

## § 202.4

### § 202.4 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.

### § 202.5 Company or person under common control.

A company or person is under common control with a carrier, whenever the control (as the term is used in § 202.4) of such company or person is in the same person, persons, or company as that by which such carrier is controlled.

### § 202.6 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 irregular 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.

### § 202.7 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.

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### § 202.8 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.

### § 202.9 Controlled company or person not principally engaged in service or operation in connection with railroad transportation.

(a) 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:

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

(2) 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;

(3) 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;

(4) Whether such service or operation is a separate and distinct enterprise;

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(5) Whether such service or operation is more than casual, as that term is defined in §202.6.

(b) 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.

### § 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.

### § 202.11 Termination of employer status.

The employer status of any company or person shall terminate whenever such company or person loses any of the characteristics essential to the existence of an employer status.

[Board Order 41-85, 6 FR 1210, Mar. 1, 1941]

### § 202.12 Evidence of termination of employer status.

(a) In determining whether a cessation of an essential characteristic, such as control or service in connection with railroad transportation, has occurred, consideration will be given only to those events or actions which evidence a final or complete cessation. Mere temporary periods of inactivity or failure to exercise functions or to operate equipment or facilities will not necessarily result in a loss of employer status.

(b) The actual date of cessation of employer status shall be the date upon which final or complete cessation of an essential employer characteristic occurs. The following indicate but do not delimit the type of evidence that will be considered in determining the actual date of cessation of an employer status: stoppage of business or operations; the cancellation of tariffs, concurrences, or powers of attorney filed with the Interstate Commerce Commission; the effective date of a certificate permitting abandonment; the effective date of a pertinent judicial action such as the discharge of a receiver, trustee, or other judicial officer, or an order approving sale of equipment or machinery; the sale, transfer, or lease of property, equipment, or machinery essential to the continuance of an employer function or to control by a carrier employer; public or private notices of contemplated or scheduled abandonment or cessation of operations; termination of contract; discharge of last employee; date upon which the right of a railway labor organization to participate in the selection of labor members of the National Railroad Adjustment Board ceases or is denied; and date on which an employer, if a labor organization, ceases to represent or is denied the right to represent crafts or classes of employees in the railroad industry, or to promote the interests of employees in the railroad industry.

(c) In the absence of evidence to the contrary the employer status of an existing company or person shall be presumed to continue, and in accordance with §250.1(b) of this chapter it is the