former participant who was married to such participant for not less than ten years during periods of service by that participant which are creditable under section 816 of the Act provided the participant was making contributions to the Fund under section 805 of the Act during some portion of such service, and provided the divorce occurred after February 15, 1981. For this purpose, a former spouse shall not be considered as married to a participant for periods assumed to be creditable under section 808 of the Act in the case of a disability annuity or section 809 of the Act in the case of a death in service. A former spouse will be considered married to a participant for any extra period of creditable service provided under section 817 of the Act for service at an unhealthful post during which the former spouse resided with the participant. See §19.5–3 for procedures to determine this extra period of marriage.

(l) *Fund* means the Foreign Service Retirement and Disability Fund.

(m) *M/MED* means the Department's Office of Medical Services.

(n) *Military and naval service* means honorable active service:

(1) In the Armed Forces of the United States;

(2) In the Regular or Reserve Corps of the Public Health Service after June 30, 1960; or

(3) As commissioned officer of the National Oceanic and Atmospheric Administration or predecessor organization after June 30, 1961.

However, this definition does not include service in the National Guard, except when ordered to active duty in the service of the United States.

(o) *Participant* means a person as described in §19.3.

(p) *Previous spouse* means any person formerly married to a principal, whether or not such person qualifies as a former spouse under paragraph (k) of this section.

(q) *Principal* means a participant or former participant whose service forms the basis for a benefit under chapter 8 of the Act for a spouse, previous spouse, former spouse or child of a participant.

(r) *PER/ER/RET* means the Department's Retirement Division in the Bureau of Personnel.

(s) *Pro Rata Share* means, in the case of any former spouse of any participant or former participant, a percentage which is equal to the percentage that (1) the number of years and months during which the former spouse was married to the participant during the creditable service of that participant is of (2) the total number of years and months of such creditable service. When making this calculation, item (1) is adjusted in accordance with paragraph (k) of this section and item (2) is adjusted in accordance with §19.4. In the total period, 30 days constitutes a month and any period of less than 30 days is not counted.

(t) *Spousal Agreement* means any written agreement between a participant or former participant, and the participant's spouse or former spouse.

(u) *Student* means a child regularly pursuing a full-time course of study or training in residence in a high school, trade school, technical or vocational institute, junior college, university, or comparable recognized educational institution. A child who is a student shall not be deemed to have ceased to be a student during any interim between school years, semesters, or terms if the interim or other period of nonattendance does not exceed 5 calendar months and if the child shows to the satisfaction of the Retirement Division (PER/ER/RET) that the child has a bona fide intention of continuing to pursue such course during the school year, semester, or term immediately following the interim.

(v) *Surviving Spouse* means the surviving wife or husband of a participant or annuitant who, in the case of death in service or marriage after retirement, was married to the participant or annuitant for at least one year immediately preceding death or is the parent of a child born of the marriage.

(w) *System* means the Foreign Service Retirement and Disability System.

[46 FR 12958, Feb. 19, 1981. Redesignated and amended at 46 FR 18970, Mar. 27, 1981]

§ 19.3 Participants.

The following persons are participants in the System:

(a) Members of the Service serving under a career appointment or as a career candidate under section 306 of the

Act (1) in the Senior Foreign Service, or (2) assigned to a salary class in the Foreign Service Schedule;

(b) Any person not otherwise entitled to be a participant who has served as chief of mission or an ambassador at large for an aggregate period of 20 years or more, exclusive of extra service credit for service at unhealthful posts, and who has paid into the Fund a special contribution for each year of service;

(c) Any individual who was appointed as a Binational Center Grantee and who completed, prior to February 15, 1981, at least 5 years of satisfactory service as a grantee, as determined by the Director of Personnel of USICA, or under any other appointment under the Foreign Service Act of 1946, as amended, who has paid into the Fund a special contribution for such service.

(d) Any person converted to the competitive service pursuant to section 2104 of the Act who elects to participate in the System pursuant to section 2106(b)(1) or (2) shall remain a participant so long as he/she is employed in an agency which is authorized to utilize the Foreign Service personnel system.

§ 19.4 Special rules for computing creditable service for purposes of payments to former spouses.

For purposes of determining the pro rata share of annuity, survivor annuity or lump-sum payable to a former spouse, the following shall be considered creditable service—

(a) The entire period of a principal's approved leave without pay during full-time service with an organization composed primarily of Government employees irrespective of whether the principal elects to make payments to the Fund for this service;

(b) The entire period of Government service for which a principal received a refund of retirement contributions which he/she has not repaid unless the former spouse received under § 19.13 a portion of the (lump-sum) refund or unless a spousal agreement or court order provided that no portion of the refund be paid to the former spouse; and

(c) All creditable service including service in excess of 35 years.

The period covered by the credit for unused sick leave is not creditable for this purpose.

§ 19.5 Required notifications to Department respecting spouses and former spouses.

§ 19.5–1 Notification from participant or annuitant.

If a participant or former participant becomes divorced on or after February 15, 1981, he/she shall notify the Department (PER/ER/RET) of the divorce on or prior to its effective date. The notice shall include the effective date of the divorce, the full name, mailing address, and date of birth of the former spouse and the date of the member's marriage to that person, and enclose a certified copy of the divorce decree. If there is a court order or spousal agreement concerning payment or nonpayment of Foreign Service benefits to the former spouse, the original or a certified copy of the order or agreement shall also be forwarded to PER/ER/RET. In the absence of a court order or spousal agreement providing otherwise, the Department will pay a pro rata share of the member's benefits to the former spouse. (A former spouse of a former participant who separated from the Service on or before February 15, 1981 is not eligible for a pension under § 19.9, i.e. not eligible for a pro rata share of the principal's annuity.) Upon receipt of notice of a divorce, a court order, or spousal agreement, the Department will proceed as indicated in § 19.6 or § 19.7. Delinquent notice to the Department of the divorce of an annuitant will result in retroactive payments to any qualified former spouse to the extent that the retroactive payments can be deducted from future annuity payments to the principal as stated in § 19.6–4.

§ 19.5–2 Notification to Department from former spouses.

A former spouse is obligated to notify the Department of the following on a timely basis:

(a) A divorce from a participant or former participant when the former spouse is notified by the court of the divorce before the participant is notified;

(b) Any change in address; and