.

(c) *Rule defined.* An established rule is an authoritative and binding declaration definitely and specifically formulated and of general application to employees within the same class. A rule may be expressed either in the form of specific authoritative instructions in force on the employer or in a contract or working agreement covering the individual and made between the employer and an employee organization, and may derive its authoritative effect either from the authority of the officer issuing the declaration or from the binding nature of the contract between the employer and the employee organization.

(d) *Practice defined.* An established practice is a custom not expressed in the form of a rule but followed with such frequency and uniformity as to give reasonable assurance that it would be followed in the individual's case, and to permit ascertainment of the practice with such precision as to render it capable of statement in the form of a rule.

(e) *Actual service to precede relation.* No employment relation can exist unless it represents a continuous relationship following immediately upon actual compensated service; it cannot be brought into existence through an application for employment, or inclusion on a waiting list, or a promise of employment, or similar circumstances preceding actual service or following an interruption of the relationship: Provided, however, that a rule may be amended so as to create anew an employment relationship which has lapsed, but such relationship can exist only from the time of the adoption of such amendment.

(f) *Termination of relation.* The termination of an employment relation need not involve a specific action but may be inferred from circumstances. It is terminated in any case in which there has been a discharge, resignation, or retirement, with or without pension. Discharge, resignation or retirement must be determined according to the substance of the transaction, even though the transaction may have been denominated furlough, leave of absence or absence on account of sickness or disability. A transaction so denominated, but which represents in substance and effect a discharge, resignation or retirement, terminates the employment relation.

(g) *Relation based on service outside the United States.* An individual shall not have been on August 29, 1935 an employee by reason of an employment relation to an employer not conducting the principal part of its business in the United States unless during his last pay roll period prior to August 29, 1935, he rendered service to it in the United States. (Secs. 1, 10, 50 Stat. 308, 314; 45 U. S. C. Sup. III, 228a, 228j)

SEC. 204.03 *Bearing of specific factors upon existence of employment relation.* In the application of the general rules set forth in section 204.02 of these regulations, certain specific and frequently recurring factors shall be dealt with in accordance with the respective paragraphs of this section. Such paragraphs do not constitute an exhaustive catalogue of all factors which may arise in the application of the general rules to concrete cases.

(a) *Probability of return to service.* Any established rule or practice, in order to be relevant to the existence of an employment relation, and any furlough, leave of absence, or absence on account of sickness or disability which is claimed to express an employment relation, must contemplate a resumption of active

service. Physical or mental incapacity to return to service, even though judged to be "permanent," is not in and of itself significant, except that it is significant in connection with definitive action of the employer or of the individual, including statements or actions on the part of the individual indicating his retirement or statements or actions of the employer treating the individual as a retired employee, such as, application for and the award of a pension or gratuity of indefinite duration.

(b) *Limitations of time.* Where the terms of a furlough, or the rules or practices under which it was issued, place a limitation on the time within which the furlough will operate to return an individual to active service, the employment relation ceases upon the expiration of such period, unless he has resumed active service within the period. Where the terms of a leave of absence or the conditions under which an individual is absent on account of sickness or disability, or the rules or practices under which a leave of absence is granted or an absence on account of sickness or disability is permitted, place a limitation on the time during which the individual may be absent, the employment relation ceases upon the expiration of such period, unless he has reported for active service upon or before the expiration of such period. However, the period may be extended by action of the employer if such action is permissible under the established rules or practices in effect on the employer.

(c) *Failure to preserve or exercise rights.* Where the terms of a furlough, leave of absence or absence on account of sickness or disability, or the rules or practices under which it is granted, require periodic or continuous action of the individual (such as periodic renewal of address, or continuous availability for service or the exercise of rights upon proper occasion) in order to preserve his status, or require the continuance of a condition (such as the continuance of incapacity as the basis of absence on account of sickness or disability) and the individual fails to take such action, or the condition ceases to exist, the employment relation terminates.

(d) *Seniority roster.* The appearance of the individual's name on a seniority roster is not, in and of itself, indicative of an employment relation. There must appear the further fact that the appearance of the individual's name on the seniority roster is based on established rules or practices in effect on the employer which would operate to restore him to active service upon the occurrence of definite and ascertainable events or conditions.

(e) *Promise of further employment after termination of rights.* When such rights to return to service as an individual may hold, in accordance with the established rules and practices in effect on the employer, are terminated, but in connection with such termination or coincidentally therewith, a promise not in accordance with the established rules or practices in effect on the employer is made, indicating some future employment, such promise does not operate to maintain an employment relation.

(f) *Reinstatement.* A bona fide reinstatement with restoration of seniority privileges, with or without pay for time lost, made for the purpose of and in contemplation of return to actual service (irrespective of whether actual service is resumed) operates to maintain the employment relation throughout the breach in service, provided that the reinstatement is not a violation of the rights of other employees. Participation in the reinstatement by representatives of the other employees, or acquiescence on their part in an actual return to service, shall be conclusive evidence that the reinstatement was not a violation of the rights of such other employees.

(g) *Reaching retirement age while in employment relation.* If there is in effect upon the employer an established rule or practice requiring automatic retirement upon attainment of a particular age, or at the end of the month in which such age is attained, such rule or practice will operate to terminate the employment relation of an individual who is on furlough, leave of absence, or absent on account of sickness or disability when the time for automatic retirement is reached, unless it is shown by express evidence that such individual was retained in his relationship with the employer and that such retention was in accordance with established rules or practices.

(h) *Abolition of job, discontinuance of service and abandonment of line.* Abolition of a job, or the discontinuance of a service, in which the individual was engaged is not in and of itself relevant to the determination of the existence or nonexistence of an employment relation. When an individual is out of active service under such circumstances, determination must be made under the other provisions of these regulations as to whether the individual was on furlough, leave of absence, or absent on account of sickness or disability, in accordance with established rules or practices in effect on the employer. However, abandonment of line or facility involving abandonment of all jobs to which the individual's preference or seniority attaches under the established rules or practices in effect on the employer terminates the employment relation, unless, by agreement between the employer and the individuals affected, the latter acquire seniority on some other line or facility of the employer; or in cases of merger or consolidation of two or more employers, on the consolidated or merged employer; such agreement need not be entered into simultaneously with the abandonment of the line or facility, provided that it is so immediately and directly connected therewith as to constitute part of the disposition of the same matter.

(i) *Pass privileges, or retention of employer property.* The fact that an individual continues to receive free transportation, or is permitted to retain employer property, such as rule books and switch keys, is not indicative of the existence of an employment relation. However, definite action of the employer terminating free transportation privileges or requiring the surrender of employer property may be indicative of the termination of the employment relation. (Sec. 1, 10, 50 Stat. 308, 314; 45 U. S. C. Sup. III, 228a, 228j)

SEC. 204.04 *Statutory provision of 1935 Act.* "A person is in the employment relation to a carrier when furloughed or on leave of absence, and subject to call for service and ready and willing to serve, all in accordance with the established rules and practices usually in effect on railroads." (Sec. 1, 49 Stat. 967–973; 45 U. S. C. Sup. II, 215d)

SEC. 204.05 *Employment relation under the 1935 Act.* The regulations relating to the existence or non-existence of an employment relation as defined in the 1937 Act (Sections 204.01, 204.02 and 204.03 above) shall apply with equal force and effect to determinations regarding the existence or non-existence of an employment relation under the 1935 Act except that:

(a) Individuals absent on account of sickness or disability, as that term is used in such regulations, do not have an employment relation under the 1935 Act, and

(b) Individuals on leave of absence, as well as individuals on furlough, are required to be subject to call for service and ready and willing to serve in order to have an employment relation under the 1935 Act. (Sec. 6, 49 Stat. 967–973; 45 U. S. C. Sup. II, 215)

PART 205—EMPLOYEE REPRESENTATIVE

Sec.

SEC. 205.01 *Statutory provision.* "The term 'employee representative' means any officer or official representative of a railway labor organization other than a labor organization included in the term 'employer' as defined in section 1 (a) who before or after the enactment date was in the service of an employer as defined in section 1 (a) and who is duly authorized and designated to represent employees in accordance

with the Railway Labor Act, as amended, and any individual who is regularly assigned to or regularly employed by such officer or official representative in connection with the duties of his office." (Sec. 1 (b) 50 Stat. 308; 45 U. S. C. Sup. III, 228a)

SEC. 205.02 *Definition of employee representative.* An individual shall be an employee representative within the meaning of the Act (a) if he is an officer or official representative of a railway labor organization not an employer, as defined in the Act, and is duly authorized and designated to represent employees in accordance with the Railway Labor Act, as amended: Provided, however, that before or after August 29, 1935, and before the time in question he must have been in the service of an employer; or (b) if he is regularly assigned to or regularly employed by an employee representative as described in (a) above in conection with the duties of the office of such employee representative, irrespective of whether he possesses the qualifications described in (a) above. (Secs. 1, 10, 50 Stat. 308, 314; 45 U. S. C. Sup. III, 228a, 228j)

SEC. 205.03 *Reports of employee representatives.* (See Section 250.05)

SEC. 205.04 *Service of employee representatives.* (See Section 220.03 (i).) (Secs. 3, 10, 50, Stat. 308, 314, 311; 45 U. S. C. Sup. III, 228a, 228j, 228c)

PART 208—ELIGIBILITY FOR AN ANNUITY

Sec.

SEC. 208.01 *Statutory provision.* "(a) The following-described individuals, if they shall have been employees on or after the enactment date, shall, subject to the conditions set forth in subsections (b), (c), and (d), be eligible for annuities after they shall have ceased to render compensated service to any person, whether or not an employer as defined in section 1 (a) (but with the right to engage in other employment to the extent not prohibited by subsection (d)):

"1. Individuals who on or after the enactment date shall be sixty-five years of age or over.

"2. Individuals who on or after the enactment date shall be sixty years of age or over and (a) either have completed thirty years of service or (b) have become totally and permanently disabled for regular employment for hire, but the annuity of such individuals shall be reduced one one-hundred-and-eightieth for each calendar month that they are under age sixty-five when the annuity begins to accrue.

"3. Individuals, without regard to age, who on or after the enactment date are totally and permanently disabled for regular employment for hire and shall have completed thirty years of service.

"Such satisfactory proof of the permanent total disability and of the continuance of such disability until age sixty-five shall be made from time to time as may be prescribed by the Board. If the individual fails to comply with the requirements prescribed by the Board as to proof of the disability or the continuance of the disability until age sixty-five, his right to an annuity under subdivision 2 or subdivision 3 of this subsection by reason of such disability shall, except for good cause shown to the Board, cease, but without prejudice to his rights under subdivision 1 or 2 (a) of this subsection. If, prior to attaining age sixty-five, such an individual recovers and is no longer disabled for regular employment for hire, his annuity shall cease upon the last day of the month in which he so recovers and if after such recovery the individual is granted an annuity under subdivision 1 or 2 (a) of this subsection, the amount of such annuity shall be reduced on an actuarial basis to be determined by the Board so as to compensate for the annuity previously received under this subdivision.

"(b) An annuity shall be paid only if the applicant shall have relinquished such rights as he may have to return to the service of an employer and of the person by whom he was last employed; but this requirement shall not apply to the individuals mentioned in subdivision 2 (b) and subdivision 3 of subsection (a) prior to attaining age sixty-five.

"(c) An annuity shall begin to accrue as of a date to be specified in a written application (to be made in such manner and form as may be prescribed by the Board and to be signed by the individual entitled thereto), but

"(1) not before the date following the last day of compensated service of the applicant, and

"(2) not more than sixty days before the filing of the application." (Sec. 2, 50 Stat. 309, 310; 45 U. S. C. Sup. III, 228b)

SEC. 208.02 *"Employee" status.* To be eligible for an annuity an individual, in addition to other qualifications, must have been an employee on August 29, 1935 or, if not an employee on that date, he must thereafter have become an employee and rendered service subsequent to December 31, 1936 to an employer, or as an employee representative. (Sec. 1, 10, 50 Stat. 308, 314; 45 U. S. C. Sup. III, 228a, 228j)

SEC. 208.03 *Annuity based on age sixty-five.* Any individual who has the employee status described in section 208.02 is eligible for an annuity if:

(a) he has attained the age of sixty-five years or more, and

(b) he has ceased to render service for compensation to any person or company, whether or not an employer under the Act:

Provided, however, (1) That no annuity shall be certified for payment to such individual until such time as he has filed with the Board a duly executed application form, has established by proof satisfactory to the Board that he possesses the above qualifications and has relinquished rights to return to service as required by Part 216 of these regulations and (2) that no annuity may begin to accrue for him earlier than two months prior to the date upon which such application is filed with the Board nor prior to the date following the last day of his compensated service. (Secs. 2, 10, 50 Stat. 309, 314; 45 U. S. C. Sup. III, 228b, 228j)

SEC. 208.05 *Annuity based on age sixty to sixty-five and service.* Any individual who has the employee status described in section 208.02 is eligible for an annuity if:

(a) he is between sixty and sixty-five years of age, and

(b) he has completed at least three hundred and fifty-four months of creditable service, and

(c) he has ceased to render service for compensation to any person, whether or not an employer under the Act;

Provided, however, (1) That no annuity shall be certified for payment to such individual until such time as he has filed with the Board a duly executed application form, has established by proof satisfactory to the Board that he possesses the above qualifications and has relinquished rights to return to service as required by Part 216 of these regulations and (2) that no annuity may begin to accrue for him earlier than two months prior to the date upon which such application is filed with the Board nor prior to the date following the last day of his compensated service, and (3) that the annuity of such an individual shall be reduced one one-hundred-and-eightieth for each calendar month during all of which he is less than sixty-five years of age when his annuity begins to accrue. (Secs. 2, 10, 50 Stat. 309, 314; 45 U. S. C. Sup. III, 228b, 228j)

SEC. 208.10 *Annuity based on age sixty to sixty-five and on disability.* Any individual who has the employee status

described in section 208.02 is eligible for an annuity if:

(a) he is between sixty and sixty-five years of age, and

(b) he has become totally and permanently disabled for regular employment for hire, and

(c) he has ceased to render service for compensation to any person, whether or not an employer under the Act;

Provided, however, (1) That no annuity shall be certified for payment to such individual until such time as he has filed with the Board a duly executed application form and has established by proof satisfactory to the Board that he possesses the above qualifications, (2) that no annuity may begin to accrue for him earlier than two months prior to the date upon which such application is filed with the Board nor prior to the date following the last day of his compensated service, and (3) that the annuity of such individual shall be reduced one one-hundred-and-eightieth for each calendar month during all of which he is less than sixty-five years of age when his annuity begins to accrue. (Secs. 2, 10, 50 Stat. 309, 314; 45 U. S. C. Sup. III, 228b, 228j)

SEC. 208.15 *Annuity based on service and disability.* Any individual who has the employee status described in section 208.02 is eligible for an annuity if:

(a) he has completed at least three hundred and fifty-four months of creditable service, and

(b) he is totally and permanently disabled for regular employment for hire, and

(c) he has ceased to render service for compensation to any person, whether or not an employer under the Act;

Provided, however, (1) That no annuity shall be certified for payment to such individual until such time as he has filed with the Board a duly executed application form and has established by proof satisfactory to the Board that he possesses the above qualifications, and (2) that no annuity may begin to accrue for him earlier than two months prior to the date upon which such application is filed with the Board nor prior to the date following the last day of his compensated service. (Secs. 2, 10, 50 Stat. 309, 314; 45 U. S. C. Sup. III, 228b, 228j)

SEC. 208.16 *Age of applicant—how established.* If in order, any one form of documentary evidence will be accepted to establish the age of the applicant, and, if a joint and survivor annuity has been elected, of the applicant's spouse, and a distinction will not be made between primary and secondary evidence. Original documents ordinarily are more credible than certified or photostatic copies, and records made or filed at an early date carry greater credibility than those of a more recent origin. Ordinarily, preference will be accorded various types of evidence in the following order:

(1) Civil and Church birth records.
(2) School records.
(3) Insurance records.
(4) Labor Union and Fraternal records.
(5) Naturalization records.
(6) Vaccination records.
(7) Immigration papers.
(8) Passports.
(9) Bible and family records.
(10) Marriage records.
(11) Military records.
(12) Employer's records.
(13) Driver's permits.
(14) Voting registration records.
(15) Game licenses
(16) Newspaper and magazine clippings.
(17) Poll Tax exemption certificates.
(18) Affidavits.

Civil and Church birth records in order to be acceptable shall have been made at or near the time of birth. Other records shall be at least fifteen years old. Types of evidence listed in items 13 to 18 inclusive should be used only as a last resort. Evidence in any other form may be accepted if of equal or greater reliability than the items listed from 1 to 12 above. If the file contains the employer's verified record of the applicant's birth date, or an unverified birth date recorded fifteen years prior to the date of the report, it will be acceptable if it agrees with the age or birth date claimed by the applicant, or comes within the scope of the following paragraph:

(a) A date of birth not fully proved but indicated by the best obtainable evidence may be fixed by the Board under the following conditions: (1) Where evidence to establish age or birth date cannot be obtained; (2) where the file contains evidence which shows that the applicant attained the age of sixty-five years on or prior to the date on which his annuity begins to accrue, but either does not show the exact birth date or is not in agreement with the birth date claimed, provided that if the date to be fixed results in age sixty-five being attained prior to June 30, 1937, the applicant's eligibility must not depend upon the creditability of service subsequent to June 30, 1937, and that, generally, a birth date cannot be fixed if the applicant has elected a joint and survivor annuity. (Sec. 2, 10, 50 Stat. 309, 314; 45 U. S. C. Sup. III, 228b, 228j)

SEC. 208.20 *Establishment of total and permanent disability for regular employment for hire.* An individual is totally and permanently disabled for regular employment for hire whenever his mental or physical condition is such that he is unable to perform regularly, in the usual and customary manner, the substantial and material duties of any regular and gainful employment which is substantial and not trifling, with any employer whether or not subject to the Act, and the facts of his mental or physical condition afford a reasonable basis for an inference that such condition is permanent.

(a) The condition of total and permanent disability for regular employment for hire must be established in each particular case in the manner and to the extent prescribed by the Board. The following disabilities, while not an exclusive or exhaustive catalogue of conditions under which an individual may be totally and permanently disabled for regular employment for hire are disabilities from which the Board will presume, in the absence of facts to the contrary, that an individual is totally and permanently disabled for regular employment for hire:

(1) Loss of, or permanent loss of use of both feet.

(2) Loss of, or permanent loss of use of both hands.

(3) Loss of, or permanent loss of use of one hand and one foot.

(4) Permanent industrial blindness (corrected vision of twenty two-hundredths or less in both eyes.)

(5) Permanent total loss of hearing in both ears (inability to hear the conversational tone of voice at any distance) unless offset or capable of being offset by some practicable device.

(6) Permanently helpless or permanently bedridden.

(7) Aphonia (complete loss of vocalization, (phonetic) from organic, i. e., non-functional cause.) (Secs. 2, 10, 50 Stat. 309, 314; 45 U. S. C. Sup. III, 228b, 228j)

SEC. 208.25 *Proof of continuance of disability.* Every annuitant, granted an annuity by reason of total and permanent disability for regular employment for hire, shall as and whenever notified by the Board submit to an examination to be made by a physician or board of physicians designated by the Board. The Board may at any time or times require additional proof of the continuance of the disability. (Secs. 2, 10, 50 Stat. 309, 314; 45 U. S. C. Sup. III, 228b, 228j)

SEC. 208.26 *No proof of disability after age sixty-five.* No annuitant shall be required to furnish proof of disability or continuance of disability after he has attained the age of sixty-five years. (Secs. 2, 10, 50 Stat. 309, 314; 45 U. S. C. Sup. III, 228b, 228j)

SEC. 208.27 *When disability annuity ceases.* An annuity granted upon the basis of total and permanent disability

for regular employment for hire shall, except for good cause shown to the Board, cease (a) as of the last day of the month in which such annuitant recovers and is no longer disabled for regular employment for hire; provided, however, that if during the month in which he so recovers he engages in compensated service for any person, his annuity may not be payable under the provisions of Part 217 for that month; or (b) as of the last day of the month preceding the month in which the Board receives notice of the annuitant's failure to appear for or submit to a required examination; or (c) as of the last day of the month following the mailing of a notice to furnish additional proof of the continuance of disability, if the annuitant fails to comply with such notice; or (d) as of the last day of the month preceding the month in which the individual becomes sixty-five years of age and fails in the manner and to the extent required by Part 216 in any other case, to relinquish rights to return to service; or (e) as of the last day of the month preceding the month during which the annuitant dies. (Secs. 2, 10, 50 Stat. 309, 314; 45 U. S. C. Sup. III, 228b, 228j)

SEC. 208.28 *Cessation of disability annuity not prejudicial to further eligibility.* The cessation of a disability annuity prior to age sixty-five shall not prejudice any rights which an individual may have or may thereafter acquire to an annuity based upon the attainment of sixty or more years of age and the completion of at least three hundred and fifty-four months of creditable service or based upon the attainment of age sixty-five; provided, however, that the amount of such further annuity shall be reduced on an actuarial basis to be determined by the Board to compensate for any annuity previously received on the basis of service and disability (see Sec. 208.15). (Secs. 2, 10, 50 Stat. 310, 314; 45 U. S. C. Sup. III, 228b, 228j)

SEC. 208.29 *Disability annuitant to notify of recovery or performance of service.* It shall be the duty of every individual granted an annuity by reason of total and permanent disability for regular employment for hire promptly to notify the Board of his recovery, or of any service for any person or company which he performs for compensation. (Secs. 2, 10, 50 Stat. 319, 314; 45 U. S. C. Sup. III, 228b, 228j)

PART 210—EXECUTION AND FILING OF AN APPLICATION

Sec.

SEC. 210.01 *Statutory provision.* "An annuity shall begin to accrue as of a date to be specified in a written application (to be made in such manner and form as may be prescribed by the Board and to be signed by the individual entitled thereto) * * *" (Sec. 2 (c), 50 Stat. 310; 45 U. S. C. Sup. III, 228b)

SEC. 210.02 *Application to be filed.* No individual, irrespective of his qualifications, shall receive an annuity under the 1935 or 1937 Act unless he has, on or before the date of his death, filed with the Board, in Washington, D. C., a duly executed application, upon such application form as the Board may from time to time provide; Provided, however, That a claim or application filed with the Social Security Board, whether before or after the adoption of this regulation, for a lump sum payment under Sec. 204 (a) of Title II of the Social Security Act based in whole or in part on service with an employer under the Railroad Retirement Act of 1935 or 1937 which service had not at the time of such filing been determined by the Board to be service with an employer shall be an application for an annuity filed with the Railroad Retirement Board as of the date on which such claim or application was filed with the Social Security Board. (Secs. 2, 10, 50 Stat. 310, 314; 45 U. S. C. Sup. III, 228b, 228j)

SEC. 210.03 *Filing date.* An application shall be considered filed as of the date that it is received by the Board, at the office and in the manner and form stated in section 210.02. (Secs. 2, 10, 50 Stat. 310, 314; 45 U. S. C. Sup. III, 228b, 228j)

SEC. 210.04 *Signature on application form.* The application form shall be signed personally by the applicant in his usual manner: *Provided, however,* That if the applicant is unable to sign his name because of physical inability or illiteracy, he shall then make his mark (X) and a witness shall affix the applicant's name. In every case the signature or mark shall be executed and authenticated in such manner as the form provided may require. In the event that the signature or any written portion of the application form is, within the judgment of the Board, substantially illegible or of doubtful authenticity, or if in the judgment of the Board there are substantial omissions in the application form, the Board may require its reexecution or correction: *Provided, however,* That such reexecuted or corrected application form shall be returned and shall be received by the Board within thirty days after notice to correct such deficiency is mailed to the address the applicant has given in the application form; otherwise, the filing date of the application shall be the date when such corrected or reexecuted application form is received by the Board. (Secs. 2, 10, 50 Stat. 310, 314; 45 U. S. C. Sup. III, 228b, 228j)

SEC. 210.05 *Presumptions from application.* The receipt by the Board of a duly executed application form on or prior to the date of death of the applicant in the absence of evidence to the contrary shall be conclusive evidence of the filing thereof by the applicant or in his behalf by his authority. (Secs. 2, 10, 50 Stat. 310, 314; 45 U. S. C. Sup. III, 228b, 228j)

SEC. 210.06 *Individual presumed to be mentally competent.* In the absence of evidence to the contrary every individual shall be presumed to be mentally competent. (Sec. 10, 50 Stat. 314; 45 U. S. C. Sup. III, 228j)

SEC. 210.07 *Application where individual is mentally incompetent.* In the event that an individual is mentally incompetent, a duly appointed guardian, conservator or committee shall execute and file the application on his behalf. In the event that the mentally incompetent individual has himself filed an application form the guardian, conservator or committee shall execute and file another application form and when this has been done, the filing date of the application may be the date on which the first application form was received by the Board. (Secs. 2, 10, 50 Stat. 310, 314; 45 U. S. C. Sup. III, 228b, 228j)

SEC. 210.08 *Evidence of authority of guardian, etc.* In all cases in which a guardian, conservator or committee acts on behalf of an individual, there shall be filed with the Board a duly certified copy of the appointment as guardian, conservator or committee of the individual. In cases in which a guardian, conservator or committee wishes to make a joint and survivor election, the guardian, conservator or committee shall also submit a duly certified copy of a court order specifically authorizing him to make an election under one of the three available options. (Secs. 2, 4, 10, 50 Stat. 310, 314; 45 U. S. C. Sup. III, 228b, 228d, 228j)

SEC. 210.09 *Effect of matters or actions submitted or taken by guardian, etc.* All matters and actions in connection with an annuity submitted or taken by the guardian, conservator or committee shall be considered by the Board in the same manner and with the same effect as though such matters or actions had been submitted or taken by the person in whose behalf the guardian, conservator or committee so acts: *Provided, however,* That the Board may, if it deems it necessary, require the guardian, conservator or committee to submit a certified copy of an order from the court which appointed the guardian, conservator or committee, authorizing some particular action which the guardian, con-

servator or committee desires to take in connection with such application. (Secs. 2, 4, 10, 50 Stat. 310, 311, 314; 45 U. S. C. Sup. III, 228b, 228d, 228j)

SEC. 210.10 *Alteration of application.* An application filed with the Board cannot be changed or altered in any respect except by the applicant or by his duly authorized agent or guardian, conservator or committee. The authority of an agent or guardian, conservator or committee to change or alter an application shall be evidenced in such manner and to the extent required by the Board. (Secs. 2, 10, 50 Stat. 310, 314; 45 U. S. C. Sup. III, 228b, 228j)

SEC. 210.11 *Cancellation of an application.* An application shall be cancelled or suspended (a) whenever the applicant by a writing filed with the Board requests that his application be cancelled or suspended, or (b) whenever an applicant postpones indefinitely the beginning date of his annuity. (Secs. 2, 10, 50 Stat. 310, 314; 45 U. S. C. Sup. III, 228b, 228j)

SEC. 210.12 *Effect of cancellation.* The effect of the cancellation or suspension of an application shall be the same as though no application had been filed. In the event the individual whose application is canceled or suspended dies, there are no greater rights than if no application had ever been filed. The individual whose application has been canceled may reapply by filing a written request for an annuity. In the event of such reapplication the application shall be deemed filed as of the date that such written request is received by the Board. (Secs. 2, 10, 50 Stat. 310, 314; 45 U. S. C. Sup. III, 228b, 228j)

SEC. 210.13 *Applicant's file to be confidential.* (See section 262.16.)

PART 214—ANNUITY BEGINNING DATE

Sec.

SEC. 214.01 *Statutory provisions.* "An annuity shall begin to accrue as of a date to be specified in a written application (to be made in such manner and form as may be prescribed by the Board and to be signed by the individual entitled thereto), but—

"(1) not before the date following the last day of compensated service of the applicant, and

"(2) not more than sixty days before the filing of the application." (Sec. 2 (c) 1, 2 (c) 2, 50 Stat. 310; 45 U. S. C. Sup. III, 228b)

"Any individual who, prior to the date of the enactment of this Act, relinquished all rights to return to the service of a carrier as defined in the Railroad Retirement Act of 1935 or ceased to be an employee representative as defined in such Act, and who is not eligible for an annuity under that Act but would have been eligible for an annuity under the Railroad Retirement Act of 1937 had such Act been in force from and after August 29, 1935, shall have his right to an annuity adjudicated under the Railroad Retirement Act of 1937; Provided, however, That no such annuity shall begin prior to the date of the enactment of this Act." (Sec. 203, 50 Stat. 318; 45 U. S. C. Sup. III, 215)

SEC. 214.02 *Annuity beginning date.* An annuity shall begin to accrue as of the date specified in the application, provided, that such date is not earlier than that permitted by Sections 2 (c) 1, 2 (c) 2, and 203 quoted above, nor prior to the date upon which the applicant attains eligibility for an annuity; and provided further, that no joint and survivor annuity shall begin to accrue prior to the date on which a joint and survivor annuity election is made in accordance with Part 230 of these regulations. The filing of an application in accordance with the proviso contained in Section 210.02 shall be the specification, as an annuity beginning date, of the date following the last day of compensated service, or of the date two months prior to the filing date, whichever date is the later. (Secs. 2, 4, 10, 50 Stat. 310, 311, 314; 45 U. S. C. Sup. III, 228b, 228d, 228j)

SEC. 214.03 *Beginning date in month of applicant's sixty-fifth birthday.* In any instance in which an applicant is not eligible for any annuity unless and until he attains age sixty-five his annuity cannot begin until the day preceding the date of his sixty-fifth birthday, but an applicant eligible for an annuity under sections 208.05 and 208.10 of these regulations, who is less than sixty-five years of age, may have his annuity without reduction begin as of the first day of the month during which he becomes sixty-five years of age. (Secs. 2, 10, 50 Stat. 309, 314; 45 U. S. C. Sup. III, 228b, 228j)

SEC. 214.04 *Clarification or change of beginning date.* (a) In any case wherein an applicant has made an unintelligible designation of the beginning date of his annuity, he shall be notified of the earliest beginning date permitted by law. Non-action in response to the notification from the Board of the earliest permissible beginning date for a period of thirty days after the date of the notification shall operate to designate the earliest permissible date specified in such notification. (b) In any case wherein an applicant has designated or authorized the designation of a valid beginning date, which is one month or more later than the earliest date permitted by law, and it does not appear that such date was selected in contemplation of continuance in service or for the effectuation of the election of a joint and survivor annuity, he shall be notified of the earliest possible date on which his annuity may begin to accrue. In the event of non-action for a period of thirty days following such notification or in the event that it appears that the designated date was selected in contemplation of continuance in service or for the effectuation of the election of a joint and survivor annuity, any earlier date subsequently designated or authorized to be designated shall not be more than two months prior to the date on which such subsequent designation or authorization is received by the Board. (c) In any case wherein an applicant elects a joint and survivor annuity and within a reasonable time but prior to the certification submits proof of health satisfactory to the Board such submission shall operate to designate the date of his election as the beginning date of his joint and survivor annuity (if such date is otherwise in order). If, however, such proof of health is not submitted within a reasonable time its submission thereafter shall operate to designate, as the beginning date of his joint and survivor annuity, the date two months prior to such submission. Whether a submission of proof of health satisfactory to the Board is made within a reasonable time depends upon the circumstances in each case, including therein the factors of notice to the applicant and his opportunity for action. (Secs. 2, 10, 50 Stat. 310, 314; 45 U. S. C. Sup. III, 228b, 228j)

SEC. 214.05 *Effect of death.* If the applicant dies before a beginning date has been designated, or prior to the date upon which his annuity would have begun to accrue, no annuity shall accrue and any election of a joint and survivor annuity shall be inoperative. (Secs. 2, 4, 10, 50 Stat. 310, 311, 314; 45 U. S. C. Sup. III, 228b, 228d, 228j)

SEC. 214.06 *Beginning date following cancellation of application.* In the event an annuity beginning date is designated and, because of a cancellation of the application, such date becomes ineffective, the annuity thereafter cannot begin to accrue earlier than two months prior to the receipt of the request to renew the application nor until the date following the last date of compensated service, whichever date is later: *Provided, however,* That the applicant may, in renewing such application, designate a later date. (Secs. 2, 10, 50 Stat. 310, 314; 45 U. S. C. Sup. III, 228b, 228j)

SEC. 214.07 *Effect of service performed after designated beginning date*—(a) *By individuals whose eligibility is not based upon disability.* If such an individual renders compensated service to any person, whether or not

an employer, through or after the designated beginning date but prior to relinquishment of rights in accordance with Part 216, his annuity cannot begin to accrue earlier than the date following the last date of such compensated service. If the individual renders such compensated service after having relinquished rights in accordance with Part 216 the beginning date of the annuity shall not be affected but in accordance with Part 217 no annuity shall be payable with respect to any month in which such service is performed for the persons mentioned in Part 217.

(b) *Individuals whose eligibility is based upon disability.* If such an individual renders compensated service to any person, whether or not an employer, through or after the designated beginning date, such fact must be reconciled with the claim of total and permanent disability for regular employment for hire before eligibility for a disability annuity is established. Where, however, it is shown that the individual, notwithstanding his rendition of compensated service, is totally and permanently disabled for regular employment for hire, the following shall apply:

If all the individual's compensated service ended before the filing date of his annuity application or if the individual's compensated service continued through such filing date the annuity cannot begin to accrue earlier than the date following the last day of such compensated service. (For the effect of a return to service after accrual, see Part 217). (Secs. 2, 10, 50 Stat. 310, 314; 45 U. S. C. Sup. III, 228b, 228j)

SEC. 214.08 *Applicant's general right to change date.* In any case where a change of beginning date is not inconsistent with other provisions of the Act or these regulations, the applicant shall have the right, prior to the date upon which his claim is certified for payment, to change the annuity beginning date; Provided, however, That no such change shall be effective unless and until a request or designation in writing signed by the applicant is received by the Board on or before the date of his death. (Secs. 2, 10, 50 Stat. 310, 314; 45 U. S. C. Sup. III, 228b, 228j)

PART 216—RELINQUISHMENT OF RIGHTS

Sec.

SEC. 216.01 *Statutory provision.* "An annuity shall be paid only if the applicant shall have relinquished such rights as he may have to return to the service of an employer and of the person by whom he was last employed; but this requirement shall not apply to the individuals mentioned in subdivision 2 (b) and subdivision 3 of subsection (2) prior to attaining age sixty-five." (Sec. 2 (b), 50 Stat. 310; 45 U. S. C. Sup. III, 228 b)

SEC. 216.02 *Relinquishment of rights as condition for payment.* No annuity other than a disability annuity shall be certified for payment until the applicant has established in accordance with this Part that he has relinquished all rights which he may have had to return to the service of (a) any employer; and (b) the person, whether or not an employer, by whom he was most recently employed when the annuity began to accrue; and (c) any person with whom he holds, at the time the annuity begins to accrue, any rights to return to service; and (d) any person with whom he ceased service in order to have his annuity begin to accrue. (Secs. 2, 10, 50 Stat. 310, 314; 45 U. S. C. Sup. III, 228b, 228j)

SEC. 216.03 *Relinquishment of rights in case of disability annuity.* In the case of an individual whose eligibility for an annuity is based in part upon total and permanent disability for regular employment for hire, an annuity is payable prior to age sixty-five even though he retains rights to return to service until age sixty-five, provided, however, that such individual shall upon attainment of age sixty-five establish that he has in accordance with this Part relinquished in the manner and to the extent required in any other case any rights which he may have to return to service; otherwise payment of his annuity shall not be made for any calendar month in which he becomes or is sixty-five years of age or over unless and until such individual so relinquishes such rights. (Secs. 2, 10, 50 Stat. 310, 314; 45 U. S. C. Sup. III, 228b, 228j)

SEC. 216.04 *What constitutes relinquishment of rights.* An individual shall be deemed to have relinquished his rights to return to the service of any employer, whether or not under the Act, whenever it is established to the satisfaction of the Board:

(a) that the records of such employer evidence that, because of some action taken by the employer, all rights which the individual may have had no longer exist; or

(b) that such individual has by a written or oral notice communicated to the employer a clear and unambiguous intention thereby to terminate any and all rights to return to the service of such employer (such relinquishment of rights shall be presumed to have occurred whenever such individual has certified to the Board that he has relinquished his rights to return to service, the employer has been notified by the Board of such certification, and the employer has expressly confirmed such certification or has failed to reply within two weeks following the mailing of the notification); or

(c) that there has been communicated to the employer by a duly authorized agent of the individual a clear and unambiguous intention on the part of the individual thereby to terminate any and all rights to return to the service of such employer; or

(d) that the individual has died; or

(e) that some events have occurred which under the established rules or practices in effect on the employer automatically terminate all rights to return to service; or

(f) that some cognizable action has been taken by the individual or his employer or by both which when considered in the light of the facts and circumstances of the particular case clearly and unambiguously manifest a termination of all rights to return to service; or

(g) that the individual has permanently ceased service in the event no rights to return to the position exist. (Sec. 2, 10, 50 Stat. 310, 314; 45 U. S. C. Sup. III, 228b, 228j)

PART 217—LOSS OF ANNUITY BY REASON OF COMPENSATED SERVICE

Sec.

SEC. 217.01 *Statutory provision.* "No annuity shall be paid with respect to any month in which an individual in receipt of an annuity hereunder shall render compensated service to an employer or to the last person by whom he was employed prior to the date on which the annuity began to accrue. Individuals receiving annuities shall report to the Board immediately all such compensated service." (Secs. 2, 10, 50 Stat. 308, 314; 45 U. S. C. Sup. III, 228b, 228j)

SEC. 217.02 *Loss of annuity for month in which compensated service is rendered.* (a) If an individual who is eligible for an annuity under Sec. 208.03 or 208.05 of these regulations, (not based on disability) renders compensated service, he shall not be paid an annuity with respect to any month in which such service is rendered if

(1) prior to the rendition of such service he had relinquished rights in accordance with Part 216 of these regulations, and

(2) such service is rendered (i) to any employer, or (ii) to any person, whether or not an employer, by whom he was most recently employed when the annuity began to accrue; or (iii) to any person with whom he held, at the time the annuity began to accrue, any rights to return to service; or (iv) to any person with whom he ceased service in order to have his annuity begin to accrue.

(b) If an individual who is eligible for an annuity under Sec. 208.10 or 208.15 of these regulations (based on disability) renders compensated service, and if such fact is reconciled with his claim of total and permanent disability for regular employment for hire (see Sec. 214.07 (b)), such individual shall not be paid an annuity with respect to

any month in which such service is rendered if

(1) such service began on or after the date of filing of the individual's annuity application and

(2) such service is rendered (i) to any employer or (ii) to any person, whether or not an employer, by whom he was most recently employed when the annuity began to accrue; or (iii) to any person with whom he held, at the time the annuity began to accrue, any rights to return to service, or (iv) to any person with whom he ceased service in order to have his annuity begin to accrue. (Secs. 2, 10, 50 Stat. 308, 314; 45 U. S. C. Sup. III, 228b, 228j)

PART 220—DEFINITION AND CREDITABILITY OF SERVICE

Sec.

SEC. 220.01 *Meaning of service.* (See also section 203.03.) Service shall consist of time devoted to active service as an employee for compensation or time with respect to which remuneration is paid for time lost as an employee. Such service shall be computed in accordance with section 220.02 and the creditability thereof shall be determined in accordance with section 220.03, and shall be verified in accordance with section 220.04. (Secs. 1, 10, 50 Stat. 308, 314; 45 U. S. C. Sup. III, 228a, 228j)

SEC. 220.02 *What constitutes a month and a year of service.* Any calendar month in which an individual renders service for compensation or for which he receives remuneration for time lost as an employee constitutes a month of service, irrespective of the amount of such service or of the amount of time for which such remuneration is received. Twelve such months, consecutive or otherwise, shall be a year of service; *Provided, however,* That in totaling the service of an employee, an ultimate fraction of six months or more shall constitute a year of service and an ultimate fraction of less than six months shall be taken at its actual value. (Secs. 1, 10, 50 Stat. 309, 314; 45 U. S. C. Sup. III, 228a, 228j)

SEC. 220.03 *Creditability of service—* (a) *When a company is not an employer.* Service rendered to any person or company other than an employer shall not be creditable except that (1) service rendered prior to August 29, 1935 for a person or company which was an employer on August 29, 1935 shall be creditable even though such person or company was not an employer at the time the service was rendered and (2) service rendered to any person or company which was at some time during its existence an express company, sleeping-car company or carrier by railroad and which was a predecessor of an express company, sleeping-car company or carrier by railroad subject to the Act on August 29, 1935 shall be creditable even though such person or company was not an employer at the time such service was rendered. (Secs. 1, 10, 50 Stat. 308, 314; 45 U. S. C. Sup. III, 228a, 228j)

(b) *Place of performance of service.* Service performed for an employer shall be creditable whether rendered within or without the United States, if such employer conducts the principal part of its business within the United States; but if such employer does not conduct the principal part of its business within the United States, service to it shall be creditable only when performed by the employee within the United States. (Secs. 1, 10, 50 Stat. 308, 314; 45 U. S. C. Sup. III, 228a, 228j)

(c) *Service based on time lost.* Any month during which an individual performs no active creditable service, but for all or part of which he received remuneration as an employee, which remuneration is creditable as compensation within the meaning of Part 222 of these regulations, shall be creditable in the same manner as active service. (Secs. 1, 10, 50 Stat. 309, 314; 45 U. S. C. Sup. III, 228a, 228j)

(d) *Service after age sixty-five.* Service rendered in any month after the month in which age sixty-five is attained shall not be creditable unless rendered prior to July 1, 1937. (Secs. 3, 10, 50 Stat. 311, 314; 45 U. S. C. Sup. III, 228c, 228j)

(e) *Service prior to January 1, 1937.* If an individual was not an employee on August 29, 1935, no service prior to January 1, 1937 shall be creditable. (Secs. 3, 10, 50 Stat. 310, 314; 45 U. S. C. Sup. III, 228c, 228j)

(f) *Service prior to January 1, 1937 where individual was employee on August 29, 1935.* Service performed prior to January 1, 1937 by an individual who was an employee on August 29, 1935 shall be creditable in the manner and to the extent provided in Section 220.03 (g) but not so as to cause the total years of service to exceed thirty: *Provided, however,* That with respect to any such individual who rendered service to any employer after January 1, 1937, and who on August 29, 1935 was not an employee of an employer conducting the principal part of its business in the United States no greater proportion of his service rendered prior to January 1, 1937 shall be included in his "years of service" than the proportion which his total compensation (including compensation in any month in excess of $300) for service after January 1, 1937, rendered anywhere to an employer conducting the principal part of its business in the United States or rendered in the United States to any other employer bears to his total compensation (including compensation in any month in excess of $300) for service rendered anywhere to an employer after January 1, 1937. (Secs. 3, 10, 50 Stat. 310, 314; 45 U. S. C. Sup. III, 228c, 228j)

(g) *Service subsequent to December 31, 1936.* Service rendered as an employee after December 31, 1936, shall be creditable even in excess of thirty years: *Provided, however,* That in any case in which both service prior to January 1, 1937, and service subsequent to December 31, 1936, are to be credited, all service subsequent to December 31, 1936, shall first be credited, and if it be less than thirty years, then service prior to January 1, 1937, shall be included, but only to an extent sufficient to bring the total of all years of service to thirty; and *Provided further,* That whenever service prior to January 1, 1937, is to be included it shall be taken in reverse order. (Secs. 3, 10, 50 Stat. 310, 314; 45 U. S. C. Sup. III, 228c, 228j)

(h) *Service performed subsequent to the beginning date of an annuity.* Service rendered as an employee after the beginning date of an annuity shall not be creditable, nor shall such annuity be recomputed because of such service except, if such annuity be granted upon the basis of total and permanent disability for regular employment for hire and the disability annuity ceases, service performed after such cessation of the annuity and before the end of the month during which age sixty-five is attained may be credited toward any other annuity to which such individual may become entitled. (Secs. 2, 3, 10, 50 Stat. 310, 311, 314; 45 U. S. C. Sup. III, 228b, 228c, 228j)

(i) *Service as employee representative.* Service rendered as an employee representative, as defined in Section 205.02 of these regulations, shall be creditable in the same manner and to the same extent as though the organization by which he was employed were an employer. (Secs. 3, 10, 50 Stat. 311, 314; 45 U. S. C. Sup. III, 228c, 228j)

SEC. 220.04 *Verification of service claimed.* Service claimed, to be credited, shall be verified to the satisfaction of the Board, in the following manner:

(a) Service claimed shall be verified from the pay roll or other detailed records of the employer.

(b) In the event the pay roll or other detailed records are incomplete or missing, the service claimed and not established by such records shall be verified from the personnel records of the employer.

(c) If the pay roll, personnel, and detailed records are incomplete or missing, the service claimed and not established by such records shall be verified from any other books and records of the employer.

(d) If employer records do not establish service claimed, the individual may submit affidavits and other evidence in support thereof in either of the following instances: (1) when there are no employer records available to show whether or not the service claimed was rendered; or (2) when there are employer records available which do not verify the service claimed and do not establish that the service claimed was not rendered. (e) When service is verified as to over-all dates, but is not supported in detail by employer records, and when there are no employer records showing in detail absences from service, a deduction shall be made to cover an average amount of such absences. The deduction shall be the absences shown by the applicant or 5 per centum of the total period in question, whichever is greater, Provided, however, that the individual may be permitted to establish in a manner satisfactory to the Board the actual amount of his absences. (Secs. 2, 3, 10, 50 Stat. 309, 310, 314; 45 U. S. C. Sup. III, 228b, 228c, 228j)

PART 222—DEFINITION AND CREDITABILITY OF COMPENSATION

Sec.
222.01 Statutory provisions.
222.02 Definition of compensation.
222.03 Creditability of compensation
(a) Compensation for one month in excess of $300.
(b) Compensation earned after age sixty-five.
(c) Compensation dependent upon creditability of service.
(d) Remuneration by an annuitant.
222.04 Payments in settlement for personal injuries not creditable as compensation.
222.05 Verification of compensation claimed.

SEC. 222.01 *Statutory provisions.* "The term 'compensation' means any form of money remuneration earned by an individual for services rendered as an employee to one or more employers, or as an employee representative, including remuneration paid for time lost as an employee, but remuneration paid for time lost shall be deemed earned in the month in which such time is lost. Such term does not include tips, or the voluntary payment by an employer, without deduction from the remuneration of the employee, of any tax now or hereafter imposed with respect to the compensation of such employee." (Sec. 1 (h), 50 Stat. 309; 45 U. S. C. Sup. III, 228a)

"* * * If the employee earned compensation after June 30, 1937, and after the last day of the month in which he attained age sixty-five, such compensation shall be disregarded if the result of taking such compensation into account would be to diminish his annuity. In computing the monthly compensation, no part of any month's compensation in excess of $300 shall be recognized." (Sec. 3 (c), 50 Stat. 311; 45 U. S. C. Sup. III, 228c)

SEC. 222.02 *Definition of compensation.* Compensation shall mean the amount an individual earns for service performed as an employee. This amount shall include amounts to be paid in the form of a commodity, service, or privilege, only if the employer and employee, before the performance of the service for which it is payment, have agreed (a) upon the value of such commodity, service, or privilege, and (b) that such part of the amount agreed upon to be paid may be paid in the form of such commodity, service, or privilege. Compensation shall also include amounts paid by an employer to an individual for time lost during which time the individual had, with the employer, an employment relation, as defined in the Act and Part 204 of these regulations.

A waiver or refund of organization dues, in all cases in which the amount waived or refunded does not include elements in addition to the consideration for membership in the organization (such as, for example, insurance payments), even though motivated by the rendition of valuable services on the part of the individual to the organization, does not constitute compensation unless it appears by affirmative evidence that such waiver or refund was intended to be and was accepted as a discharge of an obligation of the organization to compensate the individual for service rendered. (Sec. 1, 10, 50 Stat. 309, 314; 45 U. S. C. Sup. III, 228a, 228j)

SEC. 222.03 *Creditability of compensation*—(a) *Compensation for one month in excess of $300.00.* In no case shall compensation in excess of three hundred dollars be credited for any one month of service.

(b) *Compensation earned after age sixty-five.* Compensation earned after the last day of the month in which the individual becomes sixty-five years of age shall not be credited unless the crediting thereof would increase the amount of his annuity.

(c) *Compensation dependent upon creditability of service.* No amount shall be credited as compensation unless it is received or earned for service creditable in accordance with section 220.03.

(d) *Remuneration by an Annuitant.* Remuneration earned or received by an individual for service performed while he is in receipt of an annuity shall not be creditable as compensation. (Secs. 1, 3, 10, 50 Stat. 309, 311, 314; 45 U. S. C. Sup. III, 228a, 228c, 228j)

SEC. 222.04. *Payments in settlement for personal injury not creditable as compensation.* A sum or sums paid by an employer solely in settlement or in lieu of settlement of a real or supposed liability for personal injury shall not be creditable as compensation; provided, however, that payments shall be presumed, in the absence of facts to the contrary, not to have been made solely in settlement or in lieu of settlement of such liability when such payments (a) cover a period not in excess of six months, (b) are computed at a rate not in excess of that which had previously been the individual's rate of pay, and (c) are made at or before the end of the period covered by them. The Board shall determine the creditability of the payments made in any other case on the basis of the facts of the particular case. (Secs. 1, 10, 50 Stat. 309, 314; 45 U. S. C. Sup. III, 228a, 228j)

SEC. 222.05. *Verification of compensation claimed.* Compensation claimed shall be verified to the extent deemed necessary by the Board, to determine the "monthly compensation" referred to in section 225.03 of these regulations and shall be verified from employers' pay roll or other detailed records; where such records are not available the compensation claimed shall be verified as follows:

(a) By the employee submitting income tax records or a diary or other personal record; provided, however, that such records shall not be considered unless similar records are furnished covering a reasonable period of time for which employer records are available, and the difference between the amount of compensation shown by the employee's records and that shown by the employer's records is not more than 2 per centum.

(b) Notwithstanding the lack of some compensation records required to calculate the "monthly compensation" during the years 1924 to 1931, inclusive, the amounts of annuities may be determined finally on the basis of such compensation records as are available:

(1) If 48 months or more service in the period 1924–1931 are proved and carrier compensation records are furnished for every month in which service was proved; or,

(2) If some but less than 48 months service in the period 1924–1931 are proved and carrier compensation records are furnished for all the months proved, if the average monthly compensation calculated from the foregoing is $200 or more; or,

(3) If 48 months or more of service in the period 1924–1931 are proved but carrier compensation records are missing for some of these months and *where no change* in occupation in the period 1924–1931 is reported *either by the carrier or the employee*, provided that carrier compensation records are furnished for at least one-half of the service proved in the period; or,

(4) If 48 months or more of service in the period 1924–1931 are proved but carrier compensation records are missing for some of these months and *where a change in occupation in the period 1924–1931 is reported either by the carrier or the employee*, provided that carrier compensation records are furnished for at least ⅞ of the service proved in the period and for at least ⅚ of the service proved in any one calendar year;

Provided, however, That if subsequent to such adjudication, compensation records should be supplied or found, the annuity shall be redetermined.

(c) In any case in which compensation records required to calculate the "monthly compensation" during the years 1924–1931, inclusive, are not available, and a final determination cannot be made according to the rules set forth in the preceding paragraph, a claim otherwise ready for certification may be temporarily certified on the basis of compensation for the period of missing records calculated as follows:

(1) Compute an average annual compensation for each year in which records are missing and for each occupation in which the employee was engaged during each such year, by dividing the total compensation reported to the Interstate Commerce Commission for the year and for the appropriate occupation group or groups by the employer by whom the applicant was employed, by the average number of employees on the fifteenth of each month for the same occupation group and year; provided that where, because of small numbers involved, the resulting average is not typical, an appropriate adjustment may be made; and provided further, if the annual average is greater than $3,600, $3,600 shall be used as the average;

(2) Compute the total compensation for the period of missing records by summating the totals of the averages so computed, appropriately adjusted for the proportion of year worked in each occupation;

(3) Compute the compensation claimed by the applicant for the period of missing records, using, if a total or average compensation is not claimed, such hourly, daily or weekly rates as may be reported by the applicant, using 208 hours or 25.5 days per month, and 12 months per year or 52⅐ weeks per year. In summating the claimed compensation the same adjustments for time worked shall be made as were made for the averages in the preceding sub-paragraph;

(4) Divide 90 percent of the sum in sub-paragraph (2) or 90 percent of the sum in sub-paragraph (3), whichever is smaller, plus the actual compensation for the period reported, not in excess of $300 per month, by the total number of months in the eight-year period, less the number of whole calendar months of absence indicated by the employer's personnel records during the period of missing compensation records and by the pay rolls, for the period for which they are available. Annuities thus temporarily certified shall be subject to recertification upon submission by the employer of satisfactory proof of the compensation actually received.

(d) Claims which cannot be certified finally or temporarily under the rules set forth in the two preceding sub-paragraphs shall be certified finally or temporarily under regulations which the Board may from time to time prescribe.

(e) In any case involving verification of compensation the Board may prescribe the extent and manner in which such compensation shall be established. (Secs. 1, 3, 10, 50 Stat. 309, 311, 314; 45 U. S. C. Supp. III, 228a, 228c, 228j)

PART 225—COMPUTATION OF ANNUITY

Sec.

SEC. 225.01 *Formula for computing annuity.* The annuity shall be computed by multiplying an individual's "years of service" by the following percentages of his "monthly compensation": 2 per centum of the first $50; 1½ per centum of the next $100; and 1 per centum of the next $150. (Secs. 3, 10, 50 Stat. 310, 314; 45 U. S. C. Sup. III, 228c, 228j)

SEC. 225.02 *Determination of "years of service."* The "years of service" of an individual shall be determined in accordance with the provisions of section 220.03 of these regulations. (Secs. 3, 10, 50 Stat. 310, 314; 45 U. S. C. Sup. III, 228c, 228j)

SEC. 225.03 *Determination of "monthly compensation."* The "monthly compensation" of an individual shall be computed by totaling the compensation earned by him in his "years of service" (excluding compensation in excess of $300 earned in any one month) and dividing that sum by the number of months in his "years of service," except (a) with respect to service prior to January 1, 1937 included in his "years of service," the "monthly compensation" shall be the arithmetic mean of the monthly compensation earned in calendar months included in his "years of service" in the years 1924–1931, and (b) where the "years of service" does not include service in the period 1924–1931 or where service in the period 1924–1931 which is included in the "years of service" is, in the judgment of the Board, insufficient to constitute a fair and equitable basis for determining the "monthly compensation" for service prior to January 1, 1937, the Board shall determine the "monthly compensation" for such service in such manner as in its judgment shall be just and equitable. (Secs. 3, 10, 50 Stat. 310, 314; 45 U. S. C. Sup. III, 228c, 228j)

SEC. 225.04 *"Compensation" that is included in determining "monthly compensation."* The "compensation" to be included in determining the "monthly compensation" shall be determined in accordance with the provisions of Part 222 of these regulations. (Secs. 3, 10, 50 Stat. 311, 314; 45 U. S. C. Sup. III, 228c, 228j)

SEC. 225.05 *Annuities subject to reduction where individual is under age sixty-five.* Where eligibility for an annuity is based on age sixty to sixty-five and service (see section 208.05 of these regulations) or on age sixty to sixty-five and disability (see section 208.10 of these regulations) the amount of the annuity, as computed under sections 225.01 to 225.04, shall be reduced by one one-hundred-and-eightieth for each calendar month during all of which the individual is less than sixty-five years of age when the annuity begins to accrue. (Secs. 2, 10, 50 Stat. 309, 314; 45 U. S. C. Sup. III, 228b, 228j)

SEC. 225.06 *Reduction by reason of previous disability annuity.* Where an individual who has been paid an annuity based on disability and service (see section 208.15 of these regulations), and subsequent to the cessation of this annuity is granted an annuity based on age sixty-five or on age sixty to sixty-five and service (see sections 208.03 and 208.05, respectively, of these regulations), the amount of such latter annuity, computed under sections 225.01 to 225.05, shall be reduced on an actuarial basis to be determined by the Board, in order to compensate for the disability annuity previously paid. (Secs. 2, 10, 50 Stat. 310, 314; 45 U. S. C. Sup. III, 228b, 228j)

SEC. 225.07 *Reduction by reason of election of joint and survivor annuity.* If a joint and survivor election is operative, the value of the annuity, as computed under sections 225.01 to 225.06, shall be applied to the payment of two annuities, one to the individual during life, and the other to the surviving spouse during life. The amounts of both annuities shall be such that their combined actuarial value as determined by the Board shall be the same as the actuarial value of the annuity computed under sections 225.01 to 225.06. (Secs. 4, 10, 50 Stat. 312, 314; 45 U. S. C. Sup. III, 228d, 228j)

SEC. 225.08 *Maximum amount of annuity.* (a) Where the annuity is based in whole or in part upon service rendered prior to January 1, 1937, the amount of the annuity shall not exceed one hundred twenty dollars per month.

(b) Where the annuity is based wholly upon service rendered subsequent to December 31, 1936 there shall be no maximum limit upon the amount of the annuity. (Secs. 3, 10, 50 Stat. 310, 314; 45 U. S. C. Sup. III, 228c, 228j)

SEC. 225.09 *Minimum amount of annuity*—(a) *Employee at age sixty-five with twenty years' service.* In the case of an individual who is an employee under the Act at age sixty-five and has at least 234 months of creditable service, the minimum annuity shall be as follows:

(1) If the "monthly compensation" is $50 or more, the minimum annuity shall be $40, or

(2) If the "monthly compensation" is at least $25 but less than $50, the minimum annuity shall be 80 per cent of the "monthly compensation," or

(3) If the "monthly compensation" is at least $20 but less than $25, the minimum annuity shall be $20, or

(4) If the "monthly compensation" is less than $20, the annuity shall be the full amount of the "monthly compensation." (Secs. 3, 10, 50 Stat. 311, 314; 45 U. S. C. Sup. III, 228c, 228j)

(b) *Minimum applicable to all cases.* In no case, irrespective of whether the individual has the qualifications enumerated under (a) above, shall the amount of the annuity be less than the value of the additional old-age benefit the individual would receive under Title II of the Social Security Act if the individual's service as an employee, as defined in the Railroad Retirement Act of 1937, after December 31, 1936 were included in the Social Security Act. (Secs. 3, 10, 50 Stat. 311, 314; 45 U. S. C. Sup. III, 228c, 228j)

SEC. 225.10 *Annuity not subject to recomputation.* After an annuity has begun to accrue it shall not be subject to recomputation by reason of services rendered thereafter to an employer, except in computing an annuity granted after the cessation of a disability annuity. (Secs. 3, 10, 50 Stat. 311, 314; 45 U. S. C. Sup. III, 228c, 228j)

PART 230—ELECTIONS OF JOINT AND SURVIVOR ANNUITIES

Sec.

SEC. 230.01 *Statutory provision.* "An individual whose annuity shall not have begun to accrue may elect prior to January 1, 1938, or at least five years before the date on which his annuity begins to accrue, or upon furnishing proof of health satisfactory to the Board, to have the value of his annuity apply to the payment of a reduced annuity to him during life and an annuity after his death to his spouse during life equal to, or 75 per centum of, or 50 per centum of such reduced annuity. The amounts of the two annuities shall be such that their combined actuarial value as determined by the Board shall be the same as the actuarial value of the single-life annuity to which the individual would otherwise be entitled. Such election shall be irrevocable, except that it shall become inoperative if the individual or the spouse dies before the annuity begins to accrue or if the individual's marriage is dissolved or if the individual shall be granted an annuity under subdivision 3 of section 2 (a); Provided, however, That the individual may, if his marriage is dissolved before the date his annuity begins to accrue, or if his annuity under subdivision 3 of section 2 (a) ceases because of failure to make the required proof of disability, make a new election under the conditions stated in the first sentence of this subsection. The annuity of a spouse under this subsection shall begin to accrue on the first day of the calendar month in which the death of the individual occurs." (Sec. 4, 50 Stat. 311; 45 U. S. C. Sup. III, 228d)

SEC. 230.02 *When can an election be made; effect of proof of health on election.* Any individual, irrespective of whether he has applied for an annuity, can, on or prior to the date on which his annuity begins to accrue, make (in accordance with sections 230.03 to 230.09, inclusive) an election of a joint and survivor annuity; Provided, however, That if he is granted an annuity which begins to accrue earlier than five years after the date on which the election is so made such election shall be ineffective, unless, prior to the date of certification of his annuity he submits proof of health in accordance with section 230.11, or unless such election was made before January 1, 1938. (Secs. 4, 10, 50 Stat. 311, 314; 45 U. S. C. Sup. III, 228d, 228j)

SEC. 230.03 *Definition of election.* An election of a joint and survivor annuity shall have been made when the individual entitled thereto (a) shall have made a choice to have the value of his annuity at accrual applied to the payment of a reduced annuity to him during life and an annuity after his death to his spouse during life; (b) shall have made a choice whether the value of his annuity at accrual shall be applied to the payment of an annuity to him during life so reduced as to provide for an annuity after his death to his spouse equal to such reduced annuity, or 75 per centum of such reduced annuity, or 50 per centum of such reduced annuity; (c) shall have made such choice with knowledge of the essence of the transaction; (d) and shall have communicated such choice in writing, clearly and unambiguously, to the Railroad Retirement Board; (e) all within the time provided in section 4 of the Railroad Retirement Act of 1937. (Secs. 4, 10, 50 Stat. 311, 314; 45 U. S. C. Sup. III, 228d, 228j)

SEC. 230.04 *Communication to the Railroad Retirement Board.* Communication of the choice as hereinabove set forth may be made by executing, in such manner as may be indicated in the application form provided by the Board, the designated provisions thereof relevant to an election, or by the due execution of the appropriate form provided by the Board, or by the execution of any legible writing clearly and unambiguously showing that the choice has been made; any such communication shall become effective as a communication upon its receipt by the Railroad Retirement Board. In the event that the communication takes a form other than the execution of the application form provision or the form provided by the Board, the individual will be required, where possible, to verify the communication by the execution of the form provided by the Board. Secs. 4, 10, 50 Stat. 311, 314; 45 U. S. C. Sup. III, 228d, 228j)

SEC. 230.05 *Prima facie evidence of further elements of election.* Receipt of a communication as set forth above shall constitute prima facie evidence of the existence of all the elements of an election as defined in section 230.03. Whenever such prima facie evidence becomes conclusive or is confirmed as hereinafter provided, an election shall have been made on the date on which the communication containing such prima facie evidence is received by the Railroad Retirement Board. (Secs. 4, 10, 50 Stat. 311, 314; 45 U. S. C. Sup. III, 228d, 228j)

SEC. 230.06 *Confirmation of prima facie evidence.* Upon receipt of a communication as hereinabove described, the Railroad Retirement Board will advise the individual of the nature of the transaction and will solicit his confirmation of the existence of all the elements of an election. Upon receipt of such confirmation by the Railroad Retirement Board, an election shall be conclusively established to have been made on the date the original communication as hereinabove described was received by the Railroad Retirement Board; except that, in the event an annuity is awarded which is reduced as provided in section 208.05 or section 208.10 of these regulations, further opportunity for rebuttal predicated upon lack of knowledge of that fact shall be afforded. (Secs. 4, 10, 50 Stat. 311, 314; 45 U. S. C. Sup. III, 228d, 228j)

SEC. 230.07 *Prima facie evidence to become conclusive under certain circumstances.* The prima facie evidence of the existence of the elements of an election contained in a communication as hereinabove set forth shall become conclusive without confirmation in any of the following circumstances:

(a) If the individual dies before confirmation or rebuttal is received by the Railroad Retirement Board.

(b) If an intervening right of the spouse to a survivor annuity is asserted on the basis of such prima facie evidence. In any case in which the individual seeks to rebut the prima facie evidence and to claim an annuity less favorable to the spouse, he shall be re-

quired to furnish evidence that no intervening right is asserted by obtaining the signature of the spouse upon the Railroad Retirement Board form furnished for that purpose; except that no such evidence shall be required in the event that any election which might be asserted to have been made becomes inoperative by law through the award of an annuity under subdivision 3 of section 2 (a) of the Railroad Retirement Act of 1937.

(c) If no confirmation or rebuttal is received by the Railroad Retirement Board within thirty days from the date on which a solicitation of confirmation is mailed to the individual at the address furnished by him, except upon a conclusive showing of special and unusual circumstances depriving the individual of an opportunity to indicate rebuttal within such thirty days. (Secs. 4, 10, 50 Stat. 311, 314; 45 U. S. C. Sup. III, 228d, 228j)

SEC. 230.08 *Rebuttal of prima facie evidence.* In order to rebut the prima facie evidence of the existence of all the elements of an election contained in a communication as hereinabove described, the individual will be required to furnish evidence convincing to the Railroad Retirement Board that some element or elements of an election, as defined in section 230.03, did not exist. If the elements of an election were present, a mere change of judgment upon reconsideration is not sufficient. (Secs. 4, 10, 50 Stat. 311, 314; 45 U. S. C. Sup. III, 228d, 228j)

SEC. 230.09 *Further communication after rebuttal of prima facie evidence.* If prima facie evidence of the existence of all the elements of an election contained in a communication as described in section 230.04 is rebutted, any further communication in writing from the individual received by the Railroad Retirement Board expressing clearly and unambiguously a choice as set forth in section 230.03 shall constitute conclusive evidence of the existence of all the elements of an election, and such communication, in order to be effective, shall be received within the limitations of time set forth in section 4 of the Railroad Retirement Act of 1937. (Secs. 4, 10, 50 Stat. 311, 314; 45 U. S. C. Sup. III, 228d, 228j)

SEC. 230.10 *Application of regulations to communications received prior to promulgation of regulations.* These regulations shall apply to all elections under the Railroad Retirement Act of 1937, irrespective of whether communications with respect thereto are received by the Railroad Retirement Board before or after the original date, (December 11, 1937), of promulgation of this Part of the regulations; except that any individual from whom such communication had been received before that date and who had not theretofore been advised of the nature of the transaction, and to whom no annuity had been awarded, is entitled to advice of the nature of the transaction and solicitation of confirmation as promptly as possible after the original date of promulgation of this Part of the regulations, confirmation or rebuttal thereafter to proceed as provided in Sections 230.06, 230.07 and 230.08 of this Part; and except that in the case of individuals who had theretofore been advised of the nature of the transaction and individuals to whom annuities had theretofore been awarded, the original communication shall be conclusive evidence of the existence of all the elements of an election unless rebuttal evidence was received within thirty days from the original date of promulgation of this Part of the regulations. (Secs. 4, 10, 50 Stat. 311, 314; 45 U. S. C. Sup. III, 228d, 228j)

SEC. 230.11 *What constitutes proof of health satisfactory to the Board.* In order to furnish proof of health satisfactory to the Board, an individual shall submit, in such manner as the Board may from time to time require, (a) a statement of health by himself, (b) a complete report by a medical examiner who shall be a duly qualified and licensed physician, not related by blood or marriage to the individual or his spouse and not pecuniarily interested in any survivor annuity which might become payable to the individual's spouse by reason of a joint and survivor election by the individual, and (c) such additional statements as, under the facts of the particular case, the Board may require; such statements and report to show, to the satisfaction of the Board, that the individual is free from any disease or condition which would tend to shorten the individual's normal life. (Secs. 4, 10, 50 Stat. 311, 314; 45 U. S. C. Sup. III, 228d, 228j)

SEC. 230.12 *Beginning date following election.* Whenever an applicant has made, on or after January 1, 1938, an election of a joint and survivor annuity without furnishing proof of health satisfactory to the Board and has previously designated a beginning date earlier than five years after the date on which the election was made, he shall be notified of the relation of the beginning date of an annuity to the operation of an election. Such notice shall advise that a beginning date five years later than the date of his election must be designated if the election is to become operative and that unless such designation be received by the Board within thirty days of the date of such notification, the date already designated by him will be operative, in which event he will, if otherwise entitled, receive a single life annuity and his wife will not receive a survivor annuity. (Sec. 4, 10, 50 Stat. 312, 314; 45 U. S. C. Sup. III, 228d, 228j)

SEC. 230.13 *Election to be irrevocable.* An election once made in accordance with this Part cannot be revoked or changed. An election shall not be operative if:

(a) the individual does not become eligible for an annuity;

(b) the individual although eligible for an annuity does not file on or before the date of death an application for an annuity;

(c) the individual dies before the annuity begins to accrue;

(d) the individual's spouse dies before the annuity begins to accrue;

(e) in any manner other than by death, the individual's marriage is dissolved either before or after the annuity begins to accrue; in the event of such dissolution after the annuity begins to accrue the individual shall be paid from and after the effective date of such dissolution an annuity in the same amount per month as if no election had been made;

(f) the individual is granted an annuity based on service and disability (see section 208.15 of these regulations). (Secs. 4, 10, 50 Stat. 312, 314; 45 U. S. C. Sup. III, 228d, 228j)

SEC. 230.14 *When new election may be made.* An individual may, in accordance with the provisions of this Part, make a new election if (a) his marriage was dissolved and he remarries before the annuity begins to accrue, or (b) his spouse died and he remarries before the annuity begins to accrue, or (c) he was granted an annuity based on disability and service (see section 208.15 of these regulations) and this annuity ceases because of failure to make proof of disability in accordance with section 208.25 of these regulations. (Secs. 4, 10, 50 Stat. 311, 314; 45 U. S. C. Sup. III, 228d, 228j)

PART 235—PAYMENTS AT DEATH

Sec.

SEC. 235.01 *Death benefit—amount of, and when payable.* (a) Upon the death of an individual to whom no annuities have become payable there shall be paid a death benefit equal to 4 per centum of the aggregate compensation, if any, earned by the individual as an employee after December 31, 1936, excluding compensation in excess of three hundred dollars in any one month.

(b) Upon the death of an individual to whom annuities have become payable

and who is not survived by a spouse entitled to a survivor annuity, there shall be paid a death benefit equal to an amount computed as in (a) above, less all annuities paid or payable to the individual.

(c) In any case wherein an individual dies survived by a spouse entitled to a survivor annuity, there shall be paid after the death of such surviving spouse a death benefit equal to an amount computed as in (b) above, less all survivor annuities paid or payable to such surviving spouse. (Secs. 5, 10, 50 Stat. 312, 314; 45 U. S. C. Sup. III, 228e, 228j)

SEC. 235.02 *Death benefit—to whom payable.* Any individual who was an employee after December 31, 1936, may designate the person or persons whom he wishes to receive any death benefit payable under Section 5 of the Railroad Retirement Act of 1937. Such designation to be valid must be made by such individual in writing on the designation form provided by the Board, and must be received by the Railroad Retirement Board prior to the individual's death. If the person or persons designated to receive a death benefit die before the death benefits become payable, such benefits shall be paid to the designator's legal representative. (Secs. 5, 10, 50 Stat. 312, 314; 45 U. S. C. Sup. III, 228e, 228j)

SEC. 235.03 *Annuity payments due but unpaid at death.*—(a) *Under 1937 Act.* Such payments shall be paid to a surviving spouse if such spouse is entitled to an annuity under a joint and survivor election made pursuant to Section 4 of the 1937 Act; otherwise they shall be paid to the same individual or individuals who may be entitled to receive any death benefit under Section 5 of the 1937 Act, as provided in section 235.02 of these regulations, and shall be paid in the same proportion that such death benefits are so payable. (Secs. 5, 10, 50 Stat. 312, 314; 45 U. S. C. Sup. III, 228e, 228j)

(b) *Under 1935 Act.* Such payments shall be paid to a surviving spouse if such spouse is entitled to an annuity under an election made pursuant to the provisions of Section 5 of the 1935 Act; otherwise they shall be paid to such person or persons as the deceased may have designated, or if there be no designation, to the legal representative of the deceased. A designation by the deceased to be valid must be made by him in writing on the designation form provided by the Board, and must be received by the Railroad Retirement Board prior to the deceased's death. If the person or persons designated by the deceased do not survive him, the annuity payments shall be made to the legal representative of the deceased. (Secs. 10, 202, 50 Stat. 314, 315; 45 U. S. C. Sup. III, 215, 228j)

SEC. 235.04 *Survivor annuities due but unpaid at death*—(a) *Under 1937 Act.* All annuity payments due a surviving spouse who is entitled to a survivor annuity under an election made pursuant to Section 4 of the Railroad Retirement Act of 1937, but not yet paid at the death of such spouse, shall be paid to the same individual, or individuals, who may be entitled to receive any death benefit that may be payable under Section 5 of such Act and shall be paid in the same proportion that such death benefits are so payable. (Secs. 5, 10, 50 Stat. 312, 314; 45 U. S. C. Sup. III, 228e, 228j)

(b) *Under 1935 Act.* All annuity payments due a surviving spouse by reason of an election made pursuant to Section 5 of the Railroad Retirement Act of 1935 but not yet paid at the death of such spouse shall be paid to such person or persons as the deceased employee may have designated by a writing filed with the Board prior to his death, or if there be no designation or if the person or persons designated do not survive such spouse, such annuity payments shall be paid to the legal representative of the deceased employee. The designation of a person or persons to receive accrued annuities due at the death of the employee under the Railroad Retirement Act of 1935 shall operate to designate the same person or persons to receive, in the same proportion, all annuity payments due to a surviving spouse by reason of an election made pursuant to Section 5 of such Act, but not yet paid at the death of such spouse. The designation of an alternate beneficiary or alternate beneficiaries, in the event that the primary beneficiaries do not survive the designator, shall operate to designate any such alternate beneficiary in the place of the primary beneficiaries in the event also that the primary beneficiaries survive the designator but do not survive a surviving spouse entitled to survivor annuities. If more than one beneficiary is designated, the share of any beneficiary or beneficiaries who die before a surviving spouse entitled to a survivor annuity shall be paid in equal shares to the survivors, or entirely to the survivor if only one survives. (Secs. 10, 202, 50 Stat. 314, 318; 45 U. S. C. Sup. III, 215, 228j)

SEC. 235.05 *Revocation or change of designation of beneficiary.* A revocation or change of designation of beneficiary, or a designation of an additional or new beneficiary or beneficiaries, may be made at any time and without the knowledge or consent of the previous beneficiary or beneficiaries, but to be valid must be made by the designator in writing on the form provided by the Board for that purpose, and must be received by the Railroad Retirement Board prior to the designator's death. (Secs. 5, 10, 50 Stat. 312, 314; 45 U. S. C. Sup. III, 228e, 228j)

SEC. 235.06 *Designation on other than prescribed form.* Where a writing, other than the form provided by the Board, signed by the designator is received by the Board prior to the designator's death, in which a clear and unambiguous designation of beneficiary or revocation or change of designation is made in substantially the same manner as that provided on such form and the designator dies without executing such form, the designation, revocation or change shall be given the same effect as if executed on such form. (Secs. 5, 10, 50 Stat. 312, 314; 45 U. S. C. Sup. III, 228e, 228j)

SEC. 235.07 *Witnessing of designation or revocation.* No effect shall be given to a designation of beneficiary or revocation or change of designation which does not bear the signatures of two witnesses, neither of whom is named as beneficiary, unless the execution of the designation, revocation or change by the designator is proved to the satisfaction of the Board. (Secs. 5, 10, 50 Stat. 312, 314; 45 U. S. C. Sup. III, 228e, 228j)

SEC. 235.08 *Designees to share equally unless otherwise specified.* Where more than one person is designated as beneficiary, each beneficiary shall receive an equal share, unless the percentage to be paid to each beneficiary is specified, in which case each beneficiary shall receive only the percentage specified. (Secs. 5, 10, 202, 50 Stat. 312, 314, 318; 45 U. S. C. Sup. III, 228e, 228j, 215)

PART 236—PAYMENTS OF BENEFITS OF $500 OR LESS

Sec.

SEC. 236.01 *"Benefit" as used in this Part.* The term "benefit" as used in this Part means a death benefit under Section 5 of the 1937 Act and annuity payments under the 1937 Act, or the 1935 Act, due but unpaid at death. (Secs. 5, 10, 202, 50 Stat. 312, 314, 318; 45 U. S. C. Sup. III, 228e, 228j, 215)

SEC. 236.02 *Payment without formal administration.* When any benefit in an amount of five hundred dollars or less is payable to a legal representative, and when no executor or administrator has been or is expected to be appointed, the Board may, without formal administration, make certification for payment to the surviving spouse or kindred of the deceased who are determined by the Board to be entitled thereto under the laws of the State of last domicile of such deceased. (Secs. 5, 10, 202, 50 Stat. 312, 314, 318; 45 U. S. C. Sup. III, 228e, 228j, 215)

SEC. 236.03 *Agreements and renunciations by creditor.* If, in the judgment of the Board, any creditor of the estate of the deceased possesses rights superior to those of his surviving spouse or kindred, payments shall not be made without formal administration unless and until such creditor has, on a form approved by the Board, agreed with the Board that payment shall be made without administration to a specified person or persons, and in consideration there-

of, renounced any right or remedy for the payment of such benefit to any one other than the person or persons specified. (Secs. 5, 10, 202, 50 Stat. 312, 314, 318; 45 U. S. C. Sup. III, 228e, 228j, 215)

SEC. 236.04 *Direction of payment to other individuals.* If it is determined by the Board that the benefit is payable to two or more individuals mentioned in section 236.02, any one or more of such individuals may, if he wishes, upon a form approved by the Board, direct the payment of his interest to any other of such individuals. (Secs. 5, 10, 202, 50 Stat. 312, 314, 318; 45 U. S. C. Sup. III, 228e, 228j, 215)

SEC. 236.05 *Selection under state allowance or exemption laws.* Whenever, under the laws of the state in which the deceased was last domiciled, the surviving spouse or kindred is, in the judgment of the Board, entitled to allowance or exemption, the benefit may become payable without court proceedings, in accordance with the provisions of such allowance or exemption laws, if such spouse or kindred executes and files with the Board a prescribed form in which he selects and accepts the benefit as a first payment toward the allowance or exemption, and agrees in the event of any proceedings concerning the administration or distribution of assets of the estate of the deceased to notify the Probate Court or other proper authority of such selection and acceptance. (Secs. 5, 10, 202, 50 Stat. 312, 314, 318; 45 U. S. C. Sup. III, 228e, 228j, 215)

PART 240—PENSIONS

Sec.

SEC. 240.01 *Statutory provisions.* "(a) Beginning July 1, 1937, each individual then on the pension or gratuity roll of an employer by reason of his employment, who was on such roll on March 1, 1937, shall be paid on July 1, 1937, and on the 1st day of each calendar month thereafter during his life, a pension at the same rate as the pension or gratuity granted to him by the employer without diminution by reason of a general reduction or readjustment made subsequent to December 31, 1930, and applicable to pensioners of the employer: Provided, however, That no pension payable under this section shall exceed $120 monthly; And provided further, That no individual on the pension or gratuity roll of an employer not conducting the principal part of its business in the United States shall be paid a pension under this section unless, in the judgment of the Board, he was, on March 1, 1937, carried on the pension or gratuity roll as a United States pensioner.

"(b) No individual covered by this section who was on July 1, 1937, eligible for an annuity under this Act or the Railroad Retirement Act of 1935, based in whole or in part on service rendered prior to January 1, 1937, shall receive a pension payment under this section subsequent to the payment due on October 1, 1937, or due on the 1st day of the month in which the application for an annuity of such individual has been awarded and certified by the Board, whichever of the two dates is earlier. The annuity claims of such individuals who receive pension payments under this section shall be adjudicated in the same manner and with the same effect as if no pension payments had been made: Provided, however, That no such individual shall be entitled to receive both a pension under this section and an annuity under this Act or the Railroad Retirement Act of 1935, and in the event pension payments have been made to any such individual in any month in which such individual is entitled to an annuity under this Act or the Railroad Retirement Act of 1935, the difference between the amounts paid as pensions and the amounts due as annuities shall be adjusted in accordance with such rules and regulations as the Board may deem just and reasonable.

"(c) The pension paid under this section shall not be considered to be in substitution for that part of the pension or gratuity from the employer which is in excess of a pension or gratuity at the rate of $120 a month. (Sec. 6, 50 Stat. 312; 45 U. S. C. Supp. III, 228f)

"SEC. 7. Nothing in this Act or the Railroad Retirement Act of 1935 shall be taken as restricting or discouraging payment by employers to retired employees of pensions or gratuities in addition to the annuities or pensions paid to such employees under such Acts, nor shall such Acts be taken as terminating any trust heretofore created for the payment of such pensions or gratuities." (Sec. 7, 50 Stat. 313; 45 U. S. C. Sup. III, 228g)

SEC. 240.02 *Eligibility for pensions under Section 6.* Any individual shall be eligible for a pension under Section 6 of the Act if it is claimed and established to the satisfaction of the Board: (a) that he was, on March 1, 1937 and on July 1, 1937, on the pension or gratuity roll of an employer, as defined in the Act; (b) that he was on such roll by reason of employment with an employer; (c) that his pension or gratuity was payable at a fixed rate; (d) that he was not, on July 1, 1937, eligible under either the 1935 Act or the 1937 Act for an annuity based in whole or in part on service rendered prior to January 1, 1937; (e) that if, on March 1, 1937 and on July 1, 1937, the employer was not conducting the principal part of its business within the United States, the individual was, on March 1, 1937, carried on the pension or gratuity roll by reason of having performed, within the United States, all or a substantial portion of his service with such employer during a reasonable period preceding the granting of such pension or gratuity. (Secs. 6, 10, 50 Stat. 312, 314; 45 U. S. C. Sup. III, 228f, 228j)

SEC. 240.03 *Rate and time at which pension is payable.* Any individual establishing the above qualifications shall be paid a monthly pension on the first day of July, 1937, and on the first day of each calendar month thereafter during his lifetime, in the same amount as he was receiving, or would have received had he been on the pension or gratuity roll of his employer, on December 31, 1930, or on the earliest date that such rolls were commenced, whichever date shall be later: Provided, however, That if the pension or gratuity has been reduced by reason of a special (not general) reduction or readjustment made subsequent to December 31, 1930, the pension shall be at such reduced rate, but in no case shall a pension payable under Section 6 of the Act exceed one hundred and twenty dollars per month. A pension payment does not accrue nor become payable until the first day of a month, and only if the pensioner be alive on that date. (Secs. 6, 10, 50 Stat. 312, 314; 45 U. S. C. Sup. III, 228f, 228j)

SEC. 240.04 *Duty of employer.* Each employer, as defined in the Act, shall report to the Board, on such form or forms as the Board may provide, with respect to all individuals on its pension or gratuity rolls by reason of employment on both March 1, 1937 and July 1, 1937, the information requested on such form relating to the eligibility of such individuals for pensions under Section 6 of the Act, and shall submit such further evidence and information relating thereto as may be required by the Board. (Secs. 6, 10, 50 Stat. 312, 314; 45 U. S. C. Sup. III, 228f, 228j)

SEC. 240.05 *Eligibility of pensioner for an annuity on July 1, 1937.* The claim for an annuity of any individual in receipt of or eligible for a pension under Section 6 of the Act shall be adjudicated in the same manner and with the same effect as the claims of other individuals: *Provided, however,* That such an individual shall not be granted an annuity unless he was, on July 1, 1937, eligible under the 1935 or the 1937 Act for an annuity based in whole or in part on service rendered prior to January 1, 1937. (Secs. 6, 10, 50 Stat. 312, 314; 45 U. S. C. Sup. III, 228f, 228j)

SEC 240.06 *Adjustment of dual payments.* In the event of payment by the Board to an individual, who was, on July 1, 1937, eligible under either the 1935 Act or the 1937 Act for an annuity based in whole or in part on service rendered prior to January 1, 1937, of pensions in months in which for all or a part thereof the individual is entitled to annuities,

the difference between the pensions paid and the annuities accruing for the same period or fraction thereof, if any, shall be adjusted by the Board as follows:

(a) If the total or the allocated portion of the pension payments made in such months equals the total of the unpaid annuities due, the latter amount shall be canceled.

(b) If the total or the allocated portion of the pension payments made in such months exceeds the total of the unpaid annuities due, the latter amount shall be canceled and the difference shall be deducted from annuities subsequently becoming due.

(c) If the total or the allocated portion of the pension payments made in such months is less than the total of the unpaid annuities due, the individual shall be paid the difference.

(d) If, under either (a), (b) or (c) of this section, the annuity payments have been made for the month or months or fractional portions thereof in which the pension payments were made or if, for any other reason, it is, in the judgment of the Board, inequitable or impractical to cancel or reduce the annuity payments for such month or months, the unpaid annuity payments for the succeeding month or months shall be canceled or reduced.

(e) In any case wherein the payment of an annuity or a pension was based upon fraudulent or erroneous information or statements submitted by the individual to whom payment has been made or his employer, or both, the Board may require from the individual or the employer submitting such fraudulent or erroneous information or statements reimbursement of any amounts thus paid, and in addition thereto shall cause to be taken under Section 13 of the Act such action as it deems proper under the circumstances. (Secs. 6, 10, 50 Stat. 312, 314; 45 U. S. C. Sup. III, 228f, 228j)

SEC. 240.07 *Pension by Board not to affect additional payments by employer.* In any case wherein a pensioner eligible under Section 6 of the Act was receiving a pension or gratuity of more than one hundred and twenty dollars per month from an employer, the payment by the Board of a pension under Section 6 of the Act shall have no effect upon the payment by the employer of such additional gratuities as it sees fit, nor upon any trust fund created for the payment of pensions or gratuities. (Secs. 7, 10, 50 Stat. 313, 314; 45 U. S. C. Sup. III, 228g, 228j)

PART 250—REPORTS, INFORMATION, HEARINGS AND WITNESSES

Sec.

SEC. 250.01 *Duty to furnish information and records.* In connection with any matter or inquiry directly or indirectly involving (a) the employer status of any individual, person or company, (b) the employee or pension status of any individual, (c) the amount and creditability of service and compensation, or (d) any other matter arising in or necessary for the administration of the Railroad Retirement Acts of 1935 or 1937, the Board may require any individual, person or company to furnish or submit, in such form and at such times as the Board may require, any information, records, contracts, documents, reports or other material within their possession or control, that, in the judgment of the Board, may have any bearing upon such matter or inquiry. (Secs. 10, 13, 50 Stat. 314, 316; 45 U. S. C. Sup. III, 228j, 228m)

SEC. 250.02 *Employer to notify of death of employee.*—It shall be the duty of every employer coming within the purview of the Act to notify the Railroad Retirement Board of the death of any employee in active employment, and when known, of the death of any employee in an employment relation, within 30 days following the receipt by the employer of notice of such death. Such notification to the Board shall be made on the form provided for that purpose, and, to the extent known to the employer, shall show, among other things, the date of death, place thereof and the name and address of the surviving spouse or nearest relative.

The notice of death shall also contain a statement of the amount of compensation earned by the deceased for service to the employer for each month of the period beginning with the first month of the last completed calendar quarter and ending with the date of death and any other statement which the Board may deem necessary in carrying out the provisions of the Act.

This report does not take the place of the regular reports of employee's compensation to the Bureau of Accounts but represents an additional report with respect to deceased employees. The regular reports will be rendered when due, including any amounts which may be reported as the result of the death of the employee. (Secs. 10, 50 Stat. 315; 45 U. S. C. Sup. III, 228j)

SEC. 250.03 *Employers' Reports of monthly compensation of employees.* [N. B. The title "Bureau of Accounts" was officially changed February 9, 1939, to "Bureau of Wage and Service Records."] The following regulations became effective with the quarterly period ending March 31, 1938, and supersede all other regulations on the same subject previously issued by the Railroad Retirement Board. In order to make possible compliance with Section 8 of the Railroad Retirement Act of 1937, it is necessary that a uniform record be maintained by the Board showing the monthly earnings of each individual for employment covered by the Act in any calendar month subsequent to December 31, 1936. The Bureau of Accounts will furnish the forms necessary for reporting compensation of employees.

(a) The Board may accept punched tabulating cards in substitution of report forms hereinafter provided. The Board cannot permit substitution of report forms which would materially increase the cost of recording, or provide for reporting at longer intervals than those provided for regular reports.

(b) Unless otherwise specifically agreed heretofore or hereafter, in writing approved by the Director of the Bureau of Accounts of the Railroad Retirement Board, every employer shall forward to the Board on or before the expiration of thirty days after the close of each quarter ending March 31, June 30, September 30 and December 31, of each year a report of compensation earned by each employee for service during each month of such quarter. The report of compensation of employees shall consist of:

(1) A report of compensation for 3 months, (2) a report of compensation adjustments for 3 months, and (3) a summary report of compensation of employees for such period.

(c) A brief description of the items for which provision is made follows:

(1) *Employer.* The corporate name of the employer shall be shown on each sheet of the report.

(2) *Employer number.* The identification number assigned by the Railroad Retirement Board to the employer shall be shown on each sheet of the report.

(3) *Employee account number.* The 9-digit number assigned either by the Social Security Board or the Railroad Retirement Board and shown on the employee's account number card shall be shown. If, at the time of preparing the report there are employees to whom account numbers have not been assigned, but for whom Forms CER–1 have been forwarded to the Bureau of Accounts, Railroad Retirement Board, Washington, D. C., such employees should be reported on the RRB form furnished for that purpose in the regular manner except that the "Account Number" column should be left blank. These employees should then be re-listed on another such form made up in duplicate, leaving the "Account Number" column blank and reporting to the right of the name in the remaining columns the notation "CER–1 submitted on ----------," together with the
(date)

Sheet Number and Line Number on which the employee is reported on the regular RRB form. An employer who regularly assigns account numbers should show no employees without account numbers except those individuals who applied for a number while working for another employer but who never received one, or who lost their original number and do not recall it. In both cases Forms CER–1 should have been forwarded to this Bureau with proper explanation.

(4) *Employee name.* The last name, or surname, of the employee shall be shown in full as it appears on the account number card, together with the first name or initials. The order in which this information is shown is optional with the employer and may follow the method used in preparation of his payroll. The Board prefers the surname first, followed by either the first name and middle initial, or by both initials.

(5) *I. C. C. occupation classification.* The number of the occupation classification to be shown on each quarterly report shall be that to which the employee is assigned in reports to the Interstate Commerce Commission during the first month in which the individual was employed in each reporting period. No employee should be reported under more than one occupation classification on any one quarterly report. In assigning the occupation classification code the predominant type of service rendered should govern. Since certain employers do not submit a "Monthly Report of Employees, Service and Compensation" to the Interstate Commerce Commission they may not be familiar with the I. C. C. Occupation Classification. For the benefit of these employers an excerpt from the complete "List of Occupations of Positions in Each Reporting Division" for those divisions which appear to be applicable to the employees of such employers are shown hereunder together with explanatory notes:

Code *Description*

Executives, General Officers and Assistants

1. Executive officer or assistant and General officer or assistant.

NOTE.—Executive officers and general officers, assistant executive officers and assistant general officers of railroad and other associations and of national railway labor organizations should be reported under this classification.

2. Division Officers, Assistants, and Staff Assistants: Division officer and Official staff assistant.

NOTE.—Division or district officials occupying positions of importance comparable to "Superintendent of Shops" in a railroad organization shall be reported under this classification.

Professional, Clerical and General

3. Attorney: Legal assistant, Draftsman, Assistant Engineer, and Chemist.

NOTE.—Employees whose work is comparable to the duties generally performed by employees of carriers in the positions indicated shall be reported under this classification.

5. Chief Clerk and Assistant Chief Clerk, and supervising Cashiers: Supervisor or chief clerk and Supervising cashier.

6. Clerks and Clerical Specialists: Clerk, Accountant, Statistician, and Cashier or teller.

NOTE.—This classification should include all clerks who are performing work of a very difficult nature comparable to that performed by accountants, statisticians, cashiers and tellers in carrier organizations.

7. Clerks: Clerk and Ticket clerk.
9. Secretaries.
10. Stenographers and Typists.
15. Messengers and Office Boys.
16. Elevator Operators and Other Office Attendants: Elevator operator, Elevator starter, Office matron, and Office porter.
18. Patrolmen and Watchmen.
19. Traffic and Various Other Agents, Inspectors and Investigators.
20. Claim Agents or Investigators.
26. Janitors and Cleaners: Cleaner (brass, marble, etc.) and Head Janitor.

Maintenance of Way and Structures

27. Roadmasters, General Foreman and Assistants.
40. Gang or Section Foremen.
42. Section Men.
47. Linemen and Groundmen: Electrical worker.

Maintenance of Equipment and Stores

50. General, Assistant General, and Department Foreman: Shop Foreman and Enginehouse Foreman.
57. Carmen (Includes Inspector).
61. Machinists (Includes engine inspectors).
71. General Laborers.
73. Stationary Engineers.

Transportation (Other Than Train, Engine and Yard)

76. Train Dispatchers.
79. Station Agents (non-telegraphers): Station agent, Assistant station agent, Station agent—non-supervisory, and Station agent—part time.
80. Station Agents (telegraphers and telephoners): Agent—telegrapher and Agent—telephoner.
83. Telegraphers, Telephoners and Towermen.
90. Gang Foremen (freight station, grain elevator, warehouse and dock labor).
92. Truckers.
94. Common Laborers.
98. Officers, Workers, and Attendants on Barges, Launches, Ferry Boats, Towing Vessels and Steamers; and Shore Workers.
102. Bridge Operators and Helpers.
103. Crossing and Bridge Flagmen and Gatemen.
105. Yardmasters.
107. Switch Tenders.
108. Hostlers.

Transportation (Train and Engine)

111. Road Passenger Conductors.
114. Road Freight Conductors.
115. Road Passenger Baggagemen.
116. Road Passenger Brakemen and Flagmen.
118. Road Freight Brakemen and Flagmen.
119. Yard Conductors and Yard Foremen.
120. Yard Brakemen and Yard Helpers.
121. Road Passenger Engineers and Motormen.
123. Road Freight Engineers and Motormen.
124. Yard Engineers and Motormen.
125. Road Passenger Firemen and Helpers.
127. Road Freight Firemen and Helpers.
128. Yard Firemen and Helpers.

Express Companies Will Use the Following Classification: Executives, Officials and Staff Assistants

301. Executives and general officers.
302. Staff officials, division officers and assistants.

Professional, Clerical and General

303. Professional and subprofessional assistants.
304. Chief Clerks A.
305. Chief Clerks B, head clerks and clerical specialists.
306. Clerks.
307. Non-listing adding and calculating machine operators.
308. Stenographers and typists.
309. Office attendants.
310. Route agents.
311. Agents—office, depot, and terminal.
312. Foremen — vehicle, depot and platform.
313. Warehouse and platform clerks.
314. Warehouse and platform laborers.
315. Vehicle employees.
316. Police.
317. Claim agents and claim adjusters.

Train Transportation

318. Train messengers.
319. Train helpers and guards.

Maintenance and Stores

320. Foremen.
321. Machinists.
322. Other craftsmen.
323. Apprentices and helpers — all trades.
324. Garage employees.
325. Laborers, unclassified.

In the event any employer has employees who do not appear to be includable in any of the classifications shown herein, a statement giving a brief description of the duties of such employees should be transmitted to the Bureau of Accounts, Railroad Retirement Board, Washington, D. C., in duplicate, and the copy of that statement will be returned to the employer show-

ing the classification in which the employee should be included.

The following account classifications have been provided by the Bureau of Accounts of the Railroad Retirement Board for use by all employers to cover employees not presently included in the "Monthly report of employees, service and compensation:"

Code	*Description*
201.	Station caretakers and other persons regularly employed on a part time basis.
210.	Miners, Laborers and other employees used in the operation of mines.
211.	Doctors.
212.	Hospital employees other than doctors.

(6) *Compensation.* The total compensation for every employee shown on a payroll or other disbursement document for a particular calendar month shall be reported on a form provided by the Board with two exceptions:

(i) Compensation for employees in I. C. C. Occupation Classification 1, Executives, Officials and Staff Assistants, and 2, Division Officers, Assistants, and Staff Assistants, which exceeds $300 in any one month may be reported on the basis of total compensation or $300, unless such employees receive compensation from two or more employers, in which case the full amount of the compensation received from the reporting employer should be shown (See *Adjustments,* paragraph 7).

(ii) Compensation for employees whose earnings are carried on weekly payrolls, provided such payrolls are required by State laws, shall include the total compensation received for all payroll weeks, all or a major portion of which falls within a particular calendar month, except that compensation earned in one calendar year shall not be reported as compensation earned in another calendar year, further provided that the total compensation of any individual for a four-week month shall not exceed $275; or the total compensation of any individual for a five-week month shall not exceed $300; or no amount shall be reported as compensation for a particular calendar month which represents the only earnings of a particular individual in another calendar month.

All compensation for employees whose earnings are carried on weekly payrolls, the total of which exceeds $275 in any four-week month, or $300 in any five-week month, and:

Amounts, the inclusion of which as a part of the compensation for a particular month would affect the service months creditable, shall be separated and allocated to the calendar month in which earned and shall be reported in accordance with the general instructions applicable to all employers.

The practice of reporting under exceptions (i) and (ii) above shall be constant for a particular employer and may be changed only after approval by the Director, Bureau of Accounts, Railroad Retirement Board.

(7) *Adjustments.* Any adjustment of compensation shown on a payroll or other disbursement document for a current month, and included in the report as compensation for the month which represents an adjustment of compensation shown on the payroll for a prior month, or any adjustment of compensation shown on a payroll or other disbursement document for a prior month which was made subsequent to the filing of the report and therefore not included as compensation for that month shall be reported (on a form to be provided by the Bureau of Accounts) provided it affects the service period, or it affects creditable earnings.

The total amount earned in the service of the reporting employer by an employee who concurrently performs compensated service for two or more employers under the Act shall be reported regardless of occupation classification. If the total earnings of an individual from all employers under the Act exceed $300, adjustment should be made to reduce the creditable earnings and to increase the non-creditable earnings in such manner as to accomplish a net of creditable earnings equivalent to the proportion of $300 that the amount of total earnings from the reporting employer bears to the total earnings from all employers under the Act. If the total earned by such an employee from the reporting employer exceeds $300, the amount in excess of $300 should be included as the amount of compensation reported in excess of $300 for any individual in any one month.

If an employee is paid for all service by a single employer who is reimbursed for a portion of those earnings by another employer, the employee shall be considered as the employee of the employer initially making the payment of earnings for the purposes of reports herein required.

It is the intent of instructions concerning the reporting of adjustments that any adjustment of compensation shown on a payroll or other disbursement document for a current month which would not affect the amount of annuity if reported as a part of current earnings instead of as an adjustment of prior earnings, shall be reported on the proper form as a part of the compensation earned during the month covered by the payroll or other disbursement document on which the adjustment is made.

In considering these adjustments it should be borne in mind that all amounts up to but not exceeding $300 per month reported are considered by the bureau to be creditable earnings, and are transcribed as such to a punch card, and all amounts in excess of $300 per month are considered to be non-creditable earnings and are transcribed to another punch card. By punching these two cards the bureau is able to balance to the total compensation reported, the excess and net compensation reported.

(8) *Summary, recapitulation, and execution.* The total for each sheet of the reporting form shall be shown and recapitulated on additional sheets of the same form, using the name column for sheet number and the last three columns for the amounts. If the report is of sufficient size to justify a grand recapitulation, the same forms shall be used for that purpose. In addition to the summary of total compensation reported, a summary of amounts shown in excess of $300 shall be shown by Department, State, Division, or any other convenient segregation conforming with the reporting divisions used in the preparation of the detail form. The employer may show "excess" totals at the bottom of each sheet if he desires to do so. In summarizing excess earnings any amount reported on the detail form in excess of $300 should be considered as non-creditable. No amounts shown should be considered as excess unless the amount shown exceeds $300, irrespective of the fact that some of these amounts not so considered may be non-creditable earnings. The latter should be adjusted by use of a form provided for that purpose.

The grand total of the reports for each carrier as reflected on the recapitulations shall be shown on a form provided for that purpose and in accordance with instructions issued in connection with such form.

The declaration on the reporting forms shall be signed by an authorized responsible official of the employer, and the jurat completed by a notary public. (Secs. 8, 10, 50 Stat. 313, 314; 45 U. S. C. Sup. III, 228h, 228j)

SEC. 250.04 *Registration of employees.* [N. B. The title "Bureau of Accounts" was officially changed February 9, 1939 to "Bureau of Wage and Service Records".] (a) On July 1, 1937, the Railroad Retirement Board took over the assignment of account numbers to employees covered by the Railroad Retirement Act, and the cooperative arrangement in effect with the Post Office Department was discontinued. All numbers previously issued to employees under the Social Security Act were issued on the basis of an application Form SS–5 while those issued to employees under the Railroad Retirement Act were issued on the basis of an application Form CER–1. The information shown on the application Form SS–5 or Form CER–1 was transcribed to Form OA–702. The original Forms OA–702 based on Form SS–5 are on file in the office of the Bureau of Old-Age Insurance of the Social Security Board, Baltimore, Maryland. The original Form OA–702 based on Form CER–1 are on file in the office of the Bureau of Accounts, Railroad Retirement Board, Washington, D. C.

Account numbers assigned under the direction of the Railroad Retirement Board shall continue to be referred to as "Social Security Account Numbers" and Form CER–1 ("Social Security—Carrier Employee Registration Application for Account Number") shall continue in use.

The principal change resulting from the transfer of the assignment of account numbers to the Railroad Retirement Board was the cooperative arrangement entered into between the Railroad Retirement Board and certain large employers whereby those employers secure supplies of pre-numbered office record forms and make direct assignments of account numbers.

(b) It is essential that all persons who perform compensated service for an employer, and who are employees be assigned an account number. The Account number is a 9-digit number under which a record of service and compensation is maintained for an employee under either the Railroad Retirement Act or the Social Security Act. A block of numbers, the first three digits of which are in the series of 700 to 739, has been allocated to the Railroad Retirement Board for assignment to employees under the Railroad Retirement Act of 1937 who have not previously received account numbers. The separation of the number into groups of three digits representing "area," two digits representing "group," and four digits representing "serial," with a dash between each group, has no meaning and is merely for convenience in writing the number.

Employees engaged in the future by employers in whose service they have not previously been engaged will come into one of the following classifications:

(1) Persons who have not, since January 1, 1937, had any employment requiring an account number. These persons should fill out Form CER–1.

(2) Persons having a number in other than the series seven hundred (700) to seven hundred thirty-nine (739) will continue to use such numbers, but should fill out Form CER–1 if they have not already done so while in prior service with some other employer under the Railroad Retirement Act, and turn it over to their employer for filing with the Board.

(3) Persons holding account numbers of which the first three digits are in the seven hundred (700) to seven hundred thirty-nine (739) series, and persons holding account numbers in any series who have performed service for an employer after June 30, 1937, should have been registered on Form CER–1, and there should be no necessity, so far as the Railroad Retirement Board is concerned, to secure their reregistration. But, if a person with an account number in this series works for an employer after June 30, 1937, and subsequently works for another employer under the Retirement Act, such subsequent employer may wish to maintain a complete file of Forms CER–1; in such case, however, no such form need be sent to the Board.

(c) The procedure to be followed in filling out Form CER–1 and making account number assignments in the above cases is prescribed hereunder:

(1) Employers will requisition the estimated number of Forms CER–1 "Social Security-Carrier Employee Registration Application for Account Number," for periods of six months in advance. The requisition form furnished by the Board should be used for this purpose.

(2) Employers will secure a properly executed Form CER–1 from each new employee who has not previously received an account number, the first three digits of which are within the series seven hundred (700) to seven hundred thirty-nine (739), unless such employee has previously completed such form. After entering the previously assigned account number on the original and duplicate form, it should be examined with particular reference to the following items:

(i) Is each question answered in full? If the answer to any question is unknown, the word "unknown" should be written. If on Line 1 the employee has no middle name, this should be indicated by a line; otherwise, middle name should be required.

(ii) Addresses should be complete.

(iii) The name on Line 1 should be the correct name of the applicant. If this name differs from the name signed on Line 16, an explanation should be attached to the CER–1 application. This applies to such cases as abbreviations of long foreign names, married women working under their maiden names, and other persons working under a name different from their correct name.

(3) Employers who are supplied with Forms OA–702 will transcribe the information on Form CER–1 to the Form OA–702, in the case of each employee who has not previously received an account number. Before transcribing this information the same examination of Form CER–1 as described in paragraph (2) above should be made. In typing Form OA–702 the following rules should be adhered to:

(i) The lower part of the identification card which contains the employee account number can be detached and used by the employer or can be turned over to the employee at the discretion of the employer.

(ii) Capitalize the first letter only of each name on the Form OA–702.

(iii) If a name is too long to be typed in full on the account number card, initials may be typed for the middle name or for the first and middle names, if necessary. Include "Jr." or "Sr." if part of name given.

(iv) Erasures are permitted if the result is neat and legible.

(v) Numerical sequence of Forms OA–702 should be maintained.

(vi) If necessary to void a form, mark it "void" but include it in series sent to this office.

(vii) When OA–702's are prepared and account numbers assigned, the account number should be transcribed from OA–702's to the upper right-hand corner of the corresponding CER–1 in the space between the heading and the black corner.

The original account number card (right-hand portion) of Form OA–702 should be delivered to the employee. The original of Form OA–702 (left-hand portion) of Form CER–1 should be forwarded to the Bureau of Accounts, Railroad Retirement Board, Washington, D. C. The carrier may retain the right-hand portion of the duplicate Form OA–702 (Duplicate Account Number Card Portion) if desired, or it may be forwarded to the Bureau of Accounts. The left-hand portion of the duplicate copy of Form OA–702 should be sent to:

Washington Regional Office,
Social Security Board,
Bond Building,
New York Avenue & 14th St. NW.,
Washington, D. C.

The duplicate copy of Form CER–1 may be retained by the employer.

(4) Employers who do not have a supply to Forms OA–702 will forward to the Bureau of Accounts, Railroad Retirement Board, Forms CER–1, covering employees who have not previously received an account number. The Board will thereupon prepare Form OA–702 and forward the account number card to the employer for recording the number, and delivery to the employee.

(d) Other problems which may arise at the time of filling out Form CER–1 and with which the employer should be familiar in order to expedite delivery of the account numbers to employees are set forth below:

(1) *Corrections.* All applications for correction of data previously furnished by the employee as a basis for the issuance of the account number, or correction in the account number card should be made over the signature of the employee concerned. This includes changes in names on account of marriage. The employee should prepare a corrected Form CER–1, inserting the correct information in all cases. The form should also show the word "Correction" at the top of the form. The employee's account number should be shown under Item 14, if he has been assigned one. All applications for corrections in records (Form CER–1) should be forwarded to the Bureau of Accounts, Railroad Retirement Board, Washington, D. C. If the correction involves a change of the name on the account number card, this card should be

returned with the Form CER–1 and a corrected Account Card will be forwarded to the employer for delivery to the employee.

(2) *Applications for duplicate account number cards.* Applications for duplicate account number cards will be made on Form CER–1 over the signature of the employee. Applications for duplicate account number cards should be addressed to the Bureau of Accounts, Railroad Retirement Board, Washington, D. C. In all applications for duplicate account number cards the reason should be indicated in the answer to question 14 as to why a duplicate card is necessary. Usually this will be because the original has been lost. If insufficient room is available in which to supply this explanation, a supplementary statement should be attached.

(3) *Cancellations.* The question of cancellations of account numbers for employees who hold two or more numbers should be handled as follows: If an employee holds two or more numbers, the first number issued, regardless of origin, should be retained by him, and subsequent account number cards should be picked up from the employee and forwarded to the Bureau of Accounts, Railroad Retirement Board, Washington, D. C., with a letter of explanation indicating the account number which was retained by the employee.

(4) *Assignment of numbers to former employees who have left the service before receiving an account number.* If an employee applies for an account number on Form CER–1 but leaves the service of his employer before receiving his account number card, every possible effort should be made to deliver the employee's account number card to him. Where such delivery is impossible, the account number card should be forwarded to the Bureau of Accounts, Railroad Retirement Board, for filing and for reference in case of future inquiries concerning such number. If an employee leaves the service of his employer before having applied for an account number, an effort should be made to locate the former employee and have him prepare Form CER–1, at the same time getting his mailing address for delivery of account number upon assignment. If the former employee cannot be located, the employer should prepare Form CER–1, inserting all available information concerning the employee, including any information that might be helpful to subsequent identification even though not provided for by the form. This type of application should clearly state on Line 14 that the employer filed the Form CER–1 because he was unable to locate the former employee. The signature of the employer should be entered on Line 16, followed by the word employer. If signature is stamped or typed, it should be initialed. If the employer cannot furnish the complete information called for on CER–1, an account number may be assigned subject to the minimum requirement of the name, place of employment, occupation, race and sex. Employers who are supplied with Forms OA–702 should prepare this form and forward it without detaching the identification card to the Bureau of Accounts, Railroad Retirement Board, accompanied by the CER–1. The lower portion of the identification card should be noted "Undeliverable."

(5) *Employees who refuse to sign CER–1.* Where employees refuse to sign Forms CER–1 for religious or other reasons, the necessary information should be secured from employee, if possible. If the employee refuses any information, all data available to the carrier should be inserted on both the Form CER–1 and the Form OA–702, if in use, together with an explanation such as "Employee refuses to sign—religious conviction," or whatever the reason may be. The account number card should be delivered to the employee. Form CER–1 and Form OA–702 should be forwarded to the Bureau of Accounts, Railroad Retirement Board, Washington, D. C.

(6) *Employees who previously submitted application for an account number not yet received.* An employee who has previously submitted an application Form CER–1 or SS–5 but has not received an account number should prepare Form CER–1, indicating on Line 14 the name of the employer for whom he was working at the time the original application was filed. All CER–1 forms of this type should be forwarded immediately to the Bureau of Accounts, Railroad Retirement Board, Washington, D. C. If our alphabetical files show that the employee has been assigned an account number, either the original account number card or a duplicate bearing the account number will be mailed to the present employer for delivery to the employee concerned. If a check develops the fact that no number has been assigned the employee, the CER–1 will be treated as an original and a number assigned and mailed to the employer for delivery to the employee. If the account number is not received by the date reports are prepared, the account number column of the reporting Form should be left blank and the employees without numbers relisted on additional sheets of such form, as prescribed under Section 250.03 (c) (3).

(7) *Account number cards undelivered because of death of employee.* If an employee dies before an account number card is received, the account number card should be delivered to his wife or next surviving relative. If this is impossible, make appropriate notation on the account number cards and forward to the Bureau of Accounts, Railroad Retirement Board, where they will be filed.

(e) This section became effective January 1, 1938. (Sec. 10, 50 Stat. 315; 45 U. S. C. Sup. III, 228j)

SEC. 250.05 *Employers to distribute annual statements of compensation.* Upon the basis of compensation reports furnished to the Board under Section 250.03 of these regulations, the Board will annually forward to employers copies of statements of the annual compensation of employees as reported to the Board under Section 250.03 and it shall, except for good cause shown to the Board, be the duty of each employer receiving such annual reports of compensation promptly to distribute them to each individual to whom the report is applicable. Distribution of these reports shall be completed within ninety days following the date on which they are received by the employer and if at the end of such ninety-day period any reports have not been distributed to any employee to whom the report is applicable, the employer shall note thereon the reason for its failure to make distribution as required by this section and the last address of the employee known to the employer, and shall return all such undistributed reports to the Board (Sec. 8, 10, 50 Stat. 313, 316; 45 U. S. C. Sup. III, 228h, 228j)

SEC. 250.06 *Reports of employee representatives.* An initial report setting forth the facts upon which he bases his status as an employee representative will be required of an individual claiming such a status. If the facts establish to the satisfaction of the Board that the individual claiming such status is an employee representative within the meaning of the Act and these regulations, he will be so advised and will thereafter be required to furnish to the Board periodic reports of his compensation as such, from and after January 1, 1937. These reports will be used for the adjudication and computation of his annuity upon qualification therefor. Proper forms and instructions will be furnished from time to time for use in making these reports (Sec. 10, 50 Stat. 315; 45 U. S. C. Sup. III, 228j)

SEC. 250.07 *Hearings.* To such extent as may be necessary to determine (a) the employee or pension status of any individual or group of individuals, (b) the employer status of any company or person, and (c) any other matter arising in or necessary for the administration of the Railroad Retirement Acts of 1935 and 1937, the Board may itself or through a member or a designated subordinate or subordinates, require and compel the attendance of witnesses and the production of records and documents, administer oaths, take testimony, make all pertinent investigations and findings of fact and render decisions upon such findings. (Sec. 10, 50 Stat. 314; 45 U. S. C. Sup. III, 228j)

SEC. 250.08 *Witnesses.* In any hearing before the Board, a member thereof, or a designated subordinate or subordinates, or the Appeals Council or a member thereof, witnesses may be summoned to appear and give testimony.

Designation by the Board of any person or persons to preside at and conduct such hearings shall constitute a delegation of authority to such person or persons to require and compel the attendance of witnesses, to administer oaths, and to take testimony. (Sec. 10, 50 Stat. 314; 45 U. S. C. Sup. III, 228j)

SEC. 250.09 *Application for witnesses.* The Board, a member thereof, or a designated subordinate or subordinates, or the Appeals Council or a member thereof conducting a hearing may upon its or their own motion or upon application of any party to such hearing issue a subpoena for a witness or witnesses. The application shall be by affidavit filed with the body or person conducting the hearing within such period of time as will permit service and return of a subpoena prior to the date set for the hearing at which the witness is to appear but in no case shall such application be filed later than ten days prior to the date of hearing. The application shall set forth

(1) the name of the witness.
(2) his address.
(3) the title of the matter to be heard, i. e., names of parties.
(4) the issue to which the testimony of the witness will be directed.
(5) the substance of the testimony which such witness is expected to give or the facts to which such witness will testify.
(6) the books, papers or documents which are requested, if a subpoena duces tecum is applied for.

In addition to the above the party filing such application shall, at the time of filing, deposit therewith a sum of money sufficient to cover the fees and mileage of the witness, or in lieu thereof, shall state in the application that satisfactory arrangements have been made with the witness for the direct payment of his fees and mileage and any other allowable expense. (Sec. 10, 50 Stat. 314; 45 U. S. C. Sup. III, 228j)

SEC. 250.10 *Petition for summoning recalcitrant witness.* In connection with any hearing a party thereto may petition the Board, a member thereof, or a designated subordinate or subordinates, or the Appeals Council or a member thereof to subpoena, upon its or their own motion, a witness or witnesses. The petition shall be in writing under oath and be filed with the body or person conducting the hearing within the time limit prescribed for an application for subpoena, shall set forth the same information required in an application for subpoena and in addition thereto shall show (1) that the person or persons named therein as witnesses will not appear voluntarily and (2) that a failure of such person or persons to appear and testify will operate to prejudice substantive rights of the petitioner.

The body or person designated to conduct the hearing shall upon receipt of the petition determine whether the fact to which it is alleged the witness will testify or the testimony which it is alleged the witness will give is material and relevant and if such body or person finds that such fact or testimony is material and relevant it or he shall either subpoena such witness upon its or his own motion or by agreement of all parties to the hearing, except the petitioner, shall stipulate and agree in the record that such witness would testify as alleged in the petition or (if the petition be for the production of books, papers or documents) that the records requested would appear as alleged. The body or person shall also have the power to deny any part of a petition which in its or his judgment is not material or relevant to the issues to be heard. If, in the judgment of the body or person designated to conduct the hearing the testimony which it is alleged the witness will give is merely cumulative, or immaterial or irrelevant the petition may be denied (Sec. 10, 50 Stat. 315; 45 U. S. C. Sup. III, 228j)

SEC. 250.11 *Service of subpoenas.* Service of subpoenas issued under Section 250.08 shall be made by any individual designated by the Board. Such individual shall deliver to the person or persons named therein a copy of the subpoena and at that time tender to the person or persons the fees for one day's attendance and the mileage allowed by law, provided, however, that if the witness or witnesses be summoned to appear upon motion of the body or person designated to conduct the hearing no fees or mileage need be tendered. Fees and mileage allowed shall be in the same amount as is allowed to witnesses in the Courts of the United States (Sec. 10, 50 Stat. 315; 45 U. S. C. Sup. III, 228j)

SEC. 250.12 *Returns.* The person serving the subpoena shall make affidavit on the original subpoena of the manner and time of service and shall file such original subpoena with the person or body by whom it was issued (Sec. 10, 50 Stat. 315; 45 U. S. C. Sup. III, 228j)

SEC. 250.13 *Examiners.* The Board may refer proceedings to an examiner for hearing and determination of any or all issues raised. Such appointment made in writing and entered upon the minutes of the Board shall constitute authorization for the examiner to preside at and conduct hearings, require and compel the attendance of witnesses, administer oaths, take testimony and cause the same to be recorded, and do such other acts as may be necessary for the hearing and determination of the issues referred (Sec. 10, 50 Stat. 314; 45 U. S. C. Sup. III, 228j)

SEC. 250.14 *Exhibits.* Copies of all exhibits admitted in evidence at any hearing shall be furnished by the party offering the same to all other parties participating or entering appearance in the proceedings (Sec. 10, 50 Stat. 314; 45 U. S. C. Sup. III, 228j)

SEC. 250.15 *Procedure when examiner appointed.* When the taking of testimony has been completed, the examiner shall as soon as practicable mail to the parties at the address stated in their appearances a free transcript of the record of the proceedings had before the examiner. In the event that more than two parties have appeared at the hearing, the examiner shall make available as many copies of the transcript as there are different positions represented by requiring each group of parties representing the same position to designate the person or office to whom their one free copy shall be mailed. Thereafter, the examiner shall give all parties participating in the hearing the opportunity for presentation to him of argument upon both law and facts. Upon conclusion of the proceedings before him, the examiner shall prepare an examiner's report, which, together with the record of the proceedings before him shall be submitted to the Board. The report shall set forth the examiner's findings of fact, conclusions of law, and recommendations as to decision. The report may also contain such discussion of the question raised, both legal and factual, as the examiner may desire to present to the Board.

A copy of the examiner's report shall be served by the examiner upon each party participating in the hearing by mailing such copy to him at the address stated in his appearance.

Each party shall within twenty days (exclusive of Sundays and legal holidays in the District of Columbia) after the date of mailing to him of the examiner's report, file with the Board and serve upon other parties by mailing to their addresses as stated in their appearances such exceptions in writing as he desires to make to the examiner's findings of fact and conclusions of law. Each exception shall specifically designate the particular finding of fact or conclusion of law to which objection is taken, and shall set forth in detail the grounds of the objection. General exceptions and exceptions not specifically directed to particular findings of fact or conclusions of law will not be considered by the Board. Exceptions to findings of fact shall make specific reference by page numbers to those portions of the record upon which reliance is placed.

Each party shall have ten days after receipt of exceptions taken by other parties in which to file with the Board replies to the exceptions. Replies to exceptions to findings of fact shall make specific reference by page numbers to those portions of the record upon which reliance is placed.

The Board may upon the application of a party and for cause shown extend the time for filing and serving of exceptions or filing of replies thereto.

The Board will render its decision upon the record, the examiner's report, and such exceptions and replies thereto as are made. Where the record is voluminous (more than one hundred pages including exhibits) the Board will consider only such points of law and fact as are specifically raised by the exceptions and such

other points, if any, which it deems necessary for decision; and will examine only those portions of the record to which its attention is specifically directed, and such other portions of the record, if any, as the Board deems necessary.

The examiner's report shall be advisory only and the Board may, in any case, exercise its right to reject or adopt the examiner's report in whole or in part or adopt such report with modifications. The examiner's report, while advisory, shall nevertheless be presumed to be correct. Findings of fact to which no exceptions are taken will, subject only to the power of the Board upon its own consideration to reject or modify, stand confirmed.

The decision of the Board shall be communicated to the parties participating in the hearing within thirty days of the date upon which the decision of the Board is entered upon its records.

SEC. 250.16 *Board decisions and opinions and dissenting opinions.* The following regulation shall apply to all decisions of the Board except decisions relating to matters of internal administration.

A decision made by at least two members of the Board shall constitute the decision of the Board. The decision of the Board shall be stated in a written opinion filed in the record of the proceedings. Such opinion shall set forth the reasons for the decision, either in full, or by reference to previous decisions of the Board, or by adoption of the reasons stated in the decision or recommendation of a subordinate or subordinate body of the Board. Any decision of the Board made by two members shall constitute the unanimous decision of the Board, unless within ten days of the filing of the Board decision, a third member of the Board shall file a minority opinion setting forth his dissent and the reasons for his disagreement with the decision and opinion of the Board. (Sec. 10, 50 Stat. 314; 45 U. S. C. Sup. III, 228j)

PART 255—RECOVERY OF ERRONEOUS PAYMENTS

Sec.

N. B. The Board may require reimbursement for annuity or pension payments made on basis of erroneous or fraudulent information (see section 240.06 (e)).

SEC. 255.01 *Statutory provisions.* "(a) If the Board finds that at any time more or less than the correct amount of any annuity or pension has theretofore been paid to any individual under this Act or the Railroad Retirement Act of 1935, then, under regulations made by the Board, proper adjustments shall be made in connection with subsequent payments under such Acts to the same individual.

"(b) There shall be no recovery of payments of annuities, death benefits, or pensions from any person, who, in the judgment of the Board, is without fault and if, in the judgment of the Board, such recovery would be against equity and good conscience. No disbursing officer shall be held liable for any amount paid by him to any person where the recovery of such amount is waived under this Section." (Sec. 9, 50 Stat. 314; 45 U. S. C. Sup. III, 228i)

SEC. 255.02 *Erroneous payments.* An "erroneous payment," within the meaning of this Part, shall have been made in any case in which an individual receives, as a payment under the 1937 Act or the 1935 Act, a payment all or part of which he is not entitled to receive. (Secs. 9, 10, 50 Stat. 314; 45 U. S. C. Sup. III, 228i, 228j)

SEC. 255.03 *When erroneous payments to be recovered.* Erroneous payments shall be recovered in all cases except those in which recovery is waived under Section 255.10. (Secs. 9, 10, 50 Stat. 314; 45 U. S. C. Sup. III, 228i, 228j)

SEC. 255.04 *Methods of recovering erroneous payments.* Erroneous payments may be recovered by any one or any combination of the methods described in Sections 255.06, 255.07 and 255.08. (Secs. 9, 10, 50 Stat. 314; 45 U. S. C. Sup. III, 228i, 228j)

SEC. 255.05 *Recovery by cash payment.* The Board shall have the right to require that erroneous payments be immediately and fully repaid in cash and any individual shall have the absolute right to repay such erroneous payments in this manner. (Secs. 9, 10, 50 Stat. 314; 45 U. S. C. Sup. III, 228i, 228j)

SEC. 255.06 *Recovery by set-off.* Any payments due an individual to whom erroneous payments were made, or due the estate or designee of such individual, may be applied toward satisfaction of the erroneous payments. Annuity payments due the surviving spouse of an individual by reason of a joint and survivor election may be applied toward satisfaction of any erroneous payments made to the individual or the surviving spouse. In any case in which the application of payments due does not effect complete recovery, the balance may be recovered by one or more of the other methods described in this Part. (Secs. 9, 10, 50 Stat. 314; 45 U. S. C. Sup. III, 228i, 228j)

SEC. 255.07 *Recovery by deduction in computation of death benefit under 1937 Act.* In computing the death benefit under Section 5 of the 1937 Act with respect to the death of an individual, the Board shall include in the annuities to be deducted from 4 per centum of the aggregate compensation mentioned in that section all erroneous payments, not otherwise recovered, which were paid as annuities to the individual or to his surviving spouse by reason of a joint and survivor election. (Secs. 9, 10, 50 Stat. 314; 45 U. S. C. Sup. III, 228i, 228j)

SEC. 255.08 *Recovery by adjustment in connection with subsequent payments.* Adjustment with respect to erroneous payments received by any individual may be made by subtracting the total amount of the erroneous payments from the actuarial value, as determined by the Board, of any annuity or pension payments due and becoming due to such individual (or, if such individual be deceased, then any survivor annuities due and becoming due to his spouse) and recertifying such annuity or pension on the basis of the reduced actuarial value; provided, however, that in case an individual entitled to a joint and survivor annuity and his spouse are both alive, they may, upon their joint request, have the adjustment made by subtracting the total amount of the erroneous payments from the combined actuarial value of both their annuities and having both their annuities recomputed on the basis of the reduced actuarial value. The adjustment described in this section may not be made unless all of the following conditions are shown to exist: (a) That the person or persons whose annuities or pension are being adjusted are alive on the date that the annuity or pension is recertified and on the due date of the first annuity or pension payment affected by the adjustment; (b) That, on the dates mentioned in (a) above, there are annuities accruing or pensions becoming due to one of such persons; (c) that the Board has waived, in accordance with section 255.11, any right to recover by the methods described in sections 255.05 and 255.06, but has not waived recovery in accordance with section 255.10. (Secs. 9, 10, 50 Stat. 314; 45 U. S. C. Sup. III, 228i, 228j)

SEC. 255.09 *Effect of adjustment in connection with subsequent payments.* Adjustment by the method described in section 255.08 shall constitute a recovery of the amount of erroneous payments included in the adjustment. (Secs. 9, 10, 50 Stat. 314; 45 U. S. C. Sup. III, 228i, 228j)

SEC. 255.10 *Waiver of recovery.* Recovery of erroneous payments may be waived in whole or in part if, in the judgment of the Board, the individual who received the erroneous payments is without fault and if, in the judgment of the Board, such recovery by any of the methods described in sections 255.05, 255.06, 255.07 and 255.08 would be against equity and good conscience. (Secs. 9, 10, 50 Stat. 314; 45 U. S. C. Sup. III, 228i, 228j)

SEC. 255.11 *Waiver of methods of recovery.* The Board may waive any right to recover all or any part of the errone-

ous payments by any one or more methods without waiving the right to recover by some other method or methods if, in the judgment of the Board, the individual is without fault and if, in the judgment of the Board, recovery by the methods waived would be against equity and good conscience and recovery by such other methods would not be against equity and good conscience. (Secs. 9, 10, 50 Stat. 314; 45 U. S. C. Sup. III, 228i, 228j)

SEC. 255.12 *Waiver not a matter of right; factors considered.* A waiver under section 255.10 or 255.11 is not a matter of right, but is at all times within the judgment of the Board. The following, while neither controlling nor fully measuring the discretion of the Board, indicate the character of reasons which will be considered: (a) whether the erroneous payment was caused by an incorrect statement made by the individual receiving such payment, and the individual knew or should have known it was incorrect; (b) whether the erroneous payment was caused by the failure of the individual to disclose facts or make a statement which he knew or should have known to be material; (c) whether, at the time or times of receipt of payments the individual knew or should have known the amount thereof to be incorrect and failed to inquire or advise the Board of the incorrectness of the amount of the payment or payments; (d) the extent to which the individual is dependent upon the current payment of his annuity or pension for the necessities of life; (e) whether the individual has, by reason of the erroneous payment, changed his position in such manner as to make recovery a severe hardship. (Secs. 9, 10, 50 Stat. 314; 45 U. S. C. Sup. III, 228i, 228j)

PART 260—APPEALS WITHIN THE BOARD

Sec.

SEC. 260.01 *Initial decisions by the Claims Service.* (a) Claims will be adjudicated and initial decisions made by the Claims Service upon the basis of the application, the evidence submitted by the applicant, and evidence otherwise available. Adjudication and initial decision will be in accordance with instructions issued by the Board. (b) Notice of an initial decision shall be communicated by the Claims Service to the applicant in writing within thirty days after such decision is made. (Sec. 10, 50 Stat. 315; 45 U. S. C. Sup. III, 228j)

SEC. 260.02 *Appeal from an initial decision of the Claims Service.* (a) Every applicant shall have a right to appeal to the Appeals Council from any initial decision of the Claims Service by which he claims to be aggrieved. The Appeals Council shall consist of five members, one of whom shall have legal training and shall be the chairman. Each other member shall have a background of experience in the railroad industry calculated to familiarize him with the practices, procedures, and conduct prevailing in the railroad industry; two of such members shall have a background of experience in the representation of employee organizations, and two shall have had experience calculated to familiarize them with the problems of railway management. (b) Appeal from an initial decision of the Claims Service shall be made by the execution and filing of the appeal form prescribed by the Board, and must be filed with the Appeals Council within one year from the date upon which notice of the initial decision is mailed to the applicant at the address furnished by him. (c) The right to further review of an initial decision of the Claims Service shall be forfeited unless formal appeal is filed in the manner and within the time prescribed herein. (d) In the event that the applicant makes informal complaint without taking formal appeal, which complaint is not eliminated by explanation of the basis of the initial decision of the Claims Service, the Appeals Council shall endeavor to ascertain, by correspondence or conference with the applicant, whether he takes issue with any point of fact or law involved in the initial decision of the Claims Service, and, if so, whether the applicant desires to take a formal appeal to the Appeals Council. In the latter event, he shall be supplied with the appeal form prescribed by the Board, which form shall be duly executed and filed before the applicant is considered to have made an appeal. (e) The appellant, or his representative, shall be afforded full opportunity to present further evidence upon any controversial question of fact, orally or in writing or by means of exhibits; to examine and cross-examine witnesses; and to present argument in support of the appeal. If, in the judgment of the Appeals Council, evidence not offered by the appellant is available and relevant and is material to the merits of the claim, the Appeals Council shall obtain such evidence upon its own initiative. The Appeals Council shall protect the record against scandal, impertinence and irrelevancies, but the technical rules of evidence shall not apply. (f) In the development of appeals, the Appeals Council shall have power to hold hearings, require and compel the attendance of witnesses, administer oaths, take testimony, and make all necessary investigations. (g) All oral evidence presented at any hearing shall be reduced to writing. All evidence presented by the appellant and all evidence developed by the Appeals Council shall be preserved. Such evidence, together with a record of the arguments, oral or written, and the file previously made in the adjudication of the claim, shall constitute the record for decision of the appeal. After an appeal form is filed, the compilation of the record shall be initiated by the inclusion therein of the file made in the adjudication of the claim; the compilation of the record shall be kept up to date by the prompt addition thereto of all parts of the record subsequently developed. The entire record at any time during the pendency of an appeal shall be available for examination by the appellant or his representative. (h) Upon completion of the record, the Appeals Council shall render decision thereon as soon as practicable, and within thirty days after the making thereof, such decision shall be communicated to the appellant in writing. Decision shall be taken by unanimous vote of the members of the Appeals Council, and such decision shall be either a decision upon the merits of the appeal, or a decision to certify the entire record as an automatic appeal to the Board. (Sec. 10, 50 Stat. 315; 45 U. S. C. Sup. III, 228j)

SEC. 260.03 *Final appeal from a decision of the Appeals Council.* (a) Every appellant shall have a right to a final appeal to the Railroad Retirement Board from any decision of the Appeals Council by which he claims to be aggrieved. (b) Final appeal from a decision of the Appeals Council shall be made by the execution and filing of the final appeal form prescribed by the Board, except as provided in paragraph (h) of section 260.02, and must be filed with the Board within four months from the date upon which notice of the decision by the Appeals Council is mailed to the appellant at the address furnished by him. As used herein, a month shall be considered to have elapsed between any date and the date corresponding thereto in the next succeeding month. (c) The right to further review of a decision of the Appeals Council shall be forfeited unless formal final appeal is filed in the manner and within the time prescribed herein. (d) Upon final appeal to the Board, no additional evidence shall be received. In the event that the appellant shows that he is ready to present further material evidence, which for any reason he was not able to present to the Appeals Council, the claim shall be referred back to the Appeals Council for presentation of the further evidence. Upon receipt of such further evidence the Appeals Council shall transmit to the Board a transcript thereof together with its recommendation to the Board for final decision. (e) The decision of the Board shall be made upon the record of evidence and argument which has been made in the handling of the case before final appeal to the Board. Further argument will not be permitted except upon a showing by the appellant that he has arguments to present which for valid reasons he was unable to present at an earlier stage, and in cases in which the Board requests further elaboration of the appellant's arguments. In such cases, the further argument shall be submitted orally or in writing, as the Board may indicate in each case, and shall be subject to such restrictions as to form,

subject matter, length and time as the Board may indicate to the appellant. (Sec. 10, 50 Stat. 315; 45 U. S. C. Sup. III, 228j)

SEC. 260.04 *Effective date of this Part and application thereof to decisions made prior to such date.* (a) The effective date of this Part of the regulations shall be February 1, 1938. (b) All decisions upon applications for annuities or death benefits made by the Board prior to the effective date of these regulations shall be subject to review and reconsideration under these regulations, and for such purpose any such decision shall constitute an initial decision by the Claims Service as that term is used in these regulations. (c) For the purpose of applying the several limitations of time contained in these regulations, every decision made prior to the effective date of these regulations, by the Board or by the Claims Service, upon any application for annuity or death benefits, shall be considered to have been mailed to the applicant on the effective date of these regulations. (Sec. 10, 50 Stat. 314; 45 U. S. C. Sup. III, 228j)

PART 262—MISCELLANEOUS

Sec.
262.01 Penalties.
262.05 Exemption.
262.10 Free transportation.
262.15 Office of the Board.
262.16 Records and other papers of the Board; disclosure; service of process.
262.17 Actuarial Advisory Committee statutory Provision.
262.18 Actuaries to be recommended annually by employees and carriers.
262.19 Qualification, compensation and term of office of actuaries.

SEC. 262.01 *Penalties.* "Any officer or agent of an employer, as the word 'employer' is hereinbefore defined, or any employee acting in his own behalf, or any individual whether or not of the character hereinbefore defined, who shall willfully fail or refuse to make any report or furnish any information required, in accordance with the provisions of section 10 (b) 4, by the Board in the administration of this Act or the Railroad Retirement Act of 1935, or who shall knowingly make or cause to be made any false or fraudulent statement or report when a statement or report is required to be made for the purpose of such acts, or who shall knowingly make or aid in making any false or fraudulent statement or claim for the purpose of causing an award or payment under such Acts, shall be punished by a fine of not more than $10,000 or by imprisonment not exceeding one year." (Sec. 13, 50 Stat. 316; 45 U. S. C. Sup. III, 228m)

SEC. 262.05 *Exemption.* "No annuity or pension payment shall be assignable or be subject to any tax or to garnishment, attachment or other legal process under any circumstances whatsoever, nor shall the payment thereof be anticipated." (Sec. 12, 50 Stat. 316; 45 U. S. C. Sup. III, 228l)

SEC. 262.10 *Free transportation.* "It shall not be unlawful for carriers by railroad subject to this Act to furnish free transportation to individuals receiving annuities or pensions under this Act or the Railroad Retirement Act of 1935 in the same manner as such transportation is furnished to employees in their service." (Sec. 18, 50 Stat. 318; 45 U. S. C. Sup. III, 228n)

SEC. 262.15 *Office of the Board.* The only office established by the Board is in the District of Columbia. (Headquarters of field forces are not offices within the meaning of this section.) (Sec. 10, 50 Stat. 314; 45 U. S. C. Sup. III, 228j)

SEC. 262.16 *Records and other papers of the Board; disclosure; service of process.* (a) No document, or any information acquired therefrom or otherwise officially acquired, which is in the possession of the Board or any member, officer, agent or employee of the Board, shall be produced, disclosed, or delivered by any such member, officer, agent, or employee to any person or tribunal outside the Board, whether in response to a subpoena or otherwise, except as authorized by this regulation or with the consent of the Board. The consent of the Board to such production, disclosure, or delivery of any such document or information will not be granted, and no such document will be open to inspection by any person other than a member, officer, agent, or employee of the Board in the performance of his official duties, unless the Board finds that such production, disclosure, delivery, or opening to inspection will not be detrimental to the interest of the person to whom the document pertains, or to the estate of such person. Except as otherwise ordered by the Board or authorized by this regulation, any request or demand made by any person or tribunal, or otherwise, for any such document or information shall be refused upon the authority of this regulation. (b) When any member, officer, agent, or employee of the Board is served with a subpoena to produce, disclose or deliver any document described in paragraph (a) of this section, or to furnish any information acquired therefrom or otherwise officially acquired, he shall immediately notify the Board of the fact of the service of such subpoena. Unless otherwise ordered by the Board or authorized by this regulation, he shall appear in response to the subpoena and respectfully decline to produce, disclose, or deliver the document, or to furnish the information, basing his refusal upon the authority of this regulation. (c) When any document described in paragraph (a) of this section is called for by a subpoena duces tecum or other judicial order upon the Board for production, inspection, or disclosure thereof, issued by a court of competent jurisdiction in a proceeding in which such document is relevant, a copy of such document, certified by a member of the Board as a true copy, will be produced, disclosed or delivered, unless the Board finds that such production, disclosure, or delivery would be prejudicial to the public interest. In determining whether such production, disclosure, or delivery would be prejudicial to the public interest, the Board will consider, together with such other considerations as it deems relevant, the probable effect of such production, disclosure, or delivery upon the furnishing of complete and accurate information requested by the Board. (d) When pursuant to paragraph (c) of this section the Board determines that the production, disclosure, or delivery of any document described in paragraph (a) of this section would be prejudicial to the public interest, no member, officer, agent, or employee of the Board shall make any disclosure or testify with respect to such document. Refusal to make such disclosure or so to testify shall be based upon the authority of this regulation. (e) In the event the production, disclosure, or delivery of any document described in paragraph (a) of this section is called for on behalf of the United States or the Board, such document shall be produced, disclosed, or delivered only upon and pursuant to the advice of the General Counsel of the Board. (f) No officer, agent, or employee of the Board is authorized to accept or receive service of subpoenas, summons, or other judicial process addressed to the Board except as the Board may from time to time delegate such authority by power of attorney. The Board has issued such power of attorney to the General Counsel. (g) Disclosure of documents and information is hereby authorized, in such manner as the Board may by instructions prescribe, in the following cases:

(1) To any employer, employee, applicant or prospective applicant for an annuity, pension, or death benefit under the 1937 Act or the 1935 Act, or his duly authorized representative, as to matters directly concerning such employer, employee, applicant or prospective applicant.

(2) To any employer, employee, applicant or prospective applicant for benefits under the Railroad Unemployment Insurance Act, or his duly authorized representative, as to matters directly concerning such applicant, employer, employee, or prospective applicant.

(3) To any officer or employee of the United States lawfully charged with the administration of the Carriers Taxing Act of 1937, or the Social Security Act, and for the purpose of such administration only.

(h) As used in this regulation the word "document" includes correspondence, applications, claims, reports, records, memoranda and other papers. (Sec. 10, 50 Stat. 314, 315; 45 U. S. C. Sup. III, 228j, 228k)

SEC. 262.17. *Actuarial Advisory Committee—statutory provision.* "The Board is hereby authorized and directed to select two actuaries, one from recommendations made by representatives of employees and the other from recommendations made by representatives of carriers. These actuaries, along with a third who shall be designated by the Secretary of the Treasury, shall be known as the Actuarial Advisory Committee with respect to the Railroad Retirement Account. The committee shall examine the actuarial reports and estimates made by the Railroad Retirement Board and shall have authority to recommend to the Board such changes in actuarial methods as they may deem necessary. The compensation of the members of the committee of actuaries, exclusive of the member designated by the Secretary, shall be fixed by the Board on a per diem basis." (Sec. 15 (c), 50 Stat. 317; 45 U. S. C. Sup. III, 228o)

SEC. 262.18 *Actuaries to be recommended annually by employees and carriers.* In accordance with section 262.17 above the Board shall on July 1, 1939 and annually thereafter on July 1 select two actuaries to serve as members of the Actuarial Advisory Committee for that year. One of such actuaries shall be selected by recommendations made by "carrier representatives." "Carrier representatives," as used herein, shall mean any organization formed jointly by the express companies, sleeping-car companies and carriers by railroad subject to Part I of the Interstate Commerce Act which own or control more than 50 per cent of the total railroad mileage within the United States.

Such "carrier representatives" shall submit their recommendations for a new member of the Actuarial Advisory Committee prior to July 1, of each year.

The other member of the Actuarial Advisory Committee to be selected by the Board shall be recommended by "representatives of employees."

"Representatives of employees," as used in this section, shall mean any organization or body formed jointly by a majority of railway labor organizations organized in accordance with the provisions of the Railway Labor Act, as amended, or any individual or committee authorized by a majority of such railway labor organizations to make such recommendation.

These "representatives of employees" shall submit their recommendations for a new member of the Actuarial Advisory Committee prior to July 1 of each year. (Sec. 10, 15, 50 Stat. 314, 317; 45 U. S. C. Sup. III, 228j, 228o)

SEC. 262.19 *Qualifications, compensation and term of office of actuaries.* No individual shall be selected as a member of the Actuarial Advisory Committee who does not under applicable provisions and regulations of the Civil Service Commission possess qualifications in actuarial training and experience sufficient to enable him actively to assume the duties and responsibility of such appointment. The compensation of each of the two members selected as members of the Actuarial Advisory Committee shall not exceed the maximum per diem permitted under Civil Service classification and regulations for each day that such member shall engage in the performance of the duties prescribed in section 262.17. The Board will provide the Actuarial Advisory Committee with offices, supplies and equipment and such clerical and stenographic assistants from its regular staff of employees as shall be necessary to the performance of the duties prescribed in section 262.17.

The actuaries selected as members of the Actuarial Advisory Committee shall be appointed for a period not to exceed one year or until June 30 of the year following their respective appointments, whichever period is less; provided, however, that if no new recommendation be made by or requested from "carrier representatives" or "representatives of employees" for their member of the committee, the member then holding such appointment shall continue to hold such appointment until June 30 of the following year or until June 30 following a new recommendation by such member's sponsors. (Secs. 10, 15, 50 Stat. 314, 317; 45 U. S. C. Sup. III, 228j, 228o)

PART 265—APPLICABILITY OF 1935 OR 1937 ACT

Sec.

SEC. 265.01 *Annuities granted prior to June 24, 1937.* The Railroad Retirement Act of 1935 shall continue in force and effect with respect to the rights of individuals granted annuities prior to June 24, 1937, except as provided in section 265.03. (Secs. 10, 204, 50 Stat. 314, 319; 45 U. S. C. Sup. III, 228j, 215)

SEC. 265.02 *Applicability of 1935 or 1937 Act to other cases.* All claims in which no annuity was granted prior to June 24, 1937 are to be adjudicated under the 1937 Act except: (a) the claims of individuals (and of spouses and next of kin of such individuals), who, prior to June 24, 1937 have (1) relinquished all rights to return to the service of a carrier as defined in the 1935 Act, or ceased to be employee representatives, as defined in the 1935 Act, and (2) become eligible for annuities under the provisions of the 1935 Act, and (b) in the case of an individual who (1) did not prior to June 24, 1937 relinquish rights to return to the service of a carrier as defined in the 1935 Act and (2) can have an annuity begin to accrue prior to June 24, 1937, the claim shall be adjudicated under the 1937 Act, but substantial rights under the 1935 Act which accrued prior to June 24, 1937 shall be preserved. (Secs. 10, 202, 50 Stat. 314, 318; 45 U. S. C. Sup. III, 228j, 215)

SEC. 265.03 *Modification of 1935 Act by section 202 of Act of June 24, 1937.* With respect to claims which are to be adjudicated under the 1935 Act in accordance with section 265.02 (a), the following provisions, not contained in the 1935 Act, are to apply:

(a) No reduction shall be made in any annuity certified after June 24, 1937 by reason of continuance in service after age sixty-five.

(b) Service rendered prior to August 29, 1935, to a company which on that date was a carrier as defined in the 1935 Act, shall be included in the service period in connection with any annuity certified in whole or in part by the Board after June 24, 1937, irrespective of whether at the time such service was rendered such company was a carrier as defined in the 1935 Act; and service rendered prior to August 29, 1935, to any express company, sleeping-car company, or carrier by railroad which was a predecessor of a company which on that date was a carrier as defined in the 1935 Act, shall also be included in the service period in connection with any annuity certified in whole or in part by the Board after June 24, 1937, irrespective of whether at the time such service was rendered such predecessor was a carrier as defined in the 1935 Act.

(c) Annuity payments due an individual under the 1935 Act but not yet paid at death shall be paid to a surviving spouse if such spouse is entitled to an annuity under an election made pursuant to the provisions of Section 5 of the 1935 Act; otherwise they shall be paid to such person or persons as the deceased may have designated by a writing filed with the Board prior to his death, or if there be no designation, to the legal representative of the deceased. (Secs. 10, 202, 203, 50 Stat. 314, 318; 45 U. S. C. Sup. III, 215, 228j)

SEC. 265.04 *Adjudication under the 1935 Act.* The following regulations, to the extent that they are not in conflict with other sections of this Part, shall apply to the adjudication of annuities under the 1935 Act, and to the rights which an individual may have accrued under that Act:

(a) *Definition of Employee under the 1935 Act.* The term "employee" means any individual (1) who was on August 29, 1935 or shall have been at any time after August 29, 1935 in the service of a carrier, or (2) who was on August 29, 1935 or shall have been at any time after August 29, 1935 in the employment relation to a carrier, and (3) each officer or other official representative of an "employee organization," who before or after August 29, 1935 performed service for a carrier, and who on August 29, 1935 or at any time after August 29, 1935 is or shall be duly designated and authorized to represent employees in accordance with the Railway Labor Act,

and who, during, or immediately following employment by a carrier, is, shall be, or shall have been engaged in such representative service in behalf of such employees. (Sec. 1, 49 Stat. 967; 45 U. S. C. Sup. II, 215)

(b) *Definition of annuity under 1935 Act.* The term "annuity" means a fixed sum payable at the beginning of each month during retirement, ceasing at death except as otherwise provided in paragraph (i) hereof or at resumption of service for which an employee receives compensation. (Sec. 1, 49 Stat. 967; 45 U. S. C. Sup. II, 215)

(c) *Definition of compensation under 1935 Act.* The term "compensation" means any form of money remuneration for service, received by an employee from a carrier, including salaries and commissions, but shall not include free transportation nor any payment received on account of sickness, disability, pensions, or other form of relief. (Sec. 1, 49 Stat. 967; 45 U. S. C. Sup. II, 215)

(d) *Definition of age under the 1935 Act.* The term "age" means age at the latest attained birthday. (Sec. 1, 49 Stat. 967; 45 U. S. C. Sup. II, 215)

(e) *Eligibility for annuities under the 1935 Act.* The following-described employees, after retirement whether or not then in the service of a carrier, shall be paid annuities:

(1) An individual (without regard to the period of service and whether rendered before or after August 29, 1935), who either on August 29, 1935, or thereafter shall be sixty-five years of age or over.

(2) An individual who either on August 29, 1935, or who thereafter shall be fifty years of age or over and who shall have completed a service period of thirty years. An annuity paid under this subdivision shall be reduced by one one-hundred-and-eightieth of such annuity for each month during all of which such employee may be less than sixty-five years of age at the time of the first annuity payment.

(3) An individual who either before or after August 29, 1935, shall have completed a service period of thirty years and who shall be after August 29, 1935, retired by the carrier on account of mental or physical disability. An annuity paid under this subdivision shall not be subject to the deduction specified in subdivision (2) of this paragraph. Applicants claiming full annuities by reason of disability but who were retired because the carrier ceased operations do not fall within the purview of this subparagraph. Any annuity granted such an applicant under subparagraph (2) above will be reduced by the appropriate amounts indicated therein.

(f) *Factual retirement under the 1935 Act.* If an employee ceases to engage in compensated carrier service by reason of a permanent disability, or if, while on leave of absence or furlough, he is prevented from returning to such service by reason of such a disability, and if he subsequently dies and such death occurred prior to June 24, 1937, he may be regarded as having been retired within the meaning of the 1935 Act, if at the time his disability became permanent, he was not faced with impending death, or if faced therewith, his impending death was not apparent. In all such cases the fact of disability, the fact that it was permanent, and the fact that, at the time the disability became permanent, the employee was not faced with impending death, or, if faced therewith, that his impending death was not apparent, must be affirmed by the medical officer of the carrier, or, if the carrier does not have a medical officer, or if his affirmation cannot be secured, by the employee's private physician; and must, in all cases, be confirmed by the Board. (Sec. 3, 49 Stat. 969; 45 U. S. C. Sup. II, 217)

(g) *Application, beginning date and computation.* An annuity shall begin as of a date to be specified in a written application to be signed by the employee entitled thereto, and approved by the Board, which date shall not be more than sixty days before the date on which the first annuity shall have become due and payable. No annuity shall be due and payable until June 1, 1936. The annuity shall be payable on the 1st day of the month during the lifetime of the annuitant. Such annuity shall be based upon the service period of the employee and shall be the sum of the amounts determined by multiplying the total number of years of service not exceeding thirty years by the following percentages of the monthly compensation: 2 per centum of the first $50; 1½ per centum of the next $100; and 1 per centum of the compensation in excess of $150. The "monthly compensation" shall be the average of the monthly compensation paid to the employee by the carrier, except that where applicable for service before March 1, 1936 the monthly compensation shall be the average of the monthly compensation for all payroll periods for which the employee shall have received compensation from any carrier out of eight consecutive calendar years of such services ended December 31, 1931. No part of any monthly compensation in excess of $300 shall be recognized in determining any annuity. Any employee who shall be entitled to an annuity with a commuted value determined by the Board of less than $300 shall be paid such value in a lump sum. (Sec. 3, 49 Stat. 969; 45 U. S. C. Sup. II, 217)

(h) *Annuities to employee representatives under the 1935 Act.* The annuity of an employee representative shall be, as near as may be, the same annuity as if he were still in the employ of his last former carrier. (Sec. 4, 49 Stat. 969; 45 U. S. C. Sup. II, 218)

(i) *Payments at death under the 1935 Act.* If an individual receiving or entitled to receive an annuity shall die, the Board, for one year after the first day of the month in which the death occurred, shall pay an annuity equal to one-half of the annuity which such individual may have received or may have been entitled to receive, to the widow or widower of the deceased, or if there be no widow or widower, to the dependent next of kin of the deceased. (Sec. 5, 49 Stat. 970; 45 U. S. C. Sup. II, 219)

(j) *Joint and survivor annuity under the 1935 Act.* (1) Any employee may elect, at any time prior to the certification of his annuity, to have the present value of the annuity apply to the payment of a reduced annuity to the employee during life and an annuity during the life of a surviving spouse. The present values and amounts of the annuity payments shall be determined on the basis of the combined annuity tables with interest at 3 per centum per annum.

(2) An election, a modification, or cancellation of a joint and survivor annuity election may be made by the applicant at any time prior to the date that the claim is certified. (Sec. 5, 49 Stat. 970; 45 U. S. C. Sup. II, 219) (Sec. 10, 50 Stat. 314; 45 U. S. C. Sup. III, 228j)

By authority of the Board.

[SEAL] MURRAY W. LATIMER,
Chairman.

Date: April 1, 1939.

[F. R. Doc. 39–1120; Filed, April 3, 1939; 10:38 a. m.]

SOCIAL SECURITY BOARD

[Amendment to Regulation No. 1]

DISCLOSURE OF OFFICIAL RECORDS AND INFORMATION

Pursuant to authority contained in section 1102 of the Social Security Act the Social Security Board hereby adopts and promulgates as an amendment to Regulation No. 1[1] a new subsection designated as (d) as a part of section (3) so that said section (3) shall read as follows:

3. Disclosure of such records or information is hereby authorized, in such manner as the Board may by instructions prescribe, in the following cases:

(a) To any claimant or prospective claimant for benefits under title II of the Social Security Act, or his duly authorized representative, as to matters directly concerning such claimant or prospective claimant;

(b) To any officer or employee of the Treasury Department of the United States lawfully charged with the administration of title VIII or title IX of the Social Security Act, for the purpose of such administration only;

(c) To any official, body, or commission lawfully charged with the administration of any State unemployment compensation law or tax levied in connection

[1] 2 F. R. 1053.

therewith, for the purpose of such administration only;

(d) To any officer or employee of an agency of the federal government lawfully charged with the administration of a law providing for payment of unemployment, retirement or death benefits based on wages in private employment, for the purpose of such administration only.

SOCIAL SECURITY BOARD,
By A. J. ALTMEYER, *Chairman.*

MARCH 31, 1939.

[F. R. Doc. 39-1170; Filed, April 6, 1939; 10:36 a. m.]

TITLE 25—INDIANS

OFFICE OF INDIAN AFFAIRS

WASHOE TRIBE OF INDIANS, NEVADA

LANDS PROCLAIMED AS RESERVATION

MARCH 14, 1939.

By virtue of the authority contained in Section 7 of the Indian Reorganization Act of June 18, 1934 (48 Stat. L., 984) the lands described below, acquired by purchase under the provisions of Section 5 of that Act, for the use and benefit of the Washoe Tribe of Indians in Nevada, are hereby proclaimed to be an Indian reservation:

Township 12 North, Range 20 East, M. D. B. & M. The SW¼ Section 14 and NE¼SE¼ Section 15, subject to existing rights of way in connection with said lands that are a matter of record.

All that portion of NW¼NW¼, NE¼NW¼, SE¼NW¼, NE¼SW¼, and SE¼ of Section 23, lying westerly and southerly from the east fork of the Carson River.

All that portion of SW¼SW¼ of Section 24, lying westerly and southerly from the east fork of the Carson River.

All that portion of N½NW¼ and SE¼NW¼ of Section 25, lying westerly and southerly from the east fork of the Carson River.

The N½NE¼ of Section 26.

Township 11 North, Range 21 East, M. D. B. & M.

The SE¼SE¼ of Section 11.
The SW¼SW¼ of Section 12.

Together with all water and water rights, ditches and ditch rights appurtenant to or used in connection with the irrigation of said lands, or any part thereof.

All of the above described lands contain 603 acres, more or less.

OSCAR L. CHAPMAN,
Assistant Secretary of the Interior.

[F. R. Doc. 39-1166; Filed, April 6, 1939; 10:33 a. m.]

TITLE 36—PARKS AND FORESTS

NATIONAL PARK SERVICE

OTTER CREEK RECREATIONAL DEMONSTRATION AREA

SUBSIDIARY REGULATION

The following subsidiary regulation, issued under the authority of the Rules and Regulations approved by the Secretary of the Interior April 19, 1937 (2 F. R. 754), has been recommended by the project manager and approved by the Director of the National Park Service, and is in force and effect within the boundaries of the Otter Creek Recreational Demonstration Area:

SEC. 20.25 *Speed.* Speed of automobiles and other vehicles, except ambulances and Government cars on emergency trips, is limited to 25 miles per hour on primary roads, and to 20 miles per hour on secondary roads and truck trails.

Approved, March 29, 1939.

[SEAL] ARNO B. CAMMERER,
Director, National Park Service.

[F. R. Doc. 39-1165; Filed, April 6, 1939; 10:33 a. m.]

Notices

DEPARTMENT OF AGRICULTURE.

Sugar Division.

ALLOTMENT OF THE 1939 SUGAR QUOTA FOR THE DOMESTIC BEET SUGAR AREA

Notice

The proposed findings of fact, conclusions, and order set forth below have been prepared by the undersigned presiding officer upon the basis of the record of the hearing held in Chicago, Illinois, on February 21 and 22, 1939. General Sugar Regulations, Series 2, No. 2, Revised,[1] issued by the Secretary of Agriculture on February 3, 1939, provide that written objections to the proposed findings of fact, conclusions, and order may be filed within ten days after publication in the FEDERAL REGISTER. The objections should be filed in quadruplicate with the Hearing Clerk, Office of the Solicitor, Department of Agriculture, Washington, D. C. Objections received bearing postmark dated not later than the tenth day after such publication will be considered as filed within the 10-day period. Upon the expiration of such period for filing objections, the undersigned will consider such objections as may have been filed and make such changes in the proposed findings of fact, conclusions, and order as he deems proper, and will transmit the record of the proceedings to the Secretary of Agriculture for such action as he may deem appropriate.

[SEAL] ROBERT H. SHIELDS,
Presiding Officer.

[1] 4 F. R. 520 DI.

PROPOSED FINDINGS OF FACT, CONCLUSIONS, AND ORDER WITH REFERENCE TO THE ALLOTMENT OF THE 1939 SUGAR QUOTA FOR THE DOMESTIC BEET SUGAR AREA

Preliminary Statement

General Sugar Quota Regulations, Series 6, No. 1, Rev. 1, issued by the Secretary of Agriculture pursuant to the provisions of the Sugar Act of 1937 (hereinafter referred to as the "act"), established a 1939 sugar quota for the domestic beet sugar area of 1,566,719 short tons, raw value.

Under the provisions of section 205 (a) of the act, the Secretary is required to allot a quota whenever he finds that the allotment is necessary (1) to assure an orderly and adequate flow of sugar or liquid sugar in the channels of interstate commerce, (2) to prevent the disorderly marketing of sugar or liquid sugar, (3) to maintain a continuous and stable supply of sugar or liquid sugar, or (4) to afford all interested persons an equitable opportunity to market sugar or liquid sugar within the quota for any area. Section 205 (a) also provides that such allotment shall be made after such hearing and upon such notice as the Secretary may by regulations prescribe.

On February 2, 1939, the Secretary made the following finding:

"Pursuant to the authority contained in Section 205 (a) of the Sugar Act of 1937 (Public No. 414, 75th Congress), and on the basis of the information now before me, I, H. A. Wallace, Secretary of Agriculture, do hereby find that the allotment of the 1939 sugar quota for the domestic beet sugar area is necessary to prevent disorderly marketing of such sugar and to afford all interested persons an equitable opportunity to market such sugar in the continental United States * * *."

The Secretary, on the basis of that finding and pursuant to the provisions of the act and General Sugar Regulations, Series 2, No. 2, Revised (issued February 3, 1939), gave due notice of a public hearing to be held at Chicago, Illinois, on February 21, 1939, for the purpose of receiving evidence to enable him to make a fair, efficient, and equitable distribution of the 1939 sugar quota for the domestic beet sugar area among persons who market such sugar in the continental United States.

The hearing was duly held at the time and place specified in the notice.

As to the preliminary question of the necessity for making allotments, the representative of the Sugar Beet Unit of the Sugar Division testified that, upon the basis of information available to the

Department, the total supply of domestic beet sugar available for market in 1939 would be approximately 1,800,000 short tons, raw value, or approximately 215,000 short tons, raw value, in excess of the 1939 quota for the area of 1,584,524 short tons, raw value (R. p. 12–13).[1] These figures were based upon the stocks on hand January 1, 1939, the estimated 1938 crop processings after January 1, 1939, and the figure obtained by multiplying the estimated 1939 production by the average percentage of new crop sugars sold in the calendar year of the crop's production (R. p. 13). The testimony of other witnesses tended generally to confirm the necessity for allotment, and no testimony was offered to the effect that allotment of the 1939 quota was unnecessary.

As to the manner in which allotments should be made, the representative of the Sugar Beet Unit of the Sugar Division proposed that allotments be made on the basis of the first two factors given in the act, viz., processings of sugar from sugar beets to which proportionate shares, determined pursuant to section 302 (b) of the act, pertained (hereinafter referred to as "processings") and past marketings. He proposed that the processings from the 1938 crop be taken as the measure of processings, and that the average of deliveries of sugar for the three years 1936, 1937 and 1938 be taken as the measure of past marketings. He further proposed that two-thirds weight be given to the measure of processings, that one-third weight be given to the measure of past marketings, and that the result be adjusted ratably to the quota (R. pp. 14–15).

The representative of Utah-Idaho Sugar Company proposed that the proposal made by the representative of the Sugar Beet Unit be modified by giving such greater weight to the measure of processings as would require each processor to carry over a share of the surplus 1938 production (i. e. the amount by which the total processings from the 1938 crop exceeds the 1939 quota) proportionate to his processings from the 1938 crop (R. p. 233, p. 236, p. 237).

The representative of Great Western Sugar Company proposed that allotments be made on the basis of a formula giving equal weight to processings and past marketings. He proposed that processings be measured by the average of processings for 1937 and 1938, and that past marketings be measured in the manner heretofore mentioned (R. p. 70). Representatives of Spreckels Sugar Company (R. p. 215) and Holly Sugar Corporation (R. p. 242) testified in favor of this proposal.

The representative of Amalgamated Sugar Company proposed that the allotments be made by allotting 80% of the quota on the basis of the effective inventory of each processor as of January 1, 1939 (i. e. the actual inventory as of January 1, 1939, plus any sugar processed thereafter from the 1938 crop), and by allotting 20% of the quota on the basis of proportionate share acreage for 1939 (R. pp. 143-145).

The representative of Michigan Sugar Company proposed that the allotments be made by allotting to each processor an amount equal to such processor's effective inventory as of January 1, 1939, and by prorating the balance of the quota to each processor on the basis of his record of new crop sales during the five-year period 1934-38 (R. p. 180, p. 186.) Although not favoring the use of past marketings, he also proposed that, if any formula were adopted which took into consideration past marketings, the measure of past marketings should be the average of marketings during the five-year period 1934-38 (R. p. 186).

The representative of Great Lakes Sugar Company, Lake Shore Sugar Company, Monitor Sugar Company and Northeastern Sugar Company testified in favor of the formula proposed by the representative of the Michigan Sugar Company (R. p. 223, p. 228).

The representative of National Sugar Company (R. p. 53) and the representative of the American Crystal Sugar Company (R. pp. 218-220) testified concerning matters affecting their respective companies, but offered no proposal for the allotment of the quota.

Basis of Allotment

Section 205 (a) of the act provides, in part, as follows:

> Allotments shall be made in such manner and in such amounts as to provide a fair, efficient, and equitable distribution of such quota or proration thereof, by taking into consideration the processings of sugar or liquid sugar from sugar beets or sugarcane to which proportionate shares, determined pursuant to the provisions of subsection (b) of section 302, pertained; the past marketings or importations of each such person; or the ability of such person to market or import that portion of such quota or proration thereof allotted to him.

It is believed that, in order to make a fair, efficient, and equitable distribution of the 1939 sugar quota for the domestic beet sugar area, allotments should be made on the basis of (1) processings, and (2) past marketings of sugar. In measuring past marketings, it is believed that the use of the average quantity of sugar marketed by each processor during the three calendar years 1936, 1937, and 1938, will afford a fair and reasonable measure of such marketings, and that the use of processings from proportionate shares of sugar beets of the 1938 crop will afford a fair and reasonable measure of processings.

It is believed further that the act contemplates a method of allotment which will not only result in a fair, efficient, and equitable distribution of the quota, but will at the same time afford protection to the producers of sugar beets. This result will be accomplished by giving one-fourth weight to past marketings and three-fourths weight to processings measured in the manner hereinbefore stated. This weighting will result in a fair, efficient, and equitable distribution of the quota, by taking into consideration the fluctuations of sugar beet production from year to year, and will also afford protection to producers.

Findings of Fact

On the basis of the record of the hearing, I hereby find:

1. That the total supply of domestic beet sugar available for market in 1939 is approximately 1,800,000 short tons of sugar, raw value, or approximately 233,281 short tons of sugar, raw value, in excess of the 1939 quota for such area of 1,566,719 short tons, raw value.[2]

2. That a fair and reasonable measure of the past marketings of each interested person is the average quantity of sugar marketed by him during the three calendar years 1936, 1937, and 1938, and that the past marketings of each interested person as so measured are, stated in terms of 100 pound bags of refined sugar, as follows:

Amalgamated Sugar Company	1,423,920
American Crystal Sugar Co	2,687,404
Central Sugar Company	206,181
Franklin County Sugar Co	202,217
Garden City Sugar Company	133,348
Great Lakes Sugar Company	401,490
Great Western Sugar Company	8,645,442
Gunnison Sugar Company	148,236
Holly Sugar Corporation	4,105,734
Isabella Sugar Company	196,983
Lake Shore Sugar Company	240,562
Layton Sugar Company	168,417
Los Alamitos Sugar Company	93,115
Menominee Sugar Company	74,605
Michigan Sugar Company	823,577
Monitor Sugar Company	291,593
National Sugar Company	131,587
Northeastern Sugar Company	65,211
Ohio Sugar Company	97,873
Paulding Sugar Company	119,985
Rock County Sugar Company	61,323
Spreckels Sugar Company	2,679,593
Superior Sugar Company	69,510
Union Sugar Company	325,044
Utah-Idaho Sugar Company	2,024,287

3. That a fair and reasonable measure of each interested person's processings of sugar from sugar beets to which proportionate shares, determined pursuant to the provisions of subsection (b) of section 302 of the act, pertained, is his processings of such sugar beets of the 1938 crop, and that each interested person's processings as so measured are, stated in terms of 100 pound bags of refined sugar, as follows:

Amalgamated Sugar Company	2,666,759
American Crystal Sugar Co	3,686,706
Central Sugar Company	301,251
Franklin County Sugar Co	313,741
Garden City Sugar Company	223,468
Great Lakes Sugar Company	795,885
Great Western Sugar Co	9,298,596
Gunnison Sugar Company	212,415
Holly Sugar Corporation	4,525,080
Isabella Sugar Company	278,818
Lake Shore Sugar Company	429,602

[1] Calculated on the basis of the revised quota of 1,566,719 short tons, the excess would be approximately 233,281 short tons.

[2] Calculated on the basis of the revised quota set forth in General Sugar Quota Regulations, Series 6, No. 1, Rev. 1.

Layton Sugar Company	232,419
Los Alamitos Sugar Company	211,172
Menominee Sugar Company	163,832
Michigan Sugar Company	1,636,543
Monitor Sugar Company	430,150
National Sugar Company	135,360
Northeastern Sugar Company	179,086
Ohio Sugar Company	195,691
Paulding Sugar Company	174,105
Rock County Sugar Company	156,430
Spreckels Sugar Company	3,066,394
Superior Sugar Company	169,684
Union Sugar Company	512,060
Utah-Idaho Sugar Company	3,721,411

4. That a three-fourths weighting of processings and a one-fourth weighting of past marketings, as measured above, will result in allotments which are fair, efficient, and equitable, by taking into account the 1938 processings, which will vitally affect the marketings of beet sugar in 1939, and will make adequate provisions for those fluctuations which occur from year to year in sugar beet production, and will also afford protection to producers.

Conclusions

On the basis of the foregoing and after consideration of the briefs submitted by interested persons following the hearing, I hereby determine and conclude that the allotment of the 1939 sugar quota for the domestic beet sugar area is necessary to prevent disorderly marketing of such sugar and to afford all interested persons an equitable opportunity to market such sugar in the continental United States; and that in order to make a fair, efficient, and equitable distribution of such quota, as required by section 205 (a) of the act, allotments should be made by adjusting ratably to the quota the several figures computed for the interested persons named herein by adding (a) 25 percent of the past marketings of such person, as measured and found in the finding of fact numbered 2, and (b) 75 percent of such person's processings as measured and found in the finding of fact numbered 3.

Order

Pursuant to the authority vested in the Secretary of Agriculture by section 205 (a) of the act, it is hereby ordered that:

SEC. 1. The 1939 sugar quota for the domestic beet sugar area is hereby allotted to the following processors in the amounts which appear opposite their respective names:

Processor	*Allotment (short tons, raw value)*
Amalgamated Sugar Company	116,658
American Crystal Sugar Co	170,174
Central Sugar Company	13,739
Franklin County Sugar Co	14,154
Garden City Sugar Company	9,949
Great Lakes Sugar Company	34,526
Great Western Sugar Co	452,328
Gunnison Sugar Company	9,723
Holly Sugar Corporation	218,865
Isabella Sugar Company	12,792
Lake Shore Sugar Company	18,931
Layton Sugar Company	10,716
Los Alamitos Sugar Company	8,995
Menominee Sugar Company	7,007
Michigan Sugar Company	70,969
Monitor Sugar Company	19,583
National Sugar Company	6,656
Northeastern Sugar Company	7,458
Ohio Sugar Company	8,479
Paulding Sugar Company	7,951
Rock County Sugar Company	6,568
Spreckels Sugar Company	147,042
Superior Sugar Company	7,162
Union Sugar Company	23,039
Utah-Idaho Sugar Company	163,255
Total	1,566,719

SEC. 2. The above-mentioned processors are hereby prohibited from shipping, transporting, or marketing in interstate commerce, or in competition with sugar or liquid sugar shipped, transported, or marketed in interstate or foreign commerce, any sugar or liquid sugar produced from sugar beets grown in the domestic beet sugar area in excess of the marketing allotments set forth above.

SEC. 3. That any increase or decrease in the 1939 sugar quota for the domestic beet sugar area shall be prorated among processors on the basis of the allotments set forth above.

[F. R. Doc. 39-1174; Filed, April 6, 1939; 12:40 p. m.]

SECURITIES AND EXCHANGE COMMISSION.

United States of America—Before the Securities and Exchange Commission

At a regular session of the Securities and Exchange Commission, held at its office in the City of Washington, D. C., on the 4th day of April 1939.

[File No. 56-11]

IN THE MATTER OF THE MIDDLE WEST CORPORATION

ORDER GRANTING APPLICATION

The Middle West Corporation, a registered holding company, having filed an application pursuant to Section 12 (d), and Rule U-12D-1 promulgated thereunder, of the Public Utility Holding Company Act of 1935, for approval of the sale by it of First Mortgage 5% Bonds, Series A, dated as of January 1, 1937, due January 1, 1957 (Special Bond Coupons Payable on or before January 1, 1940 are attached, which coupons amount to 2% of the principal amount evidenced by said bonds and are in addition to regular coupons) in the amount of $500,000 and 3,604 shares of preferred stock, 6% cumulative, $50 par value, both issued by Arkansas-Missouri Power Corporation;

A public hearing having been held on said application after appropriate notice;[1] the Commission having considered the record in this matter and made and filed its findings of fact herein:

It is ordered, That said application be, and the same hereby is, granted, subject, however, to the following terms and conditions:

(1) That such sale be effected in accordance with the terms and conditions of and for the purposes represented by the application;

(2) That after all expenses incurred in connection with the transaction shall have been paid, applicant shall file a statement of such expenses showing the amount thereof and to whom paid and the service rendered, and that after such sale is consummated the applicant shall file with this Commission a certificate of notification showing that such sale has been effected in accordance with the terms and conditions of and for the purposes represented by said application.

By the Commission.

[SEAL] FRANCIS P. BRASSOR, *Secretary.*

[F. R. Doc. 39-1171; Filed, April 6, 1939; 11:07 a. m.]

[1] 3 F. R. 2295 DI.