

and Saab 340 Fuel Airworthiness Limitations Document 340 LKS 009033, dated February 14, 2006; for related information.

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RAILROAD RETIREMENT BOARD

20 CFR Part 295

RIN 3220-AB61

Payments Pursuant to Court Decree or Court-approved Property Settlement

AGENCY: Railroad Retirement Board.

ACTION: Proposed rule.

SUMMARY: The Railroad Retirement Board (Board) proposes to amend its regulations concerning partition of annuities pursuant to a court decree or court-approved property settlement in order to incorporate provisions of the Pension Protection Act of 2006, to make corrections in the existing regulation, and to update the regulation to reflect changes in titles within the agency.

DATES: Submit comments on or before May 5, 2008.

ADDRESSES: Address any comments concerning this proposed rule to Beatrice Ezerski, Secretary to the Board, Railroad Retirement Board, 844 N. Rush Street, Chicago, Illinois 60611-2092.

FOR FURTHER INFORMATION CONTACT: Marguerite P. Dadabo, Assistant General Counsel, (312) 751-4945, TTD (312) 751-4701.

SUPPLEMENTARY INFORMATION:

Retirement and disability annuities under the Railroad Retirement Act are composed of independently calculated segments known as tiers. The tier I amount combines both railroad and non-railroad earnings, and is calculated using social security benefit formulas. The tier II amount is calculated under different formulas, generally representing railroad earnings alone. In addition, some annuitants receive a dual benefit component based on non-railroad wages earned through December 1974, or in some cases, through an earlier date. Finally, career railroad employees may receive a supplemental annuity ranging from \$23 to \$43 per month.

Under section 14(b) of the Railroad Retirement Act, the non-tier I portion of a railroad retirement annuity may be characterized as property subject to partition in a proceeding for divorce,

annulment, or legal separation. Prior to August 17, 2007, the effective date of the Pension Protection Act of 2006, Public Law 109-280, a partition payment would terminate upon the death of either the railroad employee or the former spouse, whichever occurred first, unless the court order provided for termination at an earlier date. Section 1003 of Public Law 109-280 amended the Railroad Retirement Act to provide that a partition payment will only terminate upon the employee's death when the court order requires such termination. Consequently, unless the court order requires termination of payments upon the employee's death, tier II partition payments to divorced spouses may now continue beyond the employee's death. While the change in law does not allow for the reinstatement of payments terminated prior to August 17, 2007, due to the death of the employee prior to that date, the change does mean that any divorced spouse who was getting a partition payment as of that date may continue to be paid a tier II partition amount.

The Board proposes to amend Part 295 of its regulations to reflect the changes made by Public Law 109-280, to reflect changes in certain titles of agency employees, and to correct or clarify certain references. Specifically, the Board amends section 295.1, which explains the purpose of Part 295, to incorporate a reference to Public Law 109-280. Section 295.1(b)(3) is modified to clarify references to certain annuity increases under section 3(f) of the Railroad Retirement Act.

Section 295.2 is amended to include a separate new definition of former spouse and a revised separate definition of spouse.

Section 295.4(a) is amended by the addition of a new subparagraph (4) to specify that unless a court order expressly provides otherwise, a partition order will be applied to any annuity paid to an employee, whether the employee has retired based on age or based on disability.

The phrase "pertaining to the employee" is added to the end of the second sentence of section 295.4(c) and to the end of the first sentence in section 295.4(d)(2) in order to clarify that the Board's records concerning the railroad employee will be reviewed to determine the most current address for each party to a partition order.

A new subparagraph (4) is added to section 295.5(f) to reflect the amendment made by Public Law 109-280 that allows continued payment of a partition tier II to a former spouse if the railroad employee dies on or after August 17, 2007. Paragraphs 295.5(a)

and 295.5(f) are amended to include a reference to the new subparagraph (4).

A new subparagraph (2) is added to section 295.7(e) to clarify that an erroneous payment to the employee may occur if the Board has all required documentation and due to clerical oversight fails to withhold the amount awarded by a court partition order.

Finally, references to "Deputy General Counsel" and to the "Associate Executive Director for Retirement Claims" throughout Part 295 are changed to "General Counsel" and "Director of Retirement Benefits" respectively in order to reflect title changes within the agency. Several minor corrections of capitalization and grammar are also made.

This proposed rule has been determined to be a significant regulatory action, and therefore it has been reviewed by the Office of Management and Budget prior to its publication in the **Federal Register**. There are no changes to the information collections associated with Part 295.

List of Subjects in 20 CFR Part 295

Railroad employees, railroad retirement.

For the reasons set out in the preamble, the Railroad Retirement Board proposes to amend title 20, chapter II, subchapter B, part 295 of the Code of Federal Regulations as follows:

PART 295—PAYMENTS PURSUANT TO COURT DECREE OR COURT-APPROVED PROPERTY SETTLEMENT

1. The authority citation for part 295 continues to read as follows:

Authority: 45 U.S.C. 231f; 45 U.S.C. 231m.

2. Section 295.1 is amended by revising paragraph (a), the introductory text of paragraph (b), and paragraph (b)(3) to read as follows:

§ 295.1 Introduction.

(a) Purpose. This part implements section 419 of Public Law 98-76 (97 Stat. 438), which amended section 14 of the Railroad Retirement Act to provide that, with respect to annuity amounts payable for months beginning with September 1983, the Board must comply with a court decree of divorce, annulment or legal separation, or with the terms of any court-approved property settlement incident to any such decree, which characterizes specified benefits as property subject to distribution. This part also implements section 1003 of Public Law 109-280 (120 Stat. 1053), which amended section 5 of the Railroad Retirement Act to allow the payment of an employee's tier II benefit component awarded to a

former spouse as part of a property distribution incident to a decree of divorce, annulment, or legal separation to continue after the employee's death. 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:

* * * * *

(3) Employee annuity increase as provided under section 3(f) of the Act; and

* * * * *

3. Section 295.2 is amended by adding a new definition of "Former spouse" and by revising the definition of "spouse" to read as follows:

§ 295.2 Definitions.

* * * * *

Former spouse means the former husband or wife of an employee who, on or before the date of a court order, was married to the employee and that marriage has ended by final decree of divorce, dissolution, or annulment.

* * * * *

Spouse means the husband or wife of an employee who, on or before the date of a court order, was married to the employee and that marriage has not ended by final decree of divorce, dissolution, or annulment.

§ 295.3 [Amended]

4. Section 295.3, paragraph (d) is amended by replacing all references to "Deputy General Counsel" with references to "General Counsel".

5. Section 295.4 is amended as follows:

a. By replacing wherever they appear all references to "Deputy General Counsel" with references to "General Counsel"

b. By replacing all references to the "Associate Executive Director for Retirement Claims" with references to the "Director of Retirement Benefits"

c. By replacing "bs" with "be" in the second to last sentence of paragraph (b)(2)(ii)

d. By adding the phrase "pertaining to the employee" at the end of the second sentence of the introductory paragraph of paragraph (c)

e. By adding the phrase "pertaining to the employee" at the end of the first sentence of paragraph (d)(2)

f. By capitalizing the word "Board" at the end of the last sentence in paragraph (d)(2)

g. By capitalizing the word "Board" in the last sentence of paragraph (d)(4)

h. By adding the following new paragraph (b)(4) to read as follows:

§ 295.4 Review of documentation.

* * * * *

(b) * * *

(4) Unless the order expressly provides otherwise, the Board will deduct the amount specified by the order from any annuity paid to the employee, whether the employee has retired based on age or on disability.

* * * * *

6. Section 295.5 is amended as follows:

a. By adding in paragraph (a) the phrase " , except as provided in paragraph (f)(4) of this section," in the second sentence between the words "and" and "shall"

b. By substituting the word "on" for the word "in" in paragraph (d) in the phrase that reads "to act in behalf of the spouse or former spouse"

c. By adding the phrase "Except as provided in paragraph (4) of this paragraph" to the beginning of the first sentence of the introduction to paragraph (f)

d. By substituting references to "Deputy General Counsel" with references to "General Counsel" in paragraph (g) and

e. By adding a new paragraph (f)(4) to read as follows:

§ 295.5 Limitations.

* * * * *

(f) * * *

(4) If the employee dies on or after August 17, 2007, a former spouse who is receiving a portion of the employee's annuity pursuant to a court decree or property settlement compliant with this part may continue to receive a portion of the employee's tier II benefit component unless the court decree or property settlement requires such payment to terminate upon the death of the employee.

* * * * *

§ 295.6 [Amended]

7. Section 295.6 is amended as follows:

a. In paragraph (b) by substituting "General Counsel" for "Deputy General Counsel" and by substituting "Director of Retirement Benefits" for all references to the "Associate Executive Director for Retirement Claims"

b. By adding the word "a" to the first sentence of paragraph (b) before the word "request"

c. By adding the word "a" to the first sentence of paragraph (c) before the word "signed".

8. Section 295.7 is amended by redesignating paragraph (e) as paragraph (e)(1) and adding a new paragraph (e)(2) to read as follows:

§ 295.7 Miscellaneous.

* * * * *

(e) * * *

(2) Where all documentation required by this part is in the Board's records pertaining to the employee prior to the time the employee annuity is awarded, but where the Board due to clerical oversight fails to withhold the amount awarded by the court order, then the Board shall begin deduction from the employee annuity with the month the error is discovered, and shall pay the amount which should have been withheld pursuant to this part to the spouse or former spouse. The amount paid to the spouse or former spouse representing months for which the amount under the order was not timely withheld shall be an erroneous payment to the employee within the meaning of section 10 of the Railroad Retirement Act. This section shall not apply where the Board has attempted to contact the spouse or former spouse at the time the employee annuity is awarded pursuant to section 295.4(d).

Dated: March 3, 2008.

By Authority of the Board.

Beatrice Ezerski,

Secretary to the Board.

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DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 630

[FHWA Docket No. FHWA-2007-0020]

RIN 2125-AF23

Advance Construction of Federal-Aid Projects

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of proposed rulemaking (NPRM); request for comments.

SUMMARY: The FHWA is proposing to revise the regulation for advance construction of Federal-aid projects by: Removing the restriction that a State must obligate all of its allocated or apportioned funds, or demonstrate that it will use all obligation authority allocated to it for Federal-aid highways and highway safety construction, prior to the approval of advance construction projects; and clarifying that advance construction procedures may be used for all categories of Federal-aid highway funds, and that any available Federal-aid funds for which a project is eligible may be used when a project is converted