

## § 295.2

the terms of any court-approved property settlement incident to any such decree, which characterizes specified benefits as property subject to distribution. Garnishment of benefits for alimony or child support is dealt with in part 350 of this chapter.

(b) *Benefits subject to this part.* Only the following benefits or portions of benefits under the Railroad Retirement Act are subject to this part:

(1) Employee annuity net tier II benefit component as provided under section 3(b) of the Railroad Retirement Act;

(2) Employee annuity vested dual benefit component as provided under section 3(h) of the Act;

(3) Employee annuity net proportionate share of the annuity increases as provided under section 3(f) of the Act; and

(4) Supplemental annuities as provided under section 2(b) of the Act.

### § 295.2 Definitions.

As used in this part—

*Act* means the Railroad Retirement Act.

*Court* means any court of competent jurisdiction of any state, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands; any court of the United States (as defined in section 451 of title 28 of the United States Code) having competent jurisdiction; any Indian court as defined by section 1301 of title 25 of the United States Code; or any court of competent jurisdiction of a foreign country with which the United States has an agreement requiring the United States to honor any court order of such country.

*Court decree* means a final decree of divorce, dissolution, annulment, or legal separation issued by a court (including a final decree or order modifying the terms of a previously issued decree of divorce, dissolution, annulment, or legal separation), which is issued in accordance with the laws of the jurisdiction of that court and which provides for the division of property.

*Division of property* means any transfer of property or its value by an indi-

## 20 CFR Ch. II (4-1-01 Edition)

vidual to his or her spouse or former spouse in compliance with any community property settlement, equitable distribution of property, or other distribution of property between spouses or former spouses, which is intended as a present and complete settlement of the property rights of the parties.

*Employee* means an individual who is or was formerly an employee as defined by part 203 of this chapter.

*Final decree* means a decree from which no appeal may be taken or from which no appeal has been taken within the time allowed for taking such appeals under the laws applicable to such appeals, or a decree from which timely appeal has been taken and such appeal has been finally decided under the laws applicable to such appeals.

*Property settlement* means an agreement between the parties to a suit for divorce, dissolution, annulment or legal separation in which they expressly agree to a division of their property rights, and which is incorporated in the final decree; is filed with the court in connection with a suit for divorce, dissolution, annulment or legal separation; or is otherwise presented to the court in a suit in accordance with the law of the jurisdiction. An agreement assigning or transferring property between spouses is not within the purview of this part unless it is subsequently approved by a court in connection with a suit for divorce, dissolution, annulment or legal separation.

*Spouse or former spouse* means the husband or wife, or former husband or wife, respectively, of an employee who, on or before the date of a court order, was married to the employee.

### § 295.3 Documentation and service.

(a) *Court decree or property settlement.* The Board will honor a court decree or a property settlement which meets the following criteria:

(1) The court decree or property settlement must provide that the spouse or former spouse is awarded payments from railroad retirement annuities payable to the railroad employee.

(2) The court decree or property settlement must specify an amount to be paid to the spouse or former spouse.

## Railroad Retirement Board

## § 295.4

(3) The court decree or property settlement must obligate the Board to make payments directly to the spouse or former spouse.

(4) The court decree or property settlement must clearly identify both the employee and the spouse or former spouse to whom payments are to be made.

(5) The court decree or property settlement submitted to the Board must be a recently certified copy of the document filed with the court. Where the award is made in an order modifying and earlier court decree, copies of both the original decree and the subsequent order must be furnished. In the case of a court-approved property settlement, both the settlement and any decree or order incorporating or approving the settlement must be provided.

(b) *Date of decree.* While only benefits payable for months after August, 1983 are subject to this part, the date the decree is entered or the property settlement is approved may precede September 1, 1983. A subsequent modification of a decree which was entered or a property settlement which was approved prior to September 1, 1983 must be in accord with the law of the jurisdiction in which the original decree was entered or the property settlement was approved.

(c) *Supporting documentation.* The spouse or former spouse shall submit such additional documentation as the Board shall require, including but not limited to:

(1) Identifying information concerning the employee such as social security number, railroad retirement claim number, full name, date of birth, and current address.

(2) Identifying information concerning the spouse or former spouse such as social security number, full name, and current address.

(3) A statement that—

(i) No condition of the law of the jurisdiction in which the decree was entered or the property settlement approved and no condition contained in the decree or agreement which requires termination of payment has occurred;

(ii) If any such condition does occur, the spouse or former spouse will immediately notify the Board; and

(iii) The spouse or former spouse agrees to repay any erroneous payment arising from occurrence of any such condition.

(d) *Delivery.* Any court decree or property settlement must be delivered by certified or registered mail, return receipt requested, or by personal service, to the Deputy General Counsel of the Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611. Where the decree or property settlement is delivered to any other office of the Board, it shall not be considered delivered until the date it is received by the Deputy General Counsel. Where the decree or property settlement was furnished to any office of the Board prior to September 1, 1983, delivery is not accomplished until a copy is received by the Deputy General Counsel subsequent to August 30, 1983.

(Approved by the Office of Management and Budget under control number 3220-0042)

### § 295.4 Review of documentation.

(a) *Regularity.* The Deputy General Counsel or his or her designee shall review the court decree or property settlement to determine that it complies with both the law of the jurisdiction, and with Federal law and these regulations.

(b) *Amount.* Ambiguities in the amount to be paid the spouse or former spouse shall be resolved in accord with expressed indications of the court's intent, except that:

(1) Where the amount is expressed in terms of a dollar figure:

(i) If the figure exceeds the total benefits which may be allocated under this part, the excess will be disregarded, provided that any future increase in the benefits subject to this part will be prospectively applied to the excess effective with the date of the benefit increase.

(ii) If the figure is less than the total benefits which may be allocated under this part, only the amount specified will be paid.

(2) Where the amount is expressed as a fraction, percentage, or ratio:

(i) The amount specified shall be applied only against benefits subject to this part, irrespective of the wording of the decree or property settlement.