

Dated: March 31, 1995.

Russell F. Price,

Acting Assistant Director, Western Support Center.

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DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 63

Former Spouse Payments From Retired Pay

AGENCY: Office of the Secretary of Defense, DoD.

ACTION: Proposed rule; amendment.

SUMMARY: This proposed rule amends part 63 of title 32 of the Code of Federal Regulations to reflect amendments to the Uniformed Services Former Spouses' Protection Act and to clarify the language in § 63.6(c)(8) concerning court orders that provide for a division of retired pay by means of a formula. Guidance implementing the amendments have been incorporated into Volume 7, Part B of the DoD Financial Management Regulation, DoD 7000.14-R, but has not been previously published in the **Federal Register**.

DATES: Comments must be received June 6, 1995.

ADDRESSES: Interested parties should submit written comments to: Deputy Director for Finance, Defense Finance and Accounting Service, 1931 Jefferson Davis Highway, Arlington, VA 22240-5291, Attention: Military Pay Directorate.

FOR FURTHER INFORMATION CONTACT: Mr. Fiti Malufau, (703) 602-5279.

SUPPLEMENTARY INFORMATION: Because of the large number of comments anticipated, we do not plan to acknowledge or respond to individual comments but will address the comments, as appropriate, in the preamble of the final rule.

To avoid undue hardship on those seeking to enforce support orders providing for a division of retired pay, the Department of Defense will continue to follow its current implementing guidance with regard to the amendments to the Uniformed Services Former Spouses' Protection Act and, effective April 1, 1995, will accept court orders containing formulas that are consistent with the proposed rule until a final rule is issued.

Executive Order 12866, "Regulatory Planning and Review"

The Under Secretary of Defense (Comptroller) has determined that 32 CFR part 63 is not a significant regulatory action. The rule does not:

(1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Public Law 96-354, "Regulatory Flexibility Act of 1980" (5 U.S.C. 601-612)

The Under Secretary of Defense (Comptroller) has certified that this rule is not subject to the Regulatory Flexibility Act (5 U.S.C. 601-612) because it affects only certain military members and their former spouses.

Public Law 96-511, "Paperwork Reduction Act" (44 U.S.C. 3501-3520)

The Under Secretary of Defense (Comptroller) has certified that this amendment of 32 CFR part 63 does not impose any new reporting or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501-3520).

List of Subjects in 32 CFR Part 63

Alimony, Child support, Retirement, Uniformed Services, Payments to former spouses, Military retired pay.

Accordingly, 32 CFR part 63 is proposed to be amended as follows:

PART 63—FORMER SPOUSE PAYMENTS FROM RETIRED PAY

1. The authority citation for part 63 continues to read as follows:

Authority: 10 USC 1408.

2. Section 63.6 is proposed to be amended by adding the word "certified" after the word "A" in paragraph (b)(1)(ii), by revising paragraphs (b)(5), (c)(8) and (e), and by adding a new paragraph (h)(13) to read as follows:

§ 63.6 Procedures.

* * * * *

(b) * * *

(5) The designated agent for each uniformed service is:

(i) Army, Navy, Air Force and Marine Corps: Defense Finance and Accounting Service, Cleveland Center (Code LF), PO Box 998002, Cleveland, OH 44199-8002.

(ii) Coast Guard: United States Coast Guard, Commanding Officer (L), Pay and Personnel Center, 444 Quincy Street, Topeka, KS 66683-3591.

(iii) Public Health Service: Office of General Counsel, Department of Health and Human Service, Room 5362, 330 Independence Avenue, SW, Washington, DC 20201.

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(c) * * *

(8) The court order shall require payment of child support or alimony or, in the case of a division of property, provide for the payment of an amount of disposable retired or retainer pay, expressed as a dollar amount or as a percentage. Court orders specifying a percentage or fraction of disposable retired pay shall be construed as a percentage or a fraction of disposable retired pay. A court order that provides for a division of retired pay by means of a formula wherein the elements of the formula are not specifically set forth or readily apparent on the face of the court order will not be honored unless clarified by the court. For orders served on or after April 1, 1995, an exception to requiring such a clarifying order will be made only if in accordance with (c)(8) (i), (ii) and (iii) of this section:

(i) The order otherwise qualifies for direct payment but the parties are divorced when the member is on active duty. In that situation, where the pertinent court order is expressed in terms of a formula and the element missing from that formula is the member's years of service, then the designated agent will supply the member's years of service in terms of whole months to arrive at a percentage of disposable pay due the former spouse. Partial months of service will be dropped. The member's service that is creditable for retirement percentage multiplier purposes (See Chapter 1, Section C of DoD Financial Management Regulation, DoD 7000.14-R, Volume 7, Part B¹) will be used in all formulas. In the case of reserve members, points earned during the member's marriage must be contained in the court order. The designated agent will supply total retirement points earned by a reservist

¹ Copies may be obtained from the Deputy Director for Finance, Defense Finance and Accounting Service, 1931 Jefferson Davis Highway, Arlington, Virginia 22240-5291, Attention: Military Pay Directorate.

if that element is missing from the formula. The formula will be computed based on the member's service for retirement multiplier or points and carried out to four decimal places.

(ii) The order otherwise qualifies for direct payment but the parties are divorced when the member is on active duty and the pertinent court order awarding the former spouse a portion of the member's retired/retainer pay is expressed in terms of a hypothetical retired pay amount—one that is conditional or based upon the occurrence of certain facts and/or events. No application will be processed by the designated agent in the absence of a clarifying order where the hypothetical retired pay amount is to be based upon retired/retainer pay due the member at the time of divorce and the divorce occurs prior to the member's retirement eligibility (at least 15 or 20 years of service) unless the hypothetical retired pay amount is contained in the order or is based on 15 or 20 years of service. All hypothetical awards will be computed on the basis of the member's retired pay at the time of retirement (as explained in paragraph (c)(8)(iii) of this section) and, if the order also provides for the same percentage of cost-of-living adjustments, will be converted to a percentage of current disposable pay. If the hypothetical contained in the court order does not provide for the same percentage of cost-of-living adjustments, then payments will be made in a fixed dollar amount only. As noted in this section, the formula will be carried out to four decimal places.

(iii) *Example.* A court order awards the former spouse 25% of the member's monthly retired/retainer pay of a retired rank of Captain with 20 years of service to include the same percentage of cost-of-living increases. The member later retires after 25 years of service as a Major. The monthly retired pay of a Captain with 20 years of service equals \$1,000.00 and the monthly retired pay of a Major with 25 years of service is \$1,100; \$1,000.00 divided by \$1,100.00 equals .909091. This amount (.909091) multiplied by 25% (amount of former spouse award) is .2272. This 22.72% award is proportionately the same share as the 25% award in the court order except it is expressed in terms of the member's actual rather than hypothetical retirement pension.

(iv) Except for years of service or date of retirement, as well as hypothetical retired pay amounts mentioned in paragraphs (c)(8) (i) and (ii) of this section, in order to be honored without the necessity of obtaining a subsequent clarifying order from the court, pertinent court orders must contain a

fixed dollar amount or a percentage of disposable pay that can be computed using the qualifying court order alone without reference to any facts or values external to the court order dividing the member's retired/retainer pay.

* * * * *

(e) *Limitations.* (1) Divorces, dissolutions of marriage, annulments, and legal separations that became effective before February 3, 1991. Upon proper service, a member's retired pay may be paid directly to a former spouse in the amount necessary to comply with the court order, provided the total amount does not exceed:

(i) Fifty percent of disposable retired pay for all court orders and garnishments paid under this part.

(ii) Sixty-five percent of disposable retired pay for all court orders and garnishment actions paid under this part and garnishments paid under 42 U.S.C. 659.

(2) Divorces, dissolutions of marriage, annulments, and legal separations that become effective on or after February 3, 1991. Upon proper service, a member's retired pay may be paid directly to a former spouse in the amount necessary to comply with the court order, provided the total amount does not exceed:

(i) Fifty percent of disposable retired pay for all court orders and garnishment actions paid under this part.

(ii) Sixty-five percent of the remuneration for employment as defined under 42 U.S.C. 659 and 662 for all court orders and garnishments under this part and garnishments paid under 42 U.S.C. 659.

(3) *Disposable retired pay.* Disposable retired pay is the gross pay entitlement, including renounced pay, less authorized deductions. Disposable retired pay does not include annuitant payments under 10 U.S.C. Chapter 73. For court orders issued on or before November 14, 1986, (or amendments to such court orders), disposable retired pay does not include retired pay of a member retired for disability under 10 U.S.C. Chapter 61. The authorized deductions are:

(i) For divorces, dissolutions of marriage, annulments, and legal separations that become effective before February 3, 1991:

(A) Amounts owed to the United States.

(B) Amounts required by law to be deducted from member's pay.

(C) Fines and forfeitures ordered by a court-martial.

(D) Amounts waived in order to receive compensation under Title 5 or 38 of the United States Code.

(E) Federal employment taxes and income withheld to the extent that the amount is consistent with member's tax liability, including amounts for supplemental withholding under 26 U.S.C. 3402(i) when the member presents evidence to the satisfaction of a designated agent that supports such withholding. State employment taxes and income taxes when the member makes a voluntary request for such withholding from retired pay and the Uniformed Services have an agreement with the State concerned for withholding from retired pay.

(F) Premiums paid as a result of an election under 10 U.S.C. Chapter 73, to provide an annuity to a spouse or former spouse to whom payment of a portion of such member's retired pay is being made pursuant to a court order under this part.

(G) The amount of the member's retired pay under 10 U.S.C. Chapter 61 computed using the percentage of the member's disability on the date when the member was retired (or the date on which the member's name was placed on the temporary disability retired list), for court orders issued after November 14, 1986.

(ii) For divorces, dissolutions of marriage, annulments, and legal separations that become effective on or after February 3, 1991:

(A) Amounts owed to the United States for previous overpayment of retired pay and for recoupment required by law resulting from entitlement to retired pay.

(B) Forfeitures of retired pay ordered by court-martial.

(C) Amounts waived in order to receive compensation under Title 5 or 38 of United States Code.

(D) Premiums paid as a result of an election under 10 U.S.C. Chapter 73 to provide an annuity to a spouse or former spouse to whom payment of a portion of such member's retired pay is being made pursuant to a court order under this part.

(E) The amount of member's retired pay under 10 U.S.C. Chapter 61 computed using the percentage of the member's disability on the date when the member was retired (or the date on which the member's name was placed on the temporary disability retired list).

* * * * *

(h) * * *

(13) For divorces, dissolutions of marriage, annulments, and legal separations that become effective on or after February 3, 1991, payments to a former spouse for a division of property are excluded in determining a member's gross wages concerning retired pay.

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Dated: March 31, 1995.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 51 and 58

[AD-FRL-5183-2]

National Ambient Air Quality Standards for Sulfur Oxides (Sulfur Dioxide)—Proposal of Part 51 and Part 58 Implementation Strategies

AGENCY: Environmental Protection Agency (EPA).

ACTION: Announcement of the public hearing and notice of availability.

SUMMARY: The EPA is announcing the public hearing on the proposal of the implementation options for the national ambient air quality standard (NAAQS) for sulfur oxides (sulfur dioxide) (SO₂) published on March 7, 1995. The EPA is also announcing the availability of a supplement to the Regulatory Impact Analysis (RIA) for the proposed changes to the NAAQS for SO₂. The supplement includes additional analysis on the costs of the section 303 option in the previous proposal.

DATES: Written comments must be received on or before June 5, 1995, and a public hearing on the proposed rule will be held on May 16, 1995 beginning at 9:00 a.m.

ADDRESSES: Submit written comments on the proposed action on 40 CFR parts 51 and 58 (duplicate copies preferred) to the Air and Radiation Docket Information Center (6102), Room M-1500, U.S. Environmental Protection Agency, Attn: Docket No. A-94-55, 401 M Street SW., Washington, DC 20460. This docket contains supporting information used in developing the proposed rule, and is located in the Air and Radiation Docket Information Center of the U.S. Environmental Protection Agency, South Conference Center, Room M-1500, 401 M Street SW., Washington DC 20460. The docket may be inspected between 8:30 a.m. and 3:30 p.m. on weekdays. A reasonable fee may be charged for copying.

The public hearing will be held at the U.S. Environmental Protection Agency's Environmental Research Center Auditorium, 86 T.W. Alexander Drive, Research Triangle Park, NC 27711.

FOR FURTHER INFORMATION CONTACT: Part 51 Notice—Laura D. McKelvey, Air

Quality Strategies and Standards Division (MD-15), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711, telephone (919) 541-5497. Part 58 Notice—David Lutz, Emissions Monitoring and Analysis Division (MD-14), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711, telephone (919) 541-5476. The supplemental RIA—Allyson Siwik, Air Quality Strategies and Standards Division (MD-15), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711, telephone (919) 541-7775.

SUPPLEMENTARY INFORMATION: On November 15, 1994, at 59 FR 58958, EPA proposed three options for changes to the NAAQS for SO₂. On March 7, 1995, at 60 FR 12492, EPA proposed in the **Federal Register** the requirements for implementing the alternative measures and changes in the SO₂ ambient air surveillance network. That document requires that written comments on the proposed options for changes to parts 51 and 58 to implement changes in the SO₂ standard be submitted to EPA by June 5, 1995. Today's action announces the availability of the supplement to the RIA for the changes to the SO₂ NAAQS and the public hearing on the implementation plan and ambient air quality surveillance network for April 13, 1995.

Individuals planning to make oral presentations at the hearing should notify Laura D. McKelvey at the above address at least 7 days prior to the date of the hearing. Oral presentations will be limited to 15 minutes each. Any member of the public may file a written statement before, during, or within 30 days after the hearing. Written statements (duplicate copies preferred) should be submitted to the appropriate docket at the above address.

A verbatim transcript of the hearing and written statements will be available for copying during normal working hours at the Air and Radiation Docket Information Center (6102), Room M-1500, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

List of Subjects in 40 CFR Part 51

Air pollution control, Carbon monoxide, Lead, Nitrogen dioxide, Ozone, Particulate matter, Sulfur oxides.

List of Subjects in 40 CFR Part 58

Administrative practice and procedure, Air pollution control, Reporting and recordkeeping requirements.

Dated: March 28, 1995.

Mary D. Nichols,

Assistant Administrator for Air and Radiation.

[FR Doc. 95-8206 Filed 4-5-95; 8:45 am]

BILLING CODE 6560-50-P

40 CFR Part 86

[FRL-5185-1]

RIN 2060-AE27

Revisions to the Federal Test Procedure for Emissions From Motor Vehicles

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public hearing.

SUMMARY: On April 19 and 20, 1995, the Environmental Protection Agency (EPA) will hold a public hearing in Ann Arbor, Michigan, to receive comments from interested parties on the Proposed Regulations for Revisions to the Federal Test Procedure for Emissions from Motor Vehicles, published in the **Federal Register** on February 7, 1995 (60 FR 7404).

DATES: Comments on the published proposal (60 FR 7404) will be accepted through May 20, 1995. The public hearing will be held on April 19, 1995, from 10:00 a.m. until 5:00 p.m. and on April 20, 1995, from 8:00 a.m. until 5:00 p.m.

ADDRESSES: Interested parties may submit written comments (in duplicate if possible) to Public Docket No. A-92-64, at: Air Docket Section, U.S. Environmental Protection Agency, 401 M Street SW, Washington, DC 20460.

Materials relevant to this notice have been placed in Docket No. A-92-64. The docket is located at the above address in Room M-1500, Waterside Mall, and may be inspected weekdays between 8:30 a.m. and 5:30 p.m. A reasonable fee may be charged by EPA for copying docket materials.

The public hearing will be held at the Towsley Auditorium, Morris Lawrence Building, Washtenaw Community College, 4800 East Huron River Drive, Ann Arbor, Michigan. This facility can be reached from exit no. 39 on U.S. Route 23 by going east on Geddes Rd., then south on Dixboro Rd., then east on Huron River Drive. A map is available by mail or fax by calling the EPA at (313) 668-4384.

FOR FURTHER INFORMATION CONTACT: Jim Markey, Certification Division, U.S. Environmental Protection Agency, National Vehicle and Fuel Emissions Laboratory, 2565 Plymouth Road, Ann