

will consider evidence as described in part 202 of this chapter with respect to termination of employer status under the Railroad Retirement Act. Mere failure of an employer to pay contributions due under this part does not indicate that such employer is defunct.

§ 345.208 System records.

Effective January 1, 1990, the Board will establish and maintain records necessary to determine pooled charges, pooled credits, and unallocated charges for the experience rating system and will publish a notice with respect thereto no later than October 15 of each year. See § 345.302 of this part for the definition of these terms.

Subpart D—Contribution Rates

§ 345.301 Introduction.

(a) *General.* Effective January 1, 1993, each employer that is subject to this part will have an experience-rated rate of contribution computed as set forth in § 345.303 of this part. A transitional rate of contribution applies to each such employer for 1991 and 1992, in accordance with section 8(a)(1)(B) of the RUIA. An employer that first becomes subject to section 8 of the RUIA after December 31, 1989 will have a “new-employer” contribution rate as computed in § 345.304 of this part. An employer’s experience-rated contribution rate will be not less than 0.65 percent nor more than 12.5 percent. Not later than October 15 of each year, the Board will notify each employer of its experience-rated contribution rate for the following calendar year.

(b) *Components of an experience-rated contribution rate.* An employer’s experience-rated contribution rate for each calendar year beginning with 1993 will be based upon the following charges:

(1) An allocated charge based upon the amount of benefits paid to employees of such employer; this charge is explained in subpart E of this part;

(2) An unallocated charge based upon a proportionate share of the system unallocated charge balance, the computation of which is explained in § 345.302(p) of this part;

(3) A pooled charge, also referred to as risk-sharing, to cover the cost of benefit payments that are chargeable

to a base year employer but are not captured by the contribution rate assigned to such employer because it is paying contributions at the maximum rate of contribution; the formula for computing the pooled charge is set forth in § 345.302(j) of this part;

(4) A surcharge of 1.5, 2.5, or 3.5 percent, or a pooled credit, depending on the balance to the credit of the Account as of June 30 of a given year; and

(5) An addition of 0.65 percent to the rate of contribution to cover the expenses incurred by the Board in administering the RUIA.

(c) *Maximum rate of contribution.* Notwithstanding any provision of this part, an employer’s contribution rate for any calendar year shall be limited to 12 percent, except when a surcharge of 3.5 percent is in effect with respect to that calendar year. If a 3.5 percent surcharge is in effect, the maximum contribution limit with respect to that calendar year is 12.5 percent. The surcharge rate for a calendar year will be 3.5 percent when the balance to the credit of the Account is less than zero. The Board will compute the surcharge rate in accordance with § 345.302(n) of this part.

§ 345.302 Definition of terms and phrases used in experience-rating.

(a) *Account.* The Railroad Unemployment Insurance Account established by section 10 of the Railroad Unemployment Insurance Act (RUIA) and maintained by the Secretary of the Treasury in the unemployment trust fund established pursuant to section 904 of the Social Security Act. Benefits paid under the RUIA for an employee’s days of unemployment or days of sickness are paid from this Account.

(b) *Benefit ratio.* This ratio is computed for each employer as of any given June 30 by dividing all benefits charged to the employer under subpart E of this part during the 12 calendar quarters ending on such June 30 by the employer’s three-year compensation base as of such June 30, as computed under paragraph (q) of this section. The ratio is computed to four decimal places.

(c) *Benefits.* Benefits are money payments paid or payable by the Board to a qualified employee with respect to

his or her days of unemployment or days of sickness, as provided by the RUIA.

(d) *Compensation.* This term has the meaning given in part 302 of this chapter.

(e) *Contributions.* Contributions are the money payments paid or payable by an employer subject to this part with respect to the compensation paid or payable to employees of such employer.

(f) *Cumulative benefit balance.* An employer's cumulative benefit balance as of any given June 30 is determined by adding:

(1) The net amount of the benefits charged to the employer under subpart E on or after January 1, 1990, and

(2) The cumulative amount of the employer's unallocated charges on and after January 1, 1990, as computed under paragraph (r) of this section.

(g) *Fund.* The Railroad Unemployment Insurance Administration Fund established by section 11 of the RUIA and maintained by the Secretary of the Treasury in the unemployment trust fund established pursuant to section 904 of the Social Security Act. The costs incurred by the Board in administering the RUIA are paid from the Fund.

(h) *Net cumulative contribution balance.* The Board will determine an employer's net cumulative contribution balance as of any given June 30, as follows:

(1) *Step 1.* Compute the sum of all contributions paid by the employer pursuant to this part after December 31, 1989; add that portion of the tax, if any, imposed under 26 U.S.C. 3321(a) that is attributable to the surtax rate under section 7106(b) of the Railroad Unemployment Insurance and Retirement Improvement Act of 1988 (Pub. L. 100-647) and any repayment taxes paid by the employer pursuant to 26 U.S.C. 3321(a) after the outstanding balance of loans made under section 10(d) of the RUIA before October 1, 1985, plus interest, has been paid;

(2) *Step 2.* Subtract an amount equal to the amount of such contributions deposited, pursuant to section 8(i) of the RUIA, to the credit of the Fund; and

(3) *Step 3.* Add an amount equal to the aggregate amount by which such contributions were reduced in prior calendar years as a result of pooled credits, if any, under paragraph (k) of this section.

(i) *One-year compensation base.* An employer's one-year compensation base is the aggregate amount of compensation with respect to which the employer is liable for contributions under this part in the four calendar quarters ending on such June 30.

(j) *Pooled charge ratio.* The pooled charge ratio, when applicable, is a pro-rata increase in the rate of contribution assigned to each employer that is not already paying contributions at the maximum rate. A pooled charge will become applicable to each such employer during a calendar year when the Account loses income because one or more other employers are paying contributions at the maximum rate (12 or 12.5 percent) rather than at the higher experience-based rate that their benefit charges would otherwise require. The pooled charge ratio thus picks up the cost of benefits paid to employees of employers whose rate of contribution is capped at the maximum rate. The pooled charge ratio for a calendar year is the same for all employers whose rate is less than the maximum and is computed as follows:

(1) *Step 1.* For each employer paying contributions at the maximum contribution limit under § 345.301(c) of this part, compute the amount of contributions that such employer would have paid if its experience-based rate were applied to its one-year compensation base as of the preceding June 30 and by then deducting from such amount the amount derived by applying the maximum contribution rate to the same one-year compensation base. For the purposes of this computation, the experience-based rate is the rate computed for such employer under § 345.303 of this part.

(2) *Step 2.* After the amount is computed for each employer in accordance with Step 1 of this paragraph (j), add the amounts for all such employers. The aggregate amount so computed represents the amount of contributions not collected by the Account because of the maximum contribution limit.

(3) *Step 3.* For each employer whose experience-based rate of contribution, as computed at Step 3 of §345.303(a) of this part, is less than zero, the percentage rate by which the employer's rate was raised in order to bring that rate to the minimum rate of zero is multiplied by the employer's 1-year compensation base. The total of the amounts so computed is subtracted from the aggregate amount computed in Step 2 of this paragraph (j).

(4) *Step 4.* Divide the net aggregate amount computed at Step 3 of this paragraph (j) by the system compensation base as of the preceding June 30, excluding from such base the one-year compensation base of each employer whose experience-based contribution rate, computed at Step 6 of §345.303(a) of this part, exceeds the maximum contribution limit. The result is the pooled charge ratio for the current calendar year. This ratio is computed to four decimal places.

(k) *Pooled credit ratio.* Effective January 1, 1991, and on the first of each subsequent calendar year, the Board will reduce each employer's rate of contribution, as computed under §345.303 of this part, by the amount of the pooled credit ratio, if any, applicable to such calendar year. This ratio is computed by reference to the accrual balance to the credit of the Account as of the preceding June 30. The Board will determine the amount of the pooled credit ratio, as follows:

(1) *Step 1.* First, the Board computes the accrual balance to the credit of the Account as of the close of business on the preceding June 30 in the same manner as under Step 1 of paragraph (n) of this section. There will be a pooled credit ratio for the calendar year if that balance is in excess of the greater of \$250 million or of the amount that bears the same ratio to \$250 million as the system compensation base as of that June 30 bears to the system compensation base as of June 30, 1991, as computed in accordance with paragraph (o) of this section.

(2) *Step 2.* If there is such an excess amount, divide that excess amount by the system compensation base as of the June 30 preceding the calendar year. The result is the pooled credit ratio applicable to each employer for the cal-

endar year involved in the computation. This ratio is computed to four decimal places.

(l) *Reserve balance.* An employer's reserve balance is computed as of any given June 30 by subtracting its cumulative benefit balance as of such June 30 from its net cumulative contribution balance as of such June 30. An employer's net cumulative benefit balance is computed under paragraph (f) of this section and its net cumulative contribution balance under paragraph (h) of this section. An employer's reserve balance may be either positive or negative, depending upon whether its net cumulative contribution balance exceeds its cumulative benefit balance.

(m) *Reserve ratio.* This ratio is computed for each employer as of any given June 30 by dividing its reserve balance as of June 30 by its one-year compensation base as of such June 30. An employer's reserve balance is computed under paragraph (l) of this section and its one-year compensation base under paragraph (i) of this section. This ratio is computed to four decimal places; it may be either a positive or negative figure, depending on whether the employer's reserve balance is a positive or negative figure.

(n) *Surcharge rate.* Effective January 1, 1991, and on the first of each subsequent calendar year, the Board will add to each employer's rate of contribution, as computed under §345.303 of this part, a surcharge rate of 1.5, 2.5, or 3.5 percent if the accrual balance to the credit of the Account, as of the preceding June 30, falls within the range of balances set forth in Steps 1 and 2 of this paragraph (n). The Board will determine which surcharge rate, if any, is in effect for a calendar year by means of the following computation:

(1) *Step 1.* First, the Board computes the accrual balance to the credit of the Account as of the close of business on the preceding June 30. Such balance will include any amounts in the Account attributable to loans made under section 10(d) of the Act before October 1, 1985, but not the obligation of the Account to repay such loans with interest. For this purpose, the Account will be deemed to include any balance to the credit of the Fund that exceeds

\$6 million. The surcharge rate, as specified in Step 2 of this paragraph (n), will apply if that balance is less than the greater of \$100 million or of the amount that bears the same ratio to \$100 million as the system compensation base as of that June 30 bears to the system compensation base as of June 30, 1991, as computed in accordance with paragraph (o) of this section.

(2) *Step 2.* If the balance to the credit of the Account is less than the greater of the amounts referred to in the last sentence of Step 1 of this paragraph (n), but is equal to or more than the greater of \$50 million or of the amount that bears the same ratio to \$50 million as the system compensation base as of that June 30 bears to the system compensation base as of June 30, 1991, then the surcharge rate for the calendar year shall be 1.5 percent. If the balance to the credit of the Account is less than the greater of the amounts referred to in this Step 2, but greater than or equal to zero, then the surcharge rate for the calendar year shall be 2.5 percent. If the balance to the credit of the Account is less than zero, the surcharge rate for the calendar year shall be 3.5 percent.

(o) *System compensation base.* The system compensation base as of June 30 of each year is the total of the amounts of the one-year compensation bases of all base year employers, computed in accordance with paragraph (i) of this section. Not later than October 15 of each year, the Board will compute the amount of the system compensation base and will publish notice of such amount in the FEDERAL REGISTER as soon as practicable thereafter.

(p) *System unallocated charge balance.* This balance, as computed initially for the period January 1 through June 30, 1990 and updated as of June 30 of each subsequent calendar year, represents the net amount of expenditures from, and income to, the Account that cannot be allocated as benefit charges, or adjustments, to the cumulative benefit balances of individual base year employers. The Board computes this balance, as of June 30 of each year, as follows:

(1) *Step 1.* Compute the aggregate amount of all interest paid by the Account on loans from the Railroad Re-

tirement Account after September 30, 1985, pursuant to section 10(d) of the RUIA, during the 12-month period ending on June 30;

(2) *Step 2.* Add the amount of unemployment benefits paid by reason of strikes or work stoppages growing out of labor disputes and the cumulative benefit balance of any defunct employer;

(3) *Step 3.* Add the aggregate amount of any other benefit payment that is not chargeable to a base year employer pursuant to subpart E of this part and any other expenditure not chargeable to the Fund;

(4) *Step 4.* Subtract the aggregate amount of income to the Account received as a proportionate part of the earnings of the unemployment trust fund, computed in accordance with section 904(e) of the Social Security Act, and all income to the Account received as fines or penalties collected under the RUIA;

(5) *Step 5.* Subtract the aggregate amount of all transfers from the Fund to the Account pursuant to section 11(d) of the RUIA;

(6) *Step 6.* Subtract the aggregate amount of any other cash receipt to the Account that cannot be treated as an adjustment to the benefit charges of a base year employer;

(7) *Step 7.* Subtract the net cumulative contribution balance of any defunct employer, calculated as of the date on which the Board determines that such employer is defunct. After the Board has computed the amount of the system unallocated charge balance as of June 30 of each year, the Board will publish notice of such amount in the FEDERAL REGISTER on or before October 15 of such year.

(q) *Three-year compensation base.* An employer's three-year compensation base as of any given June 30 is the aggregate amount of compensation with respect to which the employer is liable for contributions under this part in the 12 calendar quarters ending on such June 30.

(r) *Unallocated charge.* An employer's unallocated charge as of any given June 30 is the amount that, as of such June 30, bears the same ratio to the system unallocated charge balance as the employer's 1-year compensation

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base bears to the system compensation base. The system unallocated charge balance is computed under paragraph (p) of this section and the system compensation base under paragraph (o) of this section.

§ 345.303 Computation of rate.

(a) With respect to compensation in a calendar year that begins after December 31, 1992, the Board will compute, by October 15, 1992, and by October 15 of each subsequent year, a contribution rate for each employer (other than a new employer) in accordance with the following 8-step process:

(1) *Step 1.* Compute the employer's *benefit ratio* as of the preceding June 30;

(2) *Step 2.* Compute the employer's *reserve ratio* as of the preceding June 30 and subtract it from the *benefit ratio*;

(3) *Step 3.* Subtract the *pooled credit ratio* (if any) for the calendar year;

(4) *Step 4.* Multiply the Step 3 result by 100, in order to obtain a percentage rate, and then round such rate to the nearest 100th of one percent. If the rate so computed is zero or less than zero, the percentage rate will be deemed zero at this point;

(5) *Step 5.* Add 0.65 (the administrative charge) to the percentage rate computed through Step 4.

(6) *Step 6.* Add the *surcharge rate* (if any) for the calendar year;

(7) *Step 7.* Add the *pooled charge ratio* (if any) for the calendar year, as computed to four decimal places and multiplied by 100;

(8) *Step 8.* If the rate computed through Step 7 is greater than 12 percent (or 12.5 percent if a surcharge of 3.5 percent is in effect for the calendar year), reduce the percentage rate so computed to 12 percent or 12.5 percent, if appropriate.

(b) The percentage rate computed under paragraph (a) of this section is the employer's rate of contribution for the calendar year in question.

(c)(1) Any computation that is to be made under this section on the basis of a 12-quarter period ending on a given June 30 shall be made on the basis of a period beginning on January 1, 1990, or on the first day of the first calendar quarter that begins after the date on which the employer first began to pay compensation subject to this part, or

on July 1 of the third calendar year preceding that June 30, whichever date is later, and ending on that June 30.

(2) The amount computed under paragraph (c)(1) of this section shall be increased to an amount that bears the same ratio to the amount so computed as 12 bears to the number of calendar quarters on which the computation is based.

§ 345.304 New-employer contribution rates.

(a) An employer whose coverage under the RUIA becomes effective after December 31, 1989, is considered a "new employer" for the purposes of this part and will be assigned a contribution rate as computed under this section. The Board shall determine where an employer is a new employer and, if so, the effective date of its coverage under the RUIA and its rate of contribution with respect to compensation paid to employees on and after such effective date.

(b) *Initial contribution rate.* The rate of contribution with respect to compensation paid in calendar months before the end of the first full calendar year that the employer is subject to this section shall be the average contribution rate paid by all employers during the three calendar years preceding the calendar year before the calendar year in which the compensation is paid. The Board will compute the average contribution rate by dividing the aggregate contributions paid by all employers during those three calendar years by the aggregate compensation with respect to which such contributions were paid and by then multiplying the resulting ratio, as computed to four decimal points, by 100.

(c) *Second contribution rate.* The rate of contribution with respect to compensation paid in months in the second full calendar year shall be the smaller of the maximum contribution limit under the RUIA or the percentage rate computed as follows:

$$R = \frac{2(A2) + B}{3}$$

(d) *Third contribution rate.* The rate of contribution with respect to compensation paid in months in the third full