RULE 32.1 PRESENTENCE AND POSTSENTENCE INVESTIGATION REPORTS

(a) *Sentencing*. The sentencing hearing shall be set no less than seventy (70) days following the verdict or change of plea. Pursuant to 18 U.S.C. 3364(d)(1), the attorney for the government shall provide the probation officer with a listing of the amounts subject to restitution after having made reasonable attempts to consult with all identified victims, but not later than sixty (60) days prior to the date initially set for sentencing.

(b) *Victim's Restitution*. The presentence report shall include a complete accounting of the losses to each victim. If the victim's losses are not ascertainable earlier than ten (10) days prior to sentencing, the attorney for the government or the probation officer must notify the Court, and the Court will set a date for final determination of the victim's losses, not to exceed ninety (90) days after sentencing. The burden is on the government to demonstrate the amount of restitution owed to a victim.

(c) *Financial Resources*. Each defendant is required to provide the probation officer with an affidavit fully describing the financial resources of the defendant, including a complete listing of all assets in which the defendant has any interest as of the date on which the defendant was arrested as provided in 18 U.S.C. 3664(d)(3).

(d) *Presentence Interview; Attendance of Counsel*. Rule 32(b)(2), Federal Rules of Criminal Procedure (Fed. R. Crim. P.), requires defense counsel, upon request, to receive notice and an opportunity to attend any interview of the defendant by the probation officer. Defense counsel has the burden of responding as to the desire and availability to attend as promptly as possible to enable timely completion of the presentence report. Any undue delay caused by counsel's unavailability may result in the probation officer being directed by the Court to proceed with the interview without counsel. For purposes of this Rule, "undue delay" is defined as more than five (5) working days after notice.

(e) *Disclosure of Presentence Report; Written Objections*. The Probation Office shall disclose the report to the defendant and his counsel and to counsel for the United States no later than thirty-five (35) days before the sentencing hearing, unless the minimum period is waived by defendant. The presentence report shall be deemed to have been disclosed when a copy of the report is physically delivered or three (3) days after a copy of the report or notice of its availability is mailed by the probation officer. Within fourteen (14**)** days after disclosure, counsel for the defendant and the United States shall communicate in writing to the probation officer who prepared the report and to each other any objections they may have as to any material information, sentencing classifications, sentencing guideline ranges and policy statements contained in or omitted from the report. Objections to material in the report must show the exact paragraph disputed together with specific reasons therefor. Material believed to have been omitted from the report must have specific application to the sentencing guidelines. Objections to the presentence report shall not be filed with the Clerk of Court. The original presentence report, addenda thereto, and all letters of objection shall be returned to the probation officer after the sentencing hearing**.**

(f) *Accuracy of Presentence Report*. If counsel for the defendant and the United States believe material contained in the presentence report to be accurate, they must so communicate in writing to the probation officer who prepared the report within fourteen (14) days after disclosure of the report.

(g) *Resolution of Objections to Presentence Report*. As soon as possible after receiving any objections to the report, the probation officer shall conduct any further investigation necessary and make appropriate revisions to the presentence report. The probation officer may require counsel for the parties to meet with the officer to discuss unresolved factual and legal issues.

(h) *Notice to Victim.* Prior to submitting the presentence report to the Court, the probation officer shall provide notice to all identified victims as provided in 18 U.S.C. 3664(d)(2).

(i) *Submission of Presentence Report to Sentencing Judge*. Not later than seven (7) days before the sentencing hearing, the probation officer shall submit the presentence report to the sentencing judge, together with an addendum setting forth any unresolved objections, the ground for those objections and the probation officer's comments on the objections. The probation officer shall certify that the contents of the report, including any revisions thereof, have been disclosed to the defendant, his counsel and counsel for the United States, that the content of the addendum has been communicated to counsel, and that the addendum fairly states any remaining objections.

(j) *Sentencing Recommendations.* As provided by Fed. R. Crim. P. 32(b)(6)(A), the probation officer's sentencing recommendation shall not be disclosed other than to the Court.

(k) *Court Determination of Disputed Issues; Failure to Resolve Objections*. Except with regard to any objection that has not been resolved, the presentence report may be accepted by the Court as its findings of fact**.** The Court shall rule on any unresolved disputed issues prior to imposing sentence. Objections **not** previously raised through written communication to the probation officer may be raised at the sentencing hearing only for good cause shown**.**

(l) *Time Limits.* Time limits governing this Rule are set forth in Fed. R. Crim. P. 32(b)(6). Time limits prescribed in subsection (b)(6) may either be shortened or lengthened for good cause and may be waived by the defendant**.**

(m) *Confidentiality of Presentence Report*. The presentence report is a confidential document. It shall not be reproduced or copied by anyone other than a judge or probation officer of this Court. The report shall not be distributed to other agencies or individuals, unless special permission is granted by the Court. Nothing in this Rule requires the disclosure of any portion of the presentence report that is not to be disclosed under Fed. R. Crim. P. 32. The presentence report furnished to defendant, his counsel, and counsel for government shall not be copied or duplicated in any manner. All counsel shall assure the confidentiality of the material contained in the report.

(n) *Determination of Guideline Prior to Establishment of Guilt.* A probation officer shall not determine sentencing guideline factors before guilt is established by the Court.

(o) *Rule Not to Supersede or Void Provisions of Fed. R. Crim. P. 32.* Nothing in this Rule shall be construed to supersede or void the provisions of Fed. R. Crim. P. 32.