

§ 295.4

20 CFR Ch. II (4-1-07 Edition)

(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.

(ii) When the amount is expressed in terms of a fraction or ratio referring to the length of railroad service, years shall be converted into the equivalent months. If the length of railroad service specified in the decree or property settlement exceeds the number of creditable service months used by the Board to determine the employee's years of service for calculating an annuity, the actual number used by the Board shall be substituted. If the decree understates the actual number of creditable railroad service months, the number of years or months set forth in the decree or property settlement will be used.

(3) An amount may be expressed in any other fashion only to the extent to which it may be readily ascertained from records maintained by the Board in the regular course of administration of the Act.

(c) *Notification.* The Deputy General Counsel or his or her designee shall make reasonable effort to notify the spouse or former spouse and the employee of a determination that the decree or property settlement does or does not qualify as a decree or property settlement which will be honored pursuant to this part. This notice will be mailed to the most recent address of each party or representative of each party as shown in the Board's records. A copy of the decree or property settlement will be provided to the employee with this notice. The notice must state:

(1) The rationale for a determination that the decree or property settlement does not comply with this part; or

(2) The dollar amount or proportion of benefits which will be paid to the spouse or former spouse.

(d) *Withholding after notification.* (1) Where the Deputy General Counsel or his or her designee has notified the spouse or former spouse that a decree or property settlement will be honored

Railroad Retirement Board

§ 295.5

under this part, but where the employee is not then entitled to any benefits subject to division under this part, the Associate Executive Director for Retirement Claims will notate the Board's records to reflect both the amount of benefits awarded to the spouse or former spouse pursuant to the decree or property settlement and his or her current address. Where the employee is currently entitled to benefits subject to this part, and the spouse or former spouse has furnished all additional documentation required, the Associate Executive Director for Retirement Claims will take action to withhold from the employee's monthly benefit the amount stated in the Deputy General Counsel's notice under paragraph (c) of this section that the Board will honor the decree or property settlement.

(2) Where the employee was not entitled to benefits subject to this part at the time of the notice by the Deputy General Counsel that the Board will honor the decree or property settlement, but the employee becomes so entitled at a later time, the Board will attempt to contact the spouse or former spouse at the most recent address shown in the Board's records. The notice will inform the spouse or former spouse that an annuity has been awarded, that the spouse or former spouse may, upon submission of all required documentation, receive a portion of the annuity, and that the spouse or former spouse should contact the Board within three months from the date of the notice. The Associate Executive Director for Retirement Claims will initiate withholding of the amount awarded to the spouse or former spouse from the employee's monthly benefit, and will continue to withhold this amount for three successive months; provided, that an initial annuity payment for a retroactive period shall count as one monthly benefit payment. If after the third month's payment has been withheld the Board has received no response from the spouse or former spouse, the amount withheld from the employee's benefit shall be paid to the employee, and the Board take no further action regarding the decree until the spouse or former spouse contacts the board.

(3) Benefits withheld from the employee may not be paid to a spouse or former spouse until the spouse or former spouse has furnished all supporting documentation required pursuant to §295.3 of this part. The Board shall allow a reasonable time, not to exceed three months from the date of the initial response from the spouse or former spouse, for the submission of all required documentation. If the documentation is not furnished within the time allowed, payment of the amounts withheld shall be made to the employee.

(4) Any payments made to the employee subsequent to the three-month notice period specified in paragraphs (d)(2) and (3) of this section, and prior to receipt of a response or required documentation from the spouse or former spouse, shall be considered properly paid to the employee and the board shall have no further liability to the spouse or former spouse with respect to such amounts.

§ 295.5 Limitations.

(a) *Employee benefit entitlement.* Payments will be made to a spouse or former spouse under this part only if the employee has been awarded an annuity under the Railroad Retirement Act. Payments to a spouse or former spouse shall be made only for months and from such amounts with respect to which an annuity is payable to the employee, and shall be suspended or terminated for any month in which the annuity of the employee is suspended or terminated. No arrearage accrues to the spouse or former spouse with respect to any month for which the annuity of the employee is suspended or terminated as required under the Act.

(b) *Minimum amount.* The amount of payment to a spouse or former spouse may not be less than one dollar per month.

(c) *Prospective payment.* Payment to a spouse or former spouse may accrue no earlier than the later of the date of delivery, pursuant to §295.3 of this part, of a court decree or property settlement which will be honored under this part, or from October 1, 1983. The amount to be paid the spouse or former