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divorced spouse, or surviving divorced spouse, parent or disabled child; or

(f) Could have been entitled to a benefit listed in paragraph (e) of this section, if the widow(er) had applied and been old enough to qualify therefor in the month before the month of marriage.

§ 216.66 Who is an employee's surviving divorced spouse.

An individual who was married to the employee is the deceased employee's surviving divorced spouse if he or she:

(a) Was married to the employee for a period of at least 10 years immediately before the date the divorce became final, and applies for an annuity based on age or disability; or

(b) Applies for an annuity based on having a ''child in care'' and either:

(1) Is the natural parent of the employee's child;

(2) Was married to the employee at the time the employee or the surviving divorced spouse adopted the other's child who was then under 18 years old; or

(3) Was married to the employee at the time they adopted a child who was then under 18 years old.

§ 216.67 "Child in care."

(a) *Railroad Retirement Act.* Part 222 of this chapter sets forth what is required to establish that a child is in an individual's care for purposes of the Railroad Retirement Act. This definition is used to establish eligibility for the tier II component of a female spouse or widow(er) annuity under that Act. Under this definition a child must be under age 18 or under a disability before any benefit is payable based upon having the child in care.

(b) *Social Security Act.* In order to establish eligibility for the tier I components of a spouse or widow(er) annuity, and eligibility for a surviving divorced spouse annuity based upon having a child of the employee in care, the definition of ''child in care'' found in the Social Security Act is used. Under this definition, a child must be under age 16 or under a disability.

§ 216.68 Disability period for widow(er), surviving divorced spouse, or remarried widow(er).

A widow(er), surviving divorced spouse, or remarried widow(er) who has a disability as defined in part 220 of this chapter is eligible for an annuity only if the disability began before the end of a period which:

(a) Begins in the later of:

(1) The month in which the employee died;

(2) The last month for which the widow(er) or surviving divorced spouse was entitled to an annuity for having the employee's child in care; or

(3) The last month for which the widow(er) or surviving divorced spouse was entitled to a previous annuity based on disability; and

(b) Ends with the earlier of:

(1) The month before the month in which the widow(er) or surviving divorced spouse or remarried widow(er) become 60 years old; or

(2) The last day of the last month of a 7-year period (84 consecutive months) following the month in which the period began.

Subpart H—Child's Annuity

§ 216.70 General.

The Railroad Retirement Act provides an annuity for the child of a deceased employee but not for the child of a living employee. The Act does provide that the child of a living employee can establish another individual's eligibility for a spouse annuity or cause an increase in the annuities of an employee and spouse. The eligibility requirements described in this subpart also apply for the following purposes, except as otherwise indicated in this part:

(a) To establish annuity eligibility for a spouse under subpart F of this part if he or she has the employee's eligible child in care;

(b) To establish annuity eligibility for a widow(er), or surviving divorce spouse or remarried widow(er) under subpart G of this part if he or she has the employee's child in care; or

(c) To provide an increase in the employee's annuity under the Social Security Overall Minimum Guaranty (see

part 229) by including the eligible child.

§216.71 Who is eligible for a child's annuity.

An individual is eligible for a child's annuity if the individual:

(a) Is a child of an employee who has completed 10 years of railroad service and had a current connection with the railroad industry when he or she died;

(b) Is not married at the time the application is filed;

(c) Is dependent upon the employee as defined in part 222 of this chapter; and

(d) Meets one of the following at the time the application is filed:

(1) Is under age 18; or

(2) Is age 18 or older and either:

(i) Is disabled as defined in part 220 of this chapter before attaining age 22 (the disability must continue through the time of application for benefits);

(ii) Is under age 19 and is a full-time student as defined in §216.74 of this part; or

(iii) Becomes age 19 in a month in which he or she is a full-time student and has not completed the requirement for, or received a diploma or certificate from, a secondary school.

§216.72 What is required for payment of a child's annuity.

An eligible child of a deceased employee is entitled to an annuity upon applying therefor and submitting any evidence requested by the Board.

(Approved by the Office of Management and Budget under control number 3220–0030)

§216.73 Who may be re-entitled to a child's annuity.

If an individual's entitlement to a child's annuity has ended, the individual may be re-entitled if he or she has not married and he or she applies to be re-entitled. The re-entitlement may begin with:

(a) The first month in which the individual is a full-time student if he or she is under age 19, or is age 19 and has not completed requirements for, or received a diploma or certificate from, a secondary school;

(b) The first month the individual is disabled, if the disability began before he or she attained age 22 and continues through the time of application for benefits; or

(c) The first month in which the individual is under a disability that began before the last day of a 7-year period (84 consecutive months) following the month in which the previous child's annuity ended, or the individual was no longer included as a disabled child in a railroad retirement annuity paid under the Social Security Overall Minimum Annuity (see part 229).

§216.74 When a child is a full-time elementary or secondary school student.

(a) A child is a full-time elementary or secondary school student if he or she meets all of the following conditions:

(1) The child is in full-time attendance at an elementary or secondary school; or

(2) The child is instructed in elementary or secondary education at home in accordance with a home school law of the State or other jurisdiction in which the child resides; or

(3) The child is in an independent study elementary or a secondary education program administered by the local school, district, or jurisdiction, which is in accordance with the law of the State or other jurisdiction in which he or she resides.

(b) The child is in full-time attendance in a day or evening non-correspondence course of at least 13 weeks duration and he or she is carrying a subject load that is considered full-time for day students under the institution's standards and practices. If he or she is in a home schooling program as described in paragraph (a)(2) of this section, he or she must be carrying a subject load that is considered full-time for day students under the standards and practices set by the State or other jurisdiction in which the student resides.

(c) To be considered in full-time attendance, scheduled attendance must be at the rate of at least 20 hours per week unless one of the exceptions in paragraphs (c) (1) and (2) of this section applies. If the student is in an independent study program as described in paragraph (a)(3) of this section, the number of hours spent in school attendance is determined by combining