

### § 235.3

is necessary to establish such a relationship in order to receive a benefit under the Railroad Retirement Act.

#### § 235.3 Who is paid social security benefits by the Board.

The following individuals, if entitled to social security benefits, are paid such benefits by the Board:

(a) A railroad employee who has been credited with at least 120 months of railroad service;

(b) A wife or husband of a railroad employee who has been credited with at least 120 months of railroad service;

(c) A divorced wife or husband of a railroad employee who has been credited with at least 120 months of railroad service, but only if the divorced wife or husband is claiming social security benefits based upon the railroad employee's social security wages;

(d) A survivor of a railroad employee, including a surviving divorced spouse, remarried widow(er), surviving divorced mother or father, who is entitled, or upon application would be entitled, to an annuity under the Railroad Retirement Act;

(e) Any other person entitled to benefits under title II of the Social Security Act based on the social security wages of a railroad employee who has been credited with at least 120 months of railroad service, except survivors of a railroad employee when the Social Security Administration has jurisdiction for survivor benefits. See part 221 of this title.

#### § 235.4 How the Board pays social security benefits.

(a) When an individual described in § 235.3 of this part is determined by the Social Security Administration to be entitled to social security benefits, the Social Security Administration certifies such benefits to the Board for payment by the Board. Once social security entitlement is certified to the Board, the Board then certifies the amount of the social security benefit to the Department of the Treasury for payment and makes any necessary adjustments in the individual's railroad retirement benefit.

(b) The Board has no authority with respect to the adjudication of the benefit to be paid under the Social Security

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Act. Entitlement to and the computation of such benefits is a matter solely within the jurisdiction of the Social Security Administration.

### PARTS 236-238 [RESERVED]

### PART 240 [RESERVED]

## PART 243—TRANSFER, ASSIGNMENT, OR WAIVER OF PAYMENTS

Sec.

243.1 Prohibition against garnishment.

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243.6 Waiver of annuity payments.

AUTHORITY: 45 U.S.C. 231f(b)(5).

SOURCE: 53 FR 35806, Sept. 15, 1988, unless otherwise noted.

#### § 243.1 Prohibition against garnishment.

Except as hereinafter provided in this part, no benefits paid under the Railroad Retirement Act are assignable or subject to any tax or to garnishment, attachment, or other legal process (including any order issued by any court in connection with a bankruptcy proceeding), nor shall any payment be anticipated.

#### § 243.2 Legal process for the enforcement of child support and alimony obligations.

Benefits paid by the Board are subject to legal process brought for the enforcement of legal obligations to provide child support or to make alimony payments, as provided in part 350 of this chapter.

#### § 243.3 Payments pursuant to court decree or court-approved property settlement.

Certain annuity components are subject to division pursuant to a court decree or to a court-approved property settlement incident to any such decree, as provided in part 295 of this chapter.

**§ 243.4 Taxation of benefits.**

(a) Annuities paid by the Board are subject to Federal income tax in accord with the Internal Revenue Code. The annuity portion equivalent to the amount of the benefit that the person would have actually received under the Social Security Act if railroad service had been creditable under that Act is treated for Federal income tax purposes the same way as a social security benefit. Annuity payments computed under the social security overall minimum provision contained in section 3(f)(3) of the Railroad Retirement Act (see § 243.5 of this part) are also treated as social security benefits for Federal income tax purposes. Railroad retirement annuity amounts exceeding social security equivalent payments, vested dual benefits, and supplemental annuities are taxed in the same manner as benefits provided under an employer plan which meets the requirements of section 401(a) of the Internal Revenue Code.

(b) Pursuant to section 14 of the Railroad Retirement Act, no annuity or supplemental annuity, in whole or in part, is subject to any tax by any state or any political subdivision thereof.

**§ 243.5 Assignment of a portion of an annuity paid under the social security overall minimum provision.**

Section 3(f)(3) of the Railroad Retirement Act, the social security overall minimum provision, guarantees that an annuitant will receive, in combined benefits under the Railroad Retirement and Social Security Acts, not less than the amount which would have been paid to the employee and to members of his or her family under the Social Security Act if the employee's railroad service had been creditable under that Act. An annuitant whose annuity is computed under that provision may assign all or any portion of that annuity to any of the members of his or her family who are or who could be included in the computation of the annuity. Any assignment issued pursuant to this section will terminate:

- (a) When revoked by the annuitant by notification to the Board; or
- (b) When the annuity is no longer computed under the social security overall minimum provision.

**§ 243.6 Waiver of annuity payments.**

(a) Any individual who has been awarded an annuity under the Railroad Retirement Act shall have the right to waive such annuity in whole or in part by filing with the Board a statement to that effect signed by him or her.

(b) Such a waiver shall be effective as of the date specified in the waiver statement, except that if an annuity has been awarded, a waiver shall not be effective before the first day of the month after the month in which the waiver form is received at an office of the Board and shall not be effective as to any annuity payment which has already been made or which cannot be prevented.

(c) For the period during which a waiver is in effect, no payment of the amount of the annuity waived can ever be made to any person. A waiver of an annuity shall not, however, have any effect on the amount of a spouse's annuity otherwise payable or on a lump sum under section 6(c) of the Act otherwise due, nor shall it serve to make an individual eligible for a lump-sum death benefit under section 6(b) of the Act or any insurance benefit under the Social Security Act on the basis of the wages of the same deceased employee.

(d) A waiver once made shall continue in effect until the annuitant requests in writing that it be terminated.

**PART 250 [RESERVED]**

**PART 255—RECOVERY OF OVERPAYMENTS**

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