

# Rules and Regulations

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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## OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 870, 871, 872, 873, and 890

### Federal Employees Group Life Insurance and Health Benefits Programs; Coverage After Retirement Under FERS

**AGENCY:** Office of Personnel Management.

**ACTION:** Interim rule with request for comment.

**SUMMARY:** The Office of Personnel Management (OPM) is issuing interim regulations to implement amendments to the Federal Employees Health Benefits (FEHB) law enacted by Pub. L. 99-335, as amended, which established the Federal Employees Retirement System (FERS). This regulation describes the conditions under which individuals entitled to immediate or survivor annuities and lump sum death benefits under FERS and former spouses entitled to annuity payments under FERS may receive FEHB coverage. The regulation also allows FERS annuitants to make direct payment of premiums for their FEHB and Federal Employees' Group Life Insurance (FGLI) coverages when their annuity is too low to cover the insurance premiums.

**DATES:** Interim rule effective January 1, 1988. Comments must be received on or before December 21, 1987.

**ADDRESS:** Written comments may be sent to Reginald M. Jones, Jr., Assistant Director for Retirement and Insurance Policy, Retirement and Insurance Group, Office of Personnel Management, P. O. Box 57, Washington, DC 20044, or delivered to OPM, Room 4351, 1900 E Street NW, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Mary Ann Mercer, (202) 632-4634.

**SUPPLEMENTARY INFORMATION:** On June 6, 1986, Congress established the

Federal Employees Retirement System by Pub. L. 99-335. Section 207(l) of the act provides that individuals entitled to immediate or survivor annuities under FERS may continue their health coverage, and former spouses entitled to annuity payments under FERS may obtain health benefits coverage, in the FEHB Program under the same conditions that apply to individuals under the Civil Service Retirement System (CSRS). Subsequently, the Federal Employees' Retirement System Technical Corrections Act of 1986, Pub. L. 99-556, was enacted on October 27, 1986. This law authorized widows or widowers entitled to receive basic employee death benefits under FERS to continue health benefits coverage under FEHB. FERS annuitants may also continue their life insurance coverage in retirement under the same conditions that apply to individuals under CSRS. The regulation describes the procedures for continuing health benefits coverage after retirement and for paying FEHB and FGLI premiums directly to the retirement system.

Under FERS, widows or widowers entitled to receive lump sum death benefits under 5 U.S.C. 8442(b)(1)(A), that is, widows and widowers of FERS employees who at the time of death had completed at least 18 months' creditable civilian service, will be entitled to continue their FEHB coverage after the death of a spouse. This group is entitled to a lump sum death benefit but not an annuity because the employee on whose service the widow's or widower's benefits are based had less than ten years of creditable service at the time of death. Thus, there will be no annuity from which to withhold the health benefits premium.

Surviving children may also continue health benefits coverage upon death of an employee or annuitant. Under FERS, surviving children receive an annuity equal to the amount they would be eligible to receive under CSRS, less any Social Security benefit to which they may be entitled. In most cases, the annuity will not be sufficient to cover the health benefits premium.

Other individuals whose annuity may not cover health or, where applicable, life insurance premiums are (1) FERS disability retirees who qualify for Social Security disability benefits prior to age 62 (5 U.S.C. 8452(a)(2)), and (2) certain FERS disability retirees whose disability

annuities must be recomputed at age 62 (5 U.S.C. 8452(B)(4)). Those entitled to Social Security disability benefits before age 62 will have their annuity reduced by all or a portion of their monthly Social Security disability benefit. Those who are not entitled to Social Security disability benefits at age 62 will be treated as though they were entitled to them. Thus, their FERS disability annuity at age 62 will be reduced by the amount of Social Security disability benefits that would be payable if they had been entitled to such a benefit.

The regulation provides for direct payment of health benefits and, where applicable, life insurance premiums for these groups and for all FERS annuitants whose annuity is not sufficient to cover their share of the total premium.

Direct payment must be made for the annuitant's full share of the premium. Thus, the annuitant may not have a portion of the premium withheld from the annuity and make direct payment for the balance. Further, once an annuitant is in direct-pay status for health benefits or life insurance, or both, he or she must continue to pay premiums directly even if the annuity later exceeds the amount of the premiums.

We have made a technical change to the regulation [5 CFR 890.808(b)] to clarify that the information the former spouse must send to the retirement system for a determination as to whether a court order is qualifying for health benefits enrollment is the same information required in 5 CFR 831.1705 for determining his or her entitlement to a future survivor annuity or a portion of a retirement annuity.

### Waiver of Notice of Proposed Rulemaking

Pursuant to section 553(b)(3)(B) of title 5 of the U.S. Code, I find that good cause exists for waiving the general notice of proposed rulemaking. The notice is being waived because the entitlements conferred by Pub. L. 99-335 and Pub. L. 99-556 addressed in this regulation were effective beginning January 1, 1987.

### E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under Section 1(b) of E.O. 12291, Federal Regulation.

**Regulatory Flexibility Act**

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they simply extend FEHB and FEGLI coverage to qualified annuitants.

**List of Subjects**

5 CFR Parts 870, 871, 872, and 873

Administrative practice and procedure, Government employees, Life insurance, Retirement.

5 CFR Part 890

Administrative practice and procedure, Government employees, Health insurance, Retirement.

U.S. Office of Personnel Management

James E. Colvard,

Deputy Director.

Accordingly, OPM is amending 5 CFR Parts 870, 871, 872, 873 and 890 as follows:

1. The authority citation for Part 870, 871, 872, and 873 continues to read as follows:

Authority: 5 U.S.C. 8716.

**PART 870—BASIC LIFE INSURANCE**

2. In § 870.401, a new paragraph (j) is added to read as follows:

**§ 870.401 Withholdings and contributions.**

(j) *Direct premium payments under 5 U.S.C. Chapter 84.* (1) If the annuity received under 5 U.S.C. Chapter 84 (Federal Employees' Retirement System), excluding Subchapter III of Chapter 84 (Thrift Savings Plan), is too low to cover the basic life insurance premium, the retirement system will notify the annuitant of the opportunity to pay the annuitant's share of the premium directly to the retirement system.

(2) The retirement system shall establish a method for accepting direct payment for basic life insurance premiums from annuitants retiring under 5 U.S.C. Chapter 84 whose annuities are too low to cover their premiums. The retirement system will provide the annuitant with a premium payment schedule and statement of the requirements for continued enrollment. The annuitant must continue to make direct payment of the premium even if the annuity increases to the extent that it covers the premium.

(3) The annuitant must remit to the retirement system his or her share of the premium for basic life insurance for every pay period during which the coverage continues, exclusive of the 31-day temporary extension of coverage for conversion provided in § 870.501.

Payment must be made after the pay period in which the individual is covered in accordance with a schedule established by the retirement system. If the retirement system does not receive payment by the date due, the retirement system will notify the annuitant by certified mail return receipt requested that continuation of coverage rests upon payment being made within 15 days after receipt of the notice. The basic insurance coverage of an annuitant who fails to remit payment within the specified time frame will be terminated. An individual whose coverage is terminated because of nonpayment of premium may not re-elect or reinstate coverage, except as provided in paragraph (j)(4).

(4) If the individual was prevented by circumstances beyond his or her control from making payment within 15 days after receipt of the notice, he or she may request reinstatement of coverage by writing to the retirement system. Such a request must be filed within 30 calendar days from the date of termination and must be accompanied by verification that the individual was prevented by circumstances beyond his or her control from paying within the time limit. The retirement system will determine if the individual is eligible for reinstatement of coverage; and, when the determination is affirmative, the individual's coverage may be reinstated retroactively to the date of termination. If the determination is negative, the individual may request a review of the decision from OPM.

(5) Termination of enrollment for failure to pay premiums within the time frame established in accordance with subparagraph (j)(3) of this section is retroactive to the end of the last pay period for which payment has been timely received.

(6) The retirement system will submit all direct premium payments along with its regular life insurance premiums to OPM in accordance with procedures established by that Office.

**PART 871—STANDARD OPTIONAL LIFE INSURANCE**

3. In § 871.401, a new paragraph (i) is added to read as follows:

**§ 871.401 Withholdings.**

(i) *Direct premium payments under 5 U.S.C. Chapter 84.* (1) If the annuity received under 5 U.S.C. Chapter 84 (Federal Employees' Retirement System), excluding Subchapter III of Chapter 84 (Thrift Savings Plan), is too low to cover the standard optional insurance premium, the retirement system will notify the annuitant of the

opportunity to pay the premium directly to the retirement system.

(2) The retirement system shall establish a method for accepting direct payment for standard optional premiums from annuitants retiring under 5 U.S.C. Chapter 84 whose annuities are too low to cover their premiums. The retirement system will provide the annuitant with a premium payment schedule and statement of the requirements for continued enrollment. The annuitant must continue to make direct payment of the premium even if the annuity increases to the extent that it covers the premium.

(3) The annuitant must remit to the retirement system the premium for standard optional insurance for every pay period during which the coverage continues, exclusive of the 31-day temporary extension of coverage for conversion provided in § 871.501. Payment must be made after the pay period in which the individual is covered in accordance with a schedule established by the retirement system. If the retirement system does not receive payment by the date due, the retirement system will notify the annuitant by certified mail return receipt requested that continuation of coverage rests upon payment being made within 15 days after receipt of the notice. The standard optional insurance coverage of an annuitant who fails to remit payment within the specified time frame will be terminated. An individual whose coverage is terminated because of nonpayment of premium may not re-elect or reinstate coverage, except as provided in paragraph (i)(4).

(4) If the individual was prevented by circumstances beyond his or her control from making payment within 15 days after receipt of the notice, he or she may request reinstatement of coverage by writing to the retirement system. Such a request must be filed within 30 calendar days from the date of termination and must be accompanied by verification that the individual was prevented by circumstances beyond his or her control from paying within the time limit. The retirement system will determine if the individual is eligible for reinstatement of coverage; and, when the determination is affirmative, the individual's coverage may be reinstated retroactively to the date of termination. If the determination is negative, the individual may request a review of the decision from OPM.

(5) Termination of enrollment for failure to pay premiums within the time frame established in accordance with subparagraph (i)(3) of this section is retroactive to the end of the last pay

period for which payment has been timely received.

(6) The retirement system will submit all direct premium payments along with its regular life insurance premiums to OPM in accordance with procedures established by that Office.

#### **PART 872—ADDITIONAL OPTIONAL LIFE INSURANCE**

4. In § 872.401, a new paragraph (i) is added to read as follows:

##### **§ 872.401 Withholdings.**

(i) *Direct premium payments under 5 U.S.C. Chapter 84.*

(1) If the annuity received under 5 U.S.C. Chapter 84 (Federal Employees' Retirement System), excluding Subchapter III of Chapter 84 (Thrift Savings Plan), is too low to cover the additional optional insurance premium, the retirement system will notify the annuitant of the opportunity to pay the premium directly to the retirement system.

(2) The retirement system shall establish a method for accepting direct payment for additional optional insurance premiums from annuitants retiring under 5 U.S.C. Chapter 84 whose annuities are too low to cover their premiums. The retirement system will provide the annuitant with a premium payment schedule and statement of the requirements for continued enrollment. The annuitant must continue to make direct payment of the premium even if the annuity increases to the extent that it covers the premium.

(3) The annuitant must remit to the retirement system the premium for additional optional insurance for every pay period during which the coverage continues, exclusive of the 31-day temporary extension of coverage for conversion provided in § 872.501. Payment must be made after the pay period in which the individual is covered in accordance with a schedule established by the retirement system. If the retirement system does not receive payment by the date due, the retirement system will notify the annuitant by certified mail return receipt requested that continuation of coverage rests upon payment being made within 15 days after receipt of the notice. The additional optional insurance coverage of an annuitant who fails to remit payment within the specified time frame will be terminated. An individual whose coverage is terminated because of nonpayment of premium may not re-elect or reinstate coverage, except as provided in paragraph (i)(4).

(4) If the individual was prevented by circumstances beyond his or her control from making payment within 15 days after receipt of the notice, he or she may request reinstatement of coverage by writing to the retirement system. Such a request must be filed within 30 calendar days from the date of termination and must be accompanied by verification that the individual was prevented by circumstances beyond his or her control from paying within the time limit. The retirement system will determine if the individual is eligible for reinstatement of coverage; and, when the determination is affirmative, the individual's coverage may be reinstated retroactively to the date of termination. If the determination is negative, the individual may request a review of the decision from OPM.

(5) Termination of enrollment for failure to pay premiums within the time frame established in accordance with subparagraph (i)(3) of this section is retroactive to the end of the last pay period for which payment has been timely received.

(6) The retirement system will submit all direct premium payments along with its regular life insurance premiums to OPM in accordance with procedures established by that Office.

#### **PART 873—FAMILY OPTIONAL LIFE INSURANCE**

5. In § 873.401, a new paragraph (g) is added to read as follows:

##### **§ 873.401 Withholdings.**

(g) *Direct premium payments under 5 U.S.C. Chapter 84.* (1) If the annuity received under 5 U.S.C. Chapter 84 (Federal Employees' Retirement System), excluding Subchapter III of Chapter 84 (Thrift Savings Plan), is too low to cover the family optional insurance premium, the retirement system will notify the annuitant of the opportunity to pay the premium directly to the retirement system.

(2) The retirement system shall establish a method for accepting direct payment for family optional insurance premiums from annuitants retiring under 5 U.S.C. Chapter 84 whose annuities are too low to cover their premiums. The retirement system will provide the annuitant with a premium payment schedule and statement of the requirements for continued enrollment. The annuitant must continue to make direct payment of the premium even if the annuity increases to the extent that it covers the premium.

(3) The annuitant must remit to the retirement system the premium for family optional insurance for every pay

period during which the coverage continues, exclusive of the 31-day temporary extension of coverage for conversion provided in § 873.501. Payment must be made after the pay period in which the individual is covered in accordance with a schedule established by the retirement system. If the retirement system does not receive payment by the date due, the retirement system will notify the annuitant by certified mail return receipt requested that continuation of coverage rests upon payment being made within 15 days after receipt of the notice. The family optional coverage of an annuitant who fails to remit payment within the specified time frame will be terminated. An individual whose coverage is terminated because of nonpayment of premium may not re-elect or reinstate coverage; except as provided in paragraph (g)(4).

(4) If the individual was prevented by circumstances beyond his or her control from making payment within 15 days after receipt of the notice, he or she may request reinstatement of coverage by writing to the retirement system. Such a request must be filed within 30 calendar days from the date of termination and must be accompanied by verification that the individual was prevented by circumstances beyond his or her control from paying within the time limit. The retirement system will determine if the individual is eligible for reinstatement of coverage; and, when the determination is affirmative, the individual's coverage may be reinstated retroactively to the date of termination. If the determination is negative, the individual may request a review of the decision from OPM.

(5) Termination of enrollment for failure to pay premiums within the time frame established in accordance with subparagraph (g)(3) of this section is retroactive to the end of the last pay period for which payment has been timely received.

(6) The retirement system will submit all direct premium payments along with its regular life insurance premiums to OPM in accordance with procedures established by that office.

#### **PART 890—FEDERAL EMPLOYEES HEALTH BENEFITS PROGRAM**

6. The authority citation for Part 890 is revised to read as follows:

Authority: 5 U.S.C. 8913; § 890.102 also issued under 5 U.S.C. 1104.

7. Section 890.101 is amended as follows:

a. By adding alphabetically the definition of "Basic employee death benefit" as set forth below.

b. In the definition of "Employing office," by redesignating paragraphs (i) through (iii) as (1) through (3), by revising paragraphs (1) and (2), and by adding paragraph (4) as set forth below.

c. By revising the definition of "Pay period" as set forth below.

**§ 890.101 Definitions; time computations.**

(a) \* \* \*

"Basic employee death benefit" has the meaning set out at § 843.102. Survivors receiving this benefit are deemed to be "annuitants" for purposes of this Chapter.

"Employing office" \* \* \*

(1) For an enrolled annuitant (including survivor annuitant, former spouse annuitant, and surviving spouses receiving a basic employee death benefit under 5 U.S.C. 8442(b)(1)(A)) who is not also an eligible employee, "employing office" is the office which has the authority to approve payment of annuity, basic employee death benefit, or workers' compensation for the annuitant concerned.

(2) For a former spouse of an annuitant whose marriage dissolved after the employee's retirement and who has entitlement to receive future annuity payments under section 8341(h), 8345(j), 8445, or 8467 of title 5, United States Code, "employing office" is the office which has the authority to approve payment of annuity for the annuitant or former spouse concerned.

(4) For a surviving spouse in receipt of a basic employee death benefit under 5 U.S.C. 8442(b)(1)(A) who is not also an eligible employee, the "employing office" is the retirement system which has authority to approve the basic employee death benefit.

"Pay period" means the biweekly pay period established pursuant to section 5504 of title 5, United States Code, for the employees to whom that section applies and the regular pay period for employees not covered by that section. "Pay period" as it relates to a former spouse or annuitant who is not actively receiving an annuity, including surviving spouses receiving a basic employee death benefit, means any regular pay period for employees of the agency to which jurisdiction and responsibility for health benefits actions for the former spouse or annuitant have been delegated as provided under the definition of "Employing office" in this section. "Pay period" for annuitants in active receipt of annuity means the

period for which a single installment of annuity is customarily paid.

\* \* \*

8. Section 890.104 is amended by revising paragraph (a) to read as follows:

**§ 890.104 Initial decision and reconsideration.**

(a) *Who may file.* An employee, annuitant, or former spouse may request OPM to reconsider a decision of an employing office that denies coverage or change of enrollment.

\* \* \*

9. Section 890.301 is amended by revising paragraph (q) and adding paragraph (aa) to read as follows:

**§ 890.301 Opportunities to register to enroll and change enrollment.**

\* \* \*

(q) *Annuity insufficient to pay withholdings.* If the annuity of an annuitant under 5 U.S.C. Chapter 83 or of all annuitants in a family receiving benefits under 5 U.S.C. Chapter 83 is not sufficient to pay the withholdings for the plan in which the annuitants are enrolled, the employing office shall notify the annuitant of the plans available at a cost not in excess of the annuity. The annuitant may register to be enrolled in another plan whose cost is no greater than his or her annuity. For annuitants receiving benefits under 5 U.S.C. Chapter 84, see § 890.502(d).

\* \* \*

(aa) *Termination of remarriage of "lump sum" survivors in receipt of basic employee death benefits.*

A surviving spouse who received a basic employee death benefit under 5 U.S.C. 8442(b)(1)(A) and who was covered by a health benefits enrollment under this part immediately before remarriage prior to age 55 may register to enroll in a health benefits plan under this part upon termination of the remarriage. The survivor must provide OPM with a certified copy of the notice of death or the court order terminating the marriage. Registration must be made within 60 days after OPM mails the registration form to the surviving spouse.

10. Section 890.303(c) is revised to read as follows:

**§ 890.303 Continuation of enrollment.**

\* \* \*

(c) *On death.* The enrollment of a deceased employee or annuitant who is enrolled for self and family is transferred automatically to his or her eligible survivor annuitants. The enrollment is considered to be that of (1) the survivor annuitant from whose

annuity all or the greatest portion of the withholding for health benefits is made, or (2) the surviving spouse entitled to a basic employee death benefit. The enrollment covers members of the family of the deceased employee or annuitant. A remarried spouse is not a member of the family of the deceased employee or annuitant unless annuity under section 8341 or 8442 of title 5, United States Code, continues after remarriage.

\* \* \*

11. In § 890.304, paragraph (b)(1) is revised and (b)(2)(iv) is added to read as follows:

**§ 890.304 Termination of enrollment.**

\* \* \*

(b) *Annuity.* (1) If the annuity of an annuitant retiring under 5 U.S.C. Chapter 83 or of all survivor annuitants in a family of such an annuitant is not sufficient to pay the withholdings for the plan in which the annuitants are enrolled, and the annuitant does not, or cannot, elect a plan under § 890.301(q) at a cost to him or her not in excess of the annuity, the employing office shall terminate the annuitant's enrollment effective as of the end of the last period for which withholding was made. Each annuitant whose enrollment is so terminated is entitled to a 31-day extension of coverage for conversion.

(2) \* \* \*

(iv) The last day of the month preceding the month in which a survivor annuitant in receipt of basic employee death benefits under 5 U.S.C. 8442(b)(1)(A) remarries before attaining age 55.

\* \* \*

12. In § 890.306, paragraph (b) is revised, paragraph (g) is redesignated as paragraph (h), and a new paragraph (g) is added to read as follows:

**§ 890.306 Effective dates.**

\* \* \*

(b) *Annuity required to change enrollment.* The effective date of an annuitant's change to a lower cost enrollment under § 890.301(q) is immediately upon termination of his or her prior enrollment.

\* \* \*

(g) *Restoration of health benefits for survivors in receipt of basic employee death benefits following termination of remarriage.* The effective date of an enrollment under § 890.301(aa) is the first day of the month after the date of receipt by OPM of the registration form and the notice of death or court order terminating the remarriage.

\* \* \*

13. In § 890.502, paragraph (a) is redesignated as (a)(1) and new paragraph (a)(2) is added, the second sentence of paragraph (b)(1) is revised, and paragraph (f) is added to read as follows:

**§ 890.502 Employee withholdings and contributions.**

(a) \* \* \*

(2) Surviving spouses in receipt of a basic employee death benefit under 5 U.S.C. 8442(b)(1)(A) and annuitants retiring under 5 U.S.C. Chapter 84 whose health benefits premiums exceed the amount of their annuities may pay their portion of the health benefits premium directly to the retirement system acting as their employing office in accordance with procedures set out in paragraph (d) of this section.

(b)(1) \* \* \* In each pay period for which health benefits withholdings or direct premium payments are not made but during which the enrollment of an employee or annuitant continues, he/she will incur an indebtedness due the United States in the amount of the proper employee withholdings required for that pay period.

(f) *Direct premium payments under 5 U.S.C. Chapter 84.* (1) If the annuity received under 5 U.S.C. Chapter 84 (Federal Employees' Retirement System), excluding Subchapter III of Chapter 84 (Thrift Savings Plan), is too low to cover the health benefits premium or if a surviving spouse receives a basic employee death benefit, the retirement system will notify the annuitant of the opportunity to pay the annuitant's share of the premium directly to the retirement system.

(2) The retirement system shall establish a method for accepting direct payment for health benefits premiums from surviving spouses who have received or are currently receiving basic employee death benefits as well as from annuitants retiring under 5 U.S.C. Chapter 84 whose annuities are too low to cover their health premiums. The annuitant must continue to make direct payment of the health benefits premium even if the annuity increases to the extent that it covers the premium.

(3) The retirement system will use the deceased annuitant's case file as the health benefits file for surviving spouses who receive a basic employee death benefit.

(4) The annuitant must remit to the retirement system his or her share of the subscription charge for the enrollment for every pay period during which the enrollment continues, exclusive of the 31-day temporary extension of coverage for conversion provided in § 890.401.

Payment must be made after the pay period in which the individual is covered in accordance with a schedule established by the retirement system. If the retirement system does not receive payment by the date due, the retirement system will notify the surviving spouse or annuitant by certified mail return receipt requested that continuation of coverage rests upon payment being made within 15 days after receipt of the notice. The enrollment of an individual who fails to remit payment within the specified time frame will be terminated. An individual whose enrollment is terminated because of nonpayment of premium may not reenroll or reinstate coverage, except as provided in paragraph (d)(5).

(5) If the individual was prevented by circumstances beyond his or her control from making payment within 15 days after receipt of the notice, he or she may request reinstatement of coverage by writing to the retirement system. Such a request must be filed within 30 calendar days from the date of termination and must be accompanied by verification that the individual was prevented by circumstances beyond his or her control from paying within the time limit. The retirement system will determine if the individual is eligible for reinstatement of coverage; and, when the determination is affirmative, the individual's coverage may be reinstated retroactively to the date of termination. If the determination is negative, the individual may request a review of the decision from OPM.

(6) Termination of enrollment for failure to pay premiums within the time frame established in accordance with paragraph (d)(4) of this section is retroactive to the end of the last pay period for which payment has been timely received.

(7) The retirement system will submit all direct premium payments along with its regular health benefits premiums to OPM in accordance with procedures established by that office.

14. In § 890.803, paragraph (a)(3)(i) is revised to read as follows:

**§ 890.803 Who may enroll.**

(a) \* \* \*

(3)(i) The former spouse currently receives, or has future title to receive (A) a portion of annuity payable to the employee upon retirement based on a qualifying court order for purposes of 5 U.S.C. 8345(j) or 5 U.S.C. 8467; (B) survivor annuity benefits based on a qualifying court order for purposes of 5 U.S.C. 8341(h) or 5 U.S.C. 8445; or (C) a survivor annuity elected by the employee under 5 U.S.C. 8339(j) (3) or 5 U.S.C. 8417(b) (or benefits similar to those under this paragraph under

another retirement system for Government employees); or

15. In § 890.805, paragraph (b)(2) is revised to read as follows:

**§ 890.805 Application time limitations.**

(b) \* \* \*

(2) if the marriage dissolved after retirement, within 60 days after the dissolution of the marriage, or within 60 days after the retired employee elects to provide a survivor annuity for the former spouse under 5 U.S.C. 8339(j) (3) or 5 U.S.C. 8417(b); or

16. In § 890.806, paragraph (b) is revised to read as follows:

**§ 890.806 Effective dates of coverage.**

(b) *Change required because of insufficient annuity.* When a former spouse receiving an annuity under 5 U.S.C. Chapter 83 changes to a lower cost enrollment as provided by § 890.301(q), the change is effective immediately upon loss of coverage under the prior enrollment.

**§ 890.807 [Amended]**

17. In § 890.807, the word "establishment" in paragraph (a)(3) is removed and the word "established" is inserted in its place.

18. In § 890.808, a new sentence is added at the end of paragraph (b)(1), and paragraph (d) is revised to read as follows:

**§ 890.808 Employing office responsibilities.**

(b)(1) \* \* \* The request for the retirement system's determination whether the court order is a qualifying court order for health benefits enrollment under this Subpart must be accompanied by the documents specified in § 831.1705 (b) and (c).

(d) *Premium payments.* (1) The former spouse must remit to the employing office the full subscription charge for the enrollment for every pay period during which the enrollment continues, exclusive of the 31-day temporary extension of coverage for conversion provided in §§ 890.401 and 890.807(a)(2). Payment must be made after the pay period in which the former spouse is covered in accordance with a schedule established by the employing office [see definition of "pay period" under § 890.101(a)]. If the employing office does not receive payment by the due date, the employing office will notify the

former spouse by certified mail return receipt requested that continuation of coverage rests upon payment being made within 15 days (45 days for former spouses residing overseas) after receipt of the notice. The enrollment of an individual who fails to remit payment within the specified time frame will be terminated. A former spouse whose enrollment is terminated because of nonpayment of premium may not reenroll or reinstate coverage, except as provided in paragraph (d)(2) of this section.

(2) If the individual was prevented by circumstances beyond his or her control from making payment within 15 days after receipt of the notice, he or she may request reinstatement of coverage by writing to the employing office. Such a request must be filed within 30 calendar days from the date of termination and must be accompanied by verification that the individual was prevented by circumstances beyond his or her control from paying within the time limit. The employing office will determine if the individual is eligible for reinstatement of coverage; and, when the determination is affirmative, the individual's coverage may be reinstated retroactively to the date of termination. If the determination is negative, the individual may request a review of the decision from OPM.

(3) The employing office will submit all premium payments collected from former spouses along with its regular health benefits payments to OPM in accordance with procedures established by that Office.

\* \* \* \* \*

[FR Doc. 87-24359 Filed 10-21-87; 8:45 am]  
BILLING CODE 6325-01-M

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

### 14 CFR Part 1264

#### Implementation of the Program Fraud Civil Remedies Act of 1986

**AGENCY:** National Aeronautics and Space Administration.

**ACTION:** Interim rule with request for comments.

**SUMMARY:** The National Aeronautics and Space Administration (NASA) is implementing the Program Fraud Civil Remedies Act of 1986, Pub. L. 99-509, sections 6101-6104, 100 Stat. 1874 (October 21, 1986), to be codified at 31 U.S.C. 3801-3812 (hereinafter referred to as the Act). This new regulation is in accordance with the Model Regulations of the President's Council on Integrity and Efficiency, and establishes the

NASA practices and procedures in compliance with the Act.

**DATE:** Effective October 22, 1987.  
Comments due by December 21, 1987.

**ADDRESS:** Comments may be mailed to the Office of General Counsel, Code GG, NASA Headquarters, Washington, DC 20546. Comments may be inspected in Room 7041 between 8:00 a.m. and 4:30 p.m.

**FOR FURTHER INFORMATION CONTACT:** Sara Najjar, 202-453-2465.

**SUPPLEMENTARY INFORMATION:** This regulation does not constitute a major rule for the purpose of Executive Order 12291, and is not subject to the Regulatory Flexibility Act (Pub. L. 96-354, September 19, 1980; 5 U.S.C. 601 et seq.).

#### List of Subjects in 14 CFR Part 1264

Administrative practice and procedure, Civil penalties and assessments, False claims or statements, Fraud, Remedies.

Part 1264 is added to Title 14, Chapter V, to read as follows:

#### PART 1264—IMPLEMENTATION OF THE PROGRAM FRAUD CIVIL PENALTIES ACT OF 1986

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**Appendix A—Notice to Consent to the Chairperson, NASA Board of Contract Appeals (BCA), or Designee, as Presiding Officer**

**Authority:** 31 U.S.C. 3809, 42 U.S.C. 2473(c)(1).

#### § 1264.100 Basis and purpose.

(a) *Basis.* This part implements the Program Fraud Civil Remedies Act of 1986, Pub. L. 99-509, Sections 6101-6104, 100 Stat. 1874 (October 21, 1986), to be codified at 31 U.S.C. 3801-3812. 31 U.S.C. 3809 of the statute requires each authority head to promulgate regulations necessary to implement the provisions of the statute.

(b) *Purpose.* This part does the following:

(1) Establishes administrative procedures for imposing civil penalties and assessments against persons who make, submit, or present, or cause to be made, submitted, or presented, false, fictitious, or fraudulent claims or written statements to authorities or to their agents; and

(2) Specifies the hearing and appeal rights of persons subject to allegations of liability for such penalties and assessments.

#### § 1264.101 Definitions.

(a) ALJ means an Administrative Law Judge in the authority appointed pursuant to 5 U.S.C. 3105 or detailed to the authority pursuant to 5 U.S.C. 3344. For purposes of this part, the ALJ shall be referred to as the presiding officer.

(b) Authority means the National Aeronautics and Space Administration (NASA).

(c) Authority head means the NASA Administrator or Deputy Administrator or designee. For purposes of this regulation, the NASA General Counsel or Deputy General Counsel is

designated legal counsel to the Authority head.

(d) Benefits means, except as the context otherwise requires, anything of value, including but not limited to any advantage, preference, privilege, license, permit, favorable decision, ruling, status, or loan guarantee.

(e) Claim means any request, demand, or submission—

(1) Made to the authority for property, services, or money (including money representing grants, loans, insurance, or benefits);

(2) Made to a recipient of property, services, or money from the authority or to a party to a contract with the authority—

(i) For property or services if the United States—

(A) Provided such property or services;

(B) Provided any portion of the funds for the purchase of such property or services; or

(C) Will reimburse such recipient or party for the purchase of such property or services; or

(ii) For the payment of money (including money representing grants, loans, insurance, or benefits) if the United States—

(A) Provided any portion of the money requested or demanded; or

(B) Will reimburse such recipient or party for any portion of the money paid on such request or demand; or

(iii) Made to the authority which has the effect of decreasing an obligation to pay or account for property, services, or money.

(f) Complaint means the administrative complaint served by the reviewing official on the defendant under § 1264.106.

(g) Consent hearing means that the authority and the defendant consent, as provided in § 1264.106(c), that the presiding officer be the Chairperson of the NASA Board of Contract Appeals (BCA). The Chairperson may designate another administrative judge of the NASA BCA as presiding officer in a consent hearing.

(h) Defendant means any person alleged in a complaint under § 1264.106 to be liable for a civil penalty or assessment under § 1264.102.

(i) Government means the United States Government.

(j) Individual means a natural person.

(k) Initial decision means the written decision of the ALJ or presiding officer required by § 1264.109 or § 1264.136, and includes a revised initial decision issued following a remand or a motion for reconsideration.

(l) Investigating official means the NASA Inspector General, or designee

who is serving in a position for which the rate of basic pay is not less than the minimum rate of basic pay for grade GS-16 under the General Schedule.

(m) Knows or has reason to know, means that a person with respect to a claim or statement—

(1) Has actual knowledge that the claim or statement is false, fictitious, or fraudulent;

(2) Acts in deliberate ignorance of the truth or falsity of the claim or statement; or

(3) Acts in reckless disregard of the truth or falsity of the claim or settlement.

(n) Makes, wherever it appears, shall include the terms presents, submits, and causes to be made, presented, or submitted. As the context requires, making or made shall likewise include the corresponding forms of such terms.

(o) Person means any individual, partnership, corporation, association, private organization, State, political subdivision of a State, municipality, county, district, and Indian tribe, and includes the plural of that term.

(p) Presiding officer, except as provided for pursuant to consent trial notice, means (if the authority is not subject to the provisions of Subchapter II of Chapter 5, Title 5, U.S.C.) an officer or employee of the authority who—

(1) Is selected under Chapter 33 of Title 5 pursuant to the competitive examination process applicable to administrative law judges;

(2) Is appointed by the authority head to conduct hearings under this part;

(3) Is assigned to cases in rotation so far as practicable;

(4) May not perform duties inconsistent with the duties and responsibilities of a presiding officer;

(5) Is entitled to pay prescribed by the Office of Personnel Management independently of ratings and recommendations made by the authority and in accordance with Chapter 51 of such Title and Subchapter III of Chapter 53 of such Title;

(6) Is not subject to performance appraisal pursuant to Chapter 43 of such Title; and

(7) May be removed, suspended, furloughed, or reduced in grade or pay only for good cause established and determined by the Merit Systems Protection Board on the record after opportunity for hearing by such Board.

(q) Representative means an attorney.

(r) Reviewing official means the NASA Associate Administrator for Management. For purposes of this regulation, the Associate General Counsel (General) or designee is designated legal counsel to the Reviewing official.

(s) Statement means any representation, certification, affirmation, document, record, or accounting or bookkeeping entry made—

(1) With respect to a claim or to obtain the approval or payment of a claim (including relating to eligibility to make a claim); or

(2) With respect to (including relating to eligibility for)—

(i) A contract with, or a bid or proposal for a contract with; or

(ii) A grant, loan, or benefit from the authority, or any State, political subdivision of a State, or other party, if the United States Government provides any portion of the money or property under such contract or for such grant, loan, or benefit, or if the Government will reimburse such State, political subdivision, or party for any portion of the money or property under such contract or for such grant, loan, or benefit.

#### § 1264.102 Basis for civil penalties and assessments.

(a) *Claims.* (1) Any person who makes a claim that the person knows or has reason to know—

(i) Is false, fictitious, or fraudulent;

(ii) Includes or is supported by any written statement which asserts a material fact which is false, fictitious, or fraudulent;

(iii) Includes or is supported by any written statement that—

(A) Omits a material fact;

(B) Is false, fictitious, or fraudulent as a result of such omission; and

(C) Is a statement in which the person making such statement has a duty to include such material fact; or

(iv) Is for payment for the provision of property or services which the person has not provided as claimed—

Shall be subject, in addition to any other remedy that may be prescribed by law, to a civil penalty of not more than \$5,000 for each such claim.

(2) Each voucher, invoice, claim form, or other individual request or demand for property, services, or money constitutes a separate claim.

(3) A claim shall be considered made to an authority, recipient, or party when such claim is actually made to an agent, fiscal intermediary, or other entity, including any State or political subdivision thereof, acting for or on behalf of such authority, recipient, or party.

(4) Each claim for property, services, or money is subject to a civil penalty regardless of whether such property, services, or money is actually delivered or paid.

(5) If the Government has made any payment (including transferred property or provided services) on a claim, a person subject to a civil penalty under paragraph (a)(1) of this section shall also be subject to an assessment of not more than twice the amount of such claim or that portion thereof that is determined to be in violation. Such assessment shall be in lieu of damages sustained by the Government because of such claim.

(b) *Statements.* (1) Any person who makes a written statement that—

(i) The person knows or has reason to know—

(A) Asserts a material fact which is false, fictitious, or fraudulent; or

(B) Is false, fictitious, or fraudulent because it omits a material fact that the person making the statement has a duty to include in such statement; and

(ii) Contains or is accompanied by an express certification or affirmation of the truthfulness and accuracy of the contents of the statement—

Shall be subject, in addition to any other remedy that may be prescribed by law, to a civil penalty of not more than \$5,000 for each such statement.

(2) Each written representation, certification, or affirmation constitutes a separate statement.

(3) A statement shall be considered made to an authority when such statement is actually made to an agent, fiscal intermediary, or other entity, including any State or political subdivision thereof, acting for or on behalf of such authority.

(c) No proof of specific intent to defraud is required to establish liability under this section.

(d) In any case in which it is determined that more than one person is liable for making a claim or statement under this section, each such person may be held liable for a civil penalty under this section.

(e) In any case in which it is determined that more than one person is liable for making a claim under this section on which the Government has made payment (including transferred property or provided services), an assessment may be imposed against any such person or jointly and severally against any combination of such persons.

#### § 1264.103 Investigation.

(a) If an investigating official concludes that a subpoena pursuant to the authority conferred by 31 U.S.C. 3804(a) is warranted—

(1) The subpoena so issued shall notify the person to whom it is addressed of the authority under which

the subpoena is issued and shall identify the records or documents sought;

(2) The subpoena may designate the person, to act on the investigating official's behalf, to receive the documents sought; and

(3) The person receiving such subpoena shall be required to tender to the investigating official or the person designated to receive the documents a certification that the documents sought have been produced, or that such documents are not available and the reasons therefor, or that such documents, suitably identified, have been withheld based upon the assertion of an identified privilege.

(b) If the investigating official concludes that an action under the Program Fraud Civil Remedies Act may be warranted, the investigating official shall submit a report containing the findings and conclusions of such investigation to the reviewing official.

(c) Nothing in this section shall preclude or limit the investigating official's discretion to refer allegations directly to the Department of Justice for suit under the False Claims Act or other civil relief, or to preclude or limit such official's discretion to defer or postpone a report of referral to avoid interference with a criminal investigation or prosecution.

(d) Nothing in this section modifies any responsibility of the investigating official to report violations of criminal law to the Attorney General.

#### § 1264.104 Review by the reviewing official.

(a) If, based on the report of the investigating official under § 1264.103(b), the reviewing official determines that there is adequate evidence to believe that a person is liable under § 1264.102 of this part, the reviewing official shall transmit to the Attorney General a written notice of the reviewing official's intention to issue a complaint under § 1264.106.

(b) Such notice shall include—

(1) A statement of the reviewing official's reasons for issuing a complaint;

(2) A statement specifying the evidence that supports the allegations of liability;

(3) A description of the claims or statements upon which the allegations of liability are based;

(4) An estimate of the amount of money or the value of property, services, or other benefits requested or demanded in violation of § 1264.102 of this part;

(5) A statement of any exculpatory or mitigating circumstances that may relate to the claims or statements known by the reviewing official or the investigating official; and

(6) A statement that there is a reasonable prospect of collecting an appropriate amount of penalties and assessments. Such a statement may be based upon information then known or an absence of any information indicating that the person may be unable to pay such an amount.

#### § 1264.105 Prerequisites for issuing a complaint.

(a) The reviewing official may issue a complaint under § 1264.106 only if—

(1) The Department of Justice approves the issuance of a complaint in a written statement described in 31 U.S.C. 3803(b)(1); and

(2) In the case of allegations of liability under § 1264.102(a) with respect to a claim, the reviewing official determines that, with respect to such claim or a group of related claims submitted at the same time such claim is submitted (as defined in paragraph (b) of this section), the amount of money or the value of property or services demanded or requested in violation of § 1264.102(a) does not exceed \$150,000.

(b) For the purposes of this section, a related group of claims submitted at the same time shall include only those claims arising from the same transaction (e.g., grant, loan, application, or contract) that are submitted simultaneously as part of a single request, demand, or submission.

(c) Nothing in this section shall be construed to limit the reviewing official's authority to join in a single complaint against a person claims that are unrelated or were not submitted simultaneously, regardless of the amount of money or the value of property or services demanded or requested.

#### § 1264.106 Complaint.

(a) On or after the date the Department of Justice approves the issuance of a complaint in accordance with 31 U.S.C. 3803(b)(1), the reviewing official may serve a complaint on the defendant, as provided in § 1264.107.

(b) The complaint shall state—

(1) The allegations of liability against the defendant, including the statutory basis for liability, an identification of the claims or statements that are the basis for the alleged liability, and the reasons why liability allegedly arises from such claims or statements;

(2) The maximum amount of penalties and assessments for which the defendant may be held liable;

(3) Instructions for filing an answer to request a hearing, including a specific statement of the defendant's right to request a hearing by filing an answer

and to be represented by a representative; and

(4) That failure to file an answer within 30 days of service of the complaint will result in the imposition of the maximum amount of penalties and assessments without right to appeal.

(c) At the same time the defendant is served with the complaint, he or she shall also be served with a—

(1) Notice to Consent to the Chairperson of the NASA Board of Contract Appeals (BCA), or Designee, as presiding officer;

(2) Copy of this Part 1264 of 14 CFR.

#### § 1264.107 Service of complaint.

(a) Service of a complaint must be made by certified or registered mail or by delivery in any manner authorized by Rule 4(d) of the Federal Rules of Civil Procedure.

(b) Proof of service, stating the name and address of the person on whom the complaint was served, and the manner and date of service, may be made by—

(1) Affidavit of the individual making service;

(2) An acknowledged United States Postal Service return receipt card; or

(3) Written acknowledgment of the defendant or his/her representative.

#### § 1264.108 Answer.

(a) The defendant may request a hearing by filing an answer with the reviewing official within 30 days of service of the complaint. An answer shall be deemed to be a request for hearing.

(b) In the answer, the defendant—

- (1) Shall admit or deny each of the allegations of liability made in the complaint;

- (2) Shall state any defense on which the defendant intends to rely;

- (3) May state any reasons why the defendant contends that the penalties and assessments should be less than the statutory maximum; and

- (4) Shall state the name, address, and telephone number of the person authorized by the defendant to act as defendant's representative, if any.

#### § 1264.109 Default upon failure to file an answer.

(a) If the defendant does not file an answer within the time prescribed in § 1264.108(a), the reviewing official may refer the complaint to the presiding officer.

(b) Upon the referral of the complaint, the presiding officer shall promptly serve on defendant, in the manner prescribed in § 1264.107, a notice that an initial decision will be issued under this section.

(c) If the defendant fails to answer, the presiding officer shall assume the

facts alleged in the complaint to be true and, if such facts establish liability under § 1264.102, the presiding officer shall issue an initial decision imposing the maximum amount of penalties and assessments allowed under the statute.

(d) Except as otherwise provided in this section, by failing to file a timely answer, the defendant waives any right to further review of the penalties and assessments imposed under paragraph (c) of this section, and the initial decision shall become final and binding upon the parties 30 days after it is issued.

(e) If, before such an initial decision becomes final, the defendant files a motion with the presiding officer seeking to reopen on the grounds that extraordinary circumstances prevented the defendant from filing an answer, the initial decision shall be stayed pending the presiding officer's decision on the motion.

(f) If, on such motion, the defendant can demonstrate extraordinary circumstances excusing the failure to file a timely answer, the presiding officer shall withdraw the initial decision under paragraph (c) of this section, if such a decision has been issued, and shall grant the defendant an opportunity to answer the complaint.

(g) A decision of the presiding officer denying a defendant's motion under paragraph (e) of this section is not subject to reconsideration under § 1264.137.

(h) The defendant may appeal to the authority head the decision denying a motion to reopen by filing a notice of appeal with the authority head within 15 days after the presiding officer denies the motion. The timely filing of a notice of appeal shall stay the initial decision until the authority head decides the issue.

(i) If the defendant files a timely notice of appeal with the authority head, the presiding officer shall forward the record of the proceeding to the authority head.

(j) The authority head shall decide expeditiously whether extraordinary circumstances excuse the defendant's failure to file a timely answer based solely on the record before the presiding officer.

(k) If the authority head decides that extraordinary circumstances excuse the defendant's failure to file a timely answer, the authority head shall remand the case to the presiding officer with instructions to grant the defendant an opportunity to answer.

(l) If the authority head decides that the defendant's failure to file a timely answer is not excused, the authority head shall reinstate the initial decision

of the presiding officer, which shall become final and binding upon the parties 30 days after the authority head issues such decision.

#### § 1264.110 Referral of complaint and answer to the presiding officer.

Upon receipt of an answer, the reviewing official shall file the complaint and answer with the presiding officer, and include the name and address of the attorney who will represent the authority before the presiding officer.

#### § 1264.111 Notice of hearing.

(a) When the presiding officer receives the complaint and answer, the presiding officer shall promptly serve a notice of hearing upon the defendant in the manner prescribed by § 1264.107. At the same time, the presiding officer shall send a copy of such notice to the representative of the authority.

(b) Such notice shall include—

- (1) The tentative time and place, and the nature of the hearing;

- (2) The legal authority and jurisdiction under which the hearing is to be held;

- (3) The matters of fact and law asserted;

- (4) A description of the procedures for the conduct of the hearing;

- (5) The name, address, and telephone number of the representative of the authority and of the defendant;

- (6) An opportunity for a settlement conference or proposals of adjustment through alternative dispute resolutions, if not already explored; and

- (7) Such other matters as the presiding officer deems appropriate.

#### § 1264.112 Parties to the hearing.

(a) The parties to the hearing shall be the defendant and the authority.

(b) Pursuant to 31 U.S.C. 3730(c)(5), a private plaintiff under the False Claims Act, as amended, may participate in these proceedings to the extent authorized by the provisions of that Act. (See section 3 of the False Claims Amendments Act of 1986, Pub. L. 99-562, October 27, 1986.)

#### § 1264.113 Separation of functions.

(a) The investigating official, the reviewing official, and any employee or agent of the authority who takes part in investigating, preparing, or presenting a particular case may not, in such case or a factually related case—

- (1) Participate in the hearing as the presiding officer;

- (2) Participate or advise in the initial decision or the review of the initial decision by the authority head, except as a witness or as the authority

representative in the administrative or judicial proceedings; or

(3) Make the collection of penalties and assessments under 31 U.S.C. 3806.

(b) The presiding officer shall not be responsible to, or subject to the supervision or direction of, the investigating official or the reviewing official.

(c) Except as provided in paragraph (a) of this section, the representative for the Government must be a member of the legal staff of the authority. Nothing in this paragraph is intended to prevent assistance to the Government representative by attorneys in the NASA organization or other governmental entities.

#### § 1264.114 Ex parte contacts.

No party or person (except employees of the presiding officer's office) shall communicate in any way with the presiding officer on any matter at issue in a case, unless on notice and opportunity for all parties to participate. This provision does not prohibit a person or party from inquiring about the status of a case or asking routine questions concerning administrative functions or procedures.

#### § 1264.115 Disqualification or reviewing official or presiding officer.

(a) A reviewing official or presiding officer in a particular case may disqualify himself or herself at any time.

(b) A party may file with the presiding officer a motion for disqualification of a reviewing official or a presiding officer. Such motion shall be accompanied by an affidavit alleging personal bias or other reason for disqualification.

(c) Such motion and affidavit shall be filed promptly upon the party's discovery of reasons for disqualification, or such objections shall be deemed waived.

(d) Such affidavit shall state specific facts that support the party's belief that personal bias or other reason for disqualification exists and the time and circumstances of the party's discovery of such facts. It shall be accompanied by a certificate of the representative of record that it is made in good faith.

(e) Upon the filing of such a motion and affidavit, the presiding officer shall proceed no further in the case until the matter of disqualification is resolved in accordance with paragraph (f) of this section.

(f)(1) If the presiding officer determines that a reviewing official is disqualified, the presiding officer shall dismiss the complaint without prejudice.

(2) If the presiding officer disqualifies himself or herself, the case shall be

reassigned promptly to another presiding officer.

(3) If the presiding officer denies a motion to disqualify, the authority head may determine the matter only as part of his or her review of the initial decision upon appeal, if any.

#### § 1264.116 Rights of parties.

Except as otherwise limited by this part, all parties may—

(a) Be accompanied, represented, and advised by a representative;

(b) Participate in any conference held by the presiding officer;

(c) Conduct discovery;

(d) Agree to stipulations of fact or law, which shall be made part of the record;

(e) Present evidence relevant to the issues at the hearing;

(f) Present and cross-examine witnesses;

(g) Present oral arguments at the hearing as permitted by the presiding officer; and

(h) Submit written briefs and proposed findings of fact and conclusions of law after the hearing.

#### § 1264.117 Authority of the presiding officer.

(a) The presiding officer shall conduct a fair and impartial hearing, avoid delay, maintain order, and assure that a record of the proceeding is made.

(b) The presiding officer has the authority to—

(1) Set and change the date, time, and place of the hearing upon reasonable notice to the parties;

(2) Continue or recess the hearing in whole or in part for a reasonable period of time;

(3) Hold conferences to identify or simplify the issues, or to consider other matters, including settlement conferences or other alternative dispute resolution, that may aid in the fair and expeditious disposition of the proceeding;

(4) Administer oaths and affirmations;

(5) Issue subpoenas, requiring the attendance of witnesses and the production of documents at depositions or at hearings, which the presiding officer considers relevant and material;

(6) Rule on motions and other procedural matters;

(7) Regulate the scope and timing of discovery;

(8) Regulate the course of the hearing and the conduct of representatives and parties;

(9) Examine witnesses;

(10) Receive, rule on, exclude, or limit evidence;

(11) Upon motion of a party, take official notice of facts;

(12) Upon motion of a party, decide cases, in whole or in part, by summary judgment where there is no genuine issue as to any material fact;

(13) Conduct any conference, argument, or hearing on motions in person or by telephone; and

(14) Exercise such other authority as is necessary to carry out the responsibilities of the presiding officer under this part.

(c) The presiding officer does not have the authority to decide upon the validity of Federal statutes or regulations.

#### § 1264.118 Prehearing conferences.

(a) The presiding officer may schedule prehearing conferences as appropriate.

(b) Upon the motion of any party, the presiding officer shall schedule at least one prehearing conference at a reasonable time in advance of the hearing.

(c) The presiding officer may use prehearing conferences to discuss the following:

(1) Simplification of the issues;

(2) The necessity or desirability of amendments to the pleadings, including the need for a more definite statement;

(3) Stipulations, admissions of fact or as to the contents and authenticity of documents;

(4) Whether the parties can agree to submission of the case on a stipulated record;

(5) Whether a party chooses to waive appearance at an oral hearing and to submit only documentary evidence subject to the objections of other parties) and written argument;

(6) Limitation of the number of witnesses;

(7) Scheduling dates for the exchange of witness lists and of proposed exhibits;

(8) Discovery;

(9) The time and place for the hearing; and

(10) such other matters, including settlement, as may tend to expedite the fair and just disposition of the proceedings.

(d) The presiding officer may issue an order containing all matters agreed upon by the parties or ordered by the presiding officer at a prehearing conference.

#### § 1264.119 Disclosure of documents.

(a) Upon written request to the reviewing official, the defendant may review any relevant and material documents, transcripts, records, and other materials that relate to the allegations set out in the complaint and upon which the findings and conclusions of the investigating official under

§ 1264.103(b) are based unless such documents are subject to a privilege under Federal law. Upon payment of a reasonable fee for duplication, the defendant may obtain copies of such documents.

(b) Upon written request to the reviewing official, the defendant also may obtain a copy of all exculpatory information in the possession of the reviewing official or investigating official relating to the allegations in the complaint, even if it is contained in a document that would otherwise be privileged. If the document would otherwise be privileged, only that portion containing exculpatory information must be disclosed.

(c) The notice sent to the Attorney General from the reviewing official as described in § 1264.104 is not discoverable under any circumstances.

(d) The defendant may file a motion to compel disclosure of the documents subject to the provisions of this section. Such a motion may only be filed with the presiding officer following the filing of an answer pursuant to § 1264.108.

#### § 1264.120 Discovery.

(a) The following types of discovery are authorized:

- (1) Requests for production of documents for inspection and copying;
- (2) Requests for admissions of the authenticity of any relevant document or of the truth of any relevant fact;
- (3) Written interrogatories; and
- (4) Depositions.

(b) For the purpose of this section and §§ 1264.121 and 1264.122, the term "documents" includes information, documents, reports, answers, records, accounts, papers, and other data and documentary evidence which the presiding officer considers relevant and material to the hearing. Nothing contained herein shall be interpreted to require the creation of a document.

(c) Unless mutually agreed to by the parties, discovery is available only as ordered by the presiding officer. The presiding officer shall regulate the timing of discovery.

(d) Motions for discovery. (1) A party seeking discovery may file a motion with the presiding officer. Such a motion shall be accompanied by a copy of the discovery request or, in the case of depositions, a summary of the scope of the proposed deposition.

(2) Within 10 days of service, a party may file an opposition to the motion and/or a motion for protective order as provided in § 1264.123.

(3) The presiding officer may grant a motion for discovery only if he/she finds that the discovery sought—

(i) Is necessary for the expeditious, fair, and reasonable consideration of the issues;

(ii) Is not unduly costly or burdensome;

(iii) Will not unduly delay the proceeding; and

(iv) Does not seek privileged information.

(4) The burden of showing that discovery should be allowed is on the party seeking discovery.

(5) The presiding officer may grant discovery subject to a protective order under § 1264.123.

(e) Depositions. (1) If a motion for deposition is granted, the presiding officer shall issue a subpoena for the deponent, which may require the deponent to produce documents. The subpoena shall specify the time and place at which the deposition will be held.

(2) The party seeking to depose shall serve the subpoena in the manner prescribed in § 1264.107.

(3) The deponent may file with the presiding officer a motion to quash the subpoena or a motion for a protective order within 10 days of service.

(4) The party seeking to depose shall provide for the taking of a verbatim transcript of the deposition, which it shall make available to all other parties for inspection and copying.

(f) Each party shall bear its own costs of discovery.

#### § 1264.121 Exchange of witness lists, statements, and exhibits.

(a) At least 15 days before the hearing or at such other time as may be ordered by the presiding officer, the parties shall exchange witness lists, copies of prior statements of proposed witnesses, and copies of proposed hearing exhibits, including copies of any written statements that the party intends to offer in lieu of live testimony in accordance with paragraph (b) of § 1264.132. At the time the above documents are exchanged, any party that intends to rely on the transcript of deposition testimony in lieu of live testimony at the hearing, if permitted by the presiding officer, shall provide each party with a copy of the specific pages of the transcript it intends to introduce into evidence.

(b) If a party objects, the presiding officer shall not admit into evidence the testimony of any witness whose name does not appear on the witness list or any exhibit not provided to the opposing party, in accordance with paragraph (a) of this section, unless the presiding officer finds good cause for the failure or that there is no prejudice to the objecting party.

(c) Unless another party objects within the time set by the presiding officer, documents exchanged in accordance with paragraph (a) of this section shall be deemed to be authentic for the purpose of admissibility at the hearing.

#### § 1264.122 Subpoena for attendance at hearing.

(a) A party wishing the appearance and testimony of any individual at the hearing may request that the presiding officer issue a subpoena.

(b) A subpoena requiring the attendance and testimony of an individual may also require the individual to produce documents at the hearing.

(c) A party seeking a subpoena shall file a written request therefor not less than 15 days before the date fixed for the hearing unless otherwise allowed by the presiding officer for good cause shown. Such request shall specify any documents to be produced and shall designate the witnesses and describe the address and location thereof with sufficient particularity to permit such witnesses to be found.

(d) The subpoena shall specify the time and place at which the witness is to appear and any documents the witness is to produce.

(e) The party seeking the subpoena shall serve it in the manner prescribed in § 1264.107. A subpoena on a party or upon an individual under the control of a party may be served by first class mail.

(f) A party or the individual to whom the subpoena is directed may file with the presiding officer a motion to quash the subpoena within 10 days after service or on or before the time specified in the subpoena for compliance if it is less than 10 days after service.

#### § 1264.123 Protective order.

(a) A party or a prospective witness or deponent may file a motion for a protective order with respect to discovery sought by an opposing party or with respect to the hearing, seeking to limit the availability or disclosure of evidence.

(b) In issuing a protective order, the presiding officer may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following:

- (1) That the discovery not be had;
- (2) That the discovery may be had only on specified terms and conditions,

including a designation of the time or place;

(3) That the discovery may be had only through a method of discovery other than that requested;

(4) That certain matters not be inquired into, or that the scope of discovery be limited to certain matters;

(5) That discovery be conducted with no one present except persons designated by the presiding officer;

(6) That the contents of discovery or evidence be sealed;

(7) That a deposition after being sealed be opened only by order of the presiding officer;

(8) That a trade secret or other confidential research, development, commercial information, or facts pertaining to any criminal investigation, proceeding, or other administrative investigation not be disclosed or be disclosed only in a designated way; or

(9) That the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the presiding officer.

#### § 1264.124 Fees.

The party requesting a subpoena shall pay the cost of the fees and mileage of any witness subpoenaed in the amounts that would be payable to a witness in a proceeding in United States District Court. A check for witness fees and mileage shall accompany the subpoena when served, except that when a subpoena is issued on behalf of the authority, a check for witness fees and mileage need not accompany the subpoena.

#### § 1264.125 Form, filing, and service of papers.

(a) *Form.* (1) Documents filed with the presiding officer shall include an original and two copies.

(2) Every pleading and paper filed in the proceeding shall contain a caption setting forth the title of the action, the case number assigned by the presiding officer, and a designation of the paper (e.g., motion to quash subpoena).

(3) Every pleading and paper shall be signed by, and shall contain the address and telephone number of the party or the person on whose behalf the paper was filed, or his or her representative.

(4) Papers are considered filed when they are mailed. Date of mailing may be established by a certificate from the party or its representative or by proof that the document was sent by certified or registered mail.

(b) *Service.* A party filing a document with the presiding officer shall, at the time of filing, serve a copy of such document on every other party. Service

upon any party of any document other than the complaint or notice of hearing shall be made by delivering or mailing a copy to the party's last known address. When a party is represented by a representative, service shall be made upon such representative.

(c) *Proof of service.* A certificate of the individual serving the document by personal delivery or by mail, setting forth the manner of service, shall be proof of service.

#### § 1264.126 Computation of time.

(a) In computing any period of time under this part or in an order issued thereunder, the time begins with the day following the act, event, or default, and includes the last day of the period, unless it is a Saturday, Sunday, or legal holiday observed by the Federal government, in which event it includes the next business day.

(b) When the period of time allowed is less than 7 days, intermediate Saturdays, Sundays, and legal holidays observed by the Federal government shall be excluded from the computation.

(c) Where a document has been served or issued by mail, an additional 5 days will be added to the time permitted for any response.

#### § 1264.127 Motions.

(a) Any application to the presiding officer for an order or ruling shall be by motion. Motions shall state the relief sought, the authority relied upon, and the facts alleged, and shall be filed with the presiding officer and served on all other parties.

(b) Except for motions made during a prehearing conference or at the hearing, all motions shall be in writing. The presiding officer may require that oral motions be reduced to writing.

(c) Within 15 days after a written motion is served, or such other time as may be fixed by the presiding officer, any party may file a response to such motion.

(d) The presiding officer may not grant a written motion before the time for filing responses thereto has expired, except upon consent of the parties or following a hearing on the motion, but may overrule or deny such motion without awaiting a response.

(e) The presiding officer shall make a reasonable effort to dispose of all outstanding motions prior to the beginning of the hearing.

#### § 1264.128 Sanctions.

(a) The presiding officer may sanction a person, including any party or representative for—

(1) Failing to comply with an order, rule, or procedure governing the proceeding;

(2) Failing to prosecute or defend an action; or

(3) Engaging in other misconduct that interferes with the speedy, orderly, or fair conduct of the hearing.

(b) Any such sanction, including but not limited to those listed in paragraphs (c), (d), and (e) of this section, shall reasonably relate to the severity and nature of the failure or misconduct.

(c) When a party fails to comply with an order, including an order for taking a deposition, the production of evidence within the party's control, or a request for admission, the presiding officer may—

(1) Draw an inference in favor of the requesting party with regard to the information sought;

(2) In the case of requests for admission, deem each matter of which an admission is requested to be admitted;

(3) Prohibit the party failing to comply with such order from introducing evidence concerning, or otherwise relying upon testimony relating to, the information sought; and

(4) Strike any part of the pleadings or other submissions of the party failing to comply with such request.

(d) If a party fails to prosecute or defend an action under this part commenced by service of a notice of hearing, the presiding officer may dismiss the action or may issue an initial decision imposing penalties and assessments.

(e) The presiding officer may refuse to consider any motion, request, response, brief, or other document which is not filed in a timely fashion.

#### § 1264.129 The hearing and burden of proof.

(a) The presiding officer shall conduct a hearing on the record in order to determine whether the defendant is liable for a civil penalty or assessment under § 1264.102 and, if so, the appropriate amount of any such civil penalty or assessment considering any aggravating or mitigating factors.

(b) The authority shall prove defendant's liability and any aggravating factors by a preponderance of the evidence.

(c) The defendant shall prove any affirmative defenses and any mitigating factors by a preponderance of the evidence.

(d) The hearing shall be open to the public unless otherwise ordered by the presiding officer for good cause shown.

**§ 1264.130 Determining the amount of penalties and assessments.**

(a) In determining an appropriate amount of civil penalties and assessments, the presiding officer, and the authority head upon appeal, should evaluate any circumstances that mitigate or aggravate the violation and should articulate in their opinions the reasons that support the penalties and assessments they impose. Because of the intangible costs of fraud, the expense of investigating such conduct, and the need to deter others who might be similarly tempted, ordinarily double damages and a significant civil penalty should be imposed.

(b) Although not exhaustive, the following factors are among those that may influence the presiding officer and the authority head in determining the amount of penalties and assessments to impose with respect to the misconduct (i.e., the false, fictitious, or fraudulent claims or statements) charged in the complaint:

- (1) The number of false, fictitious, or fraudulent claims or statements;
- (2) The time period over which such claims or statements were made;
- (3) The degree of the defendant's culpability with respect to the misconduct;
- (4) The amount of money or the value of the property, services, or benefit falsely claimed;
- (5) The value of the Government's actual loss as a result of the misconduct, including foreseeable consequential damages and the costs of investigation;
- (6) The relationship of the amount imposed as civil penalties to the amount of the Government's loss;
- (7) The potential or actual impact of the misconduct upon national defense, public health or safety, or public confidence in the management of Government programs and operations, including particularly the impact on the intended beneficiaries of such programs;
- (8) Whether the defendant has engaged in a pattern of the same or similar misconduct;
- (9) Whether the defendant attempted to conceal the misconduct;
- (10) The degree to which the defendant has involved others in the misconduct or in concealing it;
- (11) Where the misconduct of employees or agents is imputed to the defendant, the extent to which the defendant's practices fostered or attempted to preclude such misconduct;
- (12) Whether the defendant cooperated in or obstructed an investigation of the misconduct;
- (13) Whether the defendant assisted in identifying and prosecuting other wrongdoers;

(14) The complexity of the program or transaction, and the degree of the defendant's sophistication with respect to it, including the extent of the defendant's prior participation in the program or in similar transactions;

(15) Whether the defendant has been found, in any criminal, civil, or administrative proceeding to have engaged in similar misconduct or to have dealt dishonestly with the Government of the United States or of a State, directly or indirectly; and

(16) The need to deter the defendant and others from engaging in the same or similar misconduct.

(c) Nothing in this section shall be construed to limit the presiding officer or the authority head from considering any other factors that in any given case may mitigate or aggravate the offense for which penalties and assessments are imposed.

**§ 1264.131 Location of hearing.**

- (a) The hearing may be held—
- (1) In any judicial district of the United States in which the defendant resides or transacts business;
  - (2) In any judicial district of the United States in which the claim or statement in issue was made; or
  - (3) In such other place as may be agreed upon by the defendant and the presiding officer.
- (b) Each party shall have the opportunity to present argument with respect to the location of the hearing.
- (c) The hearing shall be held at the place and at the time ordered by the presiding officer.

**§ 1264.132 Witnesses.**

- (a) Except as provided in paragraph (b) of this section, testimony at the hearing shall be given orally by witnesses under oath or affirmation.
- (b) At the discretion of the presiding officer, testimony may be admitted in the form of a written statement or deposition. Any such written statement must be provided to all other parties along with the last known address of such witness, in a manner which allows sufficient time for other parties to subpoena such witness for cross-examination at the hearing. Prior written statements of witnesses proposed to testify at the hearing and deposition transcripts shall be exchanged as provided in § 1264.121(a).
- (c) The presiding officer shall exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence so as to make the interrogation and presentation effective for the ascertainment of the truth, avoid needless consumption of time, and

protect witnesses from harassment or undue embarrassment.

(d) The presiding officer shall permit the parties to conduct such cross-examination as may be required for a full and true disclosure of the facts.

(e) At the discretion of the presiding officer, a witness may be cross-examined on matters relevant to the proceeding without regard to the scope of his or her direct examination. To the extent permitted by the presiding officer, cross-examination on matters outside the scope of direct examination shall be conducted in the manner of direct examination and may proceed by leading questions only if the witness is a hostile witness, an adverse party, or a witness identified with an adverse party.

(f) Upon motion of any party, the presiding officer shall order witnesses excluded so that they cannot hear the testimony of other witnesses. This rule does not authorize exclusion of—

- (1) A party who is an individual;
- (2) In the case of a party that is not an individual, an officer or employee of the party designated by the party's representative; or
- (3) An individual whose presence is shown by a party to be essential to the presentation of its case, including an individual employed by the Government engaged in assisting the representative for the Government.

**§ 1264.133 Evidence.**

- (a) The presiding officer shall determine the admissibility of evidence.
- (b) Except as provided herein, the presiding officer shall not be bound by the Federal Rules of Evidence. However, the presiding officer may apply the Federal Rules of Evidence where appropriate, e.g., to exclude unreliable evidence.
- (c) The presiding officer shall exclude irrelevant and immaterial evidence.
- (d) Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or by considerations of undue delay or needless presentation of cumulative evidence.
- (e) Although relevant, evidence may be excluded if it is privileged under Federal law.
- (f) Evidence concerning offers of compromise or settlement shall be inadmissible to the extent provided in Rule 408 of the Federal Rules of Evidence.
- (g) The presiding officer shall permit the parties to introduce rebuttal witnesses and evidence.

(h) All documents and other evidence offered or taken for the record shall be open to examination by all parties, unless otherwise ordered by the presiding officer pursuant to § 1264.123.

#### § 1264.134 The record.

(a) The hearing will be recorded and transcribed. Transcripts may be obtained following the hearing from the presiding officer at a cost not to exceed the actual cost of duplication.

(b) The transcript of testimony, exhibits, and other evidence admitted at the hearing, and all papers and requests filed in the proceeding constitute the record for the decision by the presiding officer and the authority head.

(c) The record may be inspected and copied (upon payment of a reasonable fee) by anyone, unless otherwise ordered by the presiding officer pursuant to § 1264.123.

#### § 1264.135 Post-hearing briefs.

The presiding officer may require the parties to file post-hearing briefs. In any event, upon approval of the presiding officer, any party may file a post-hearing brief. The presiding officer shall fix the time for filing such briefs, not to exceed 60 days from the date the parties receive the transcript of the hearing or, if applicable, the stipulated record. Such briefs may be accompanied by proposed findings of fact and conclusions of law. The presiding officer may permit the parties to file reply briefs, and may grant an extension of the 60-day time period or other time for good cause shown.

#### § 1264.136 Initial decision.

(a) The presiding officer shall issue an initial decision based solely on the record, which shall contain findings of fact, conclusions of law, and the amount of any penalties and assessments imposed.

(b) The findings of fact shall include a finding on each of the following issues:

(1) Whether the claims or statements identified in the complaint, or any portions thereof, violate § 1264.102;

(2) If the person is liable for penalties or assessments, the appropriate amount of any such penalties or assessments considering any mitigating or aggravating factors found in the case, such as those described in § 1264.130.

(c) The presiding officer shall promptly serve the initial decision on all parties within 90 days after the time for submission of post-hearing briefs and reply briefs (if permitted) has expired or upon notification that the record is now closed. The presiding officer shall at the same time serve all defendants with a statement describing the right of any

defendant determined to be liable for a civil penalty or assessment to file a motion for reconsideration with the presiding officer or a notice of appeal with the authority head. If the presiding officer fails to meet the deadline contained in this paragraph, he or she shall notify the parties of the reason for the delay and shall set a new deadline.

(d) Unless the initial decision of the presiding officer is timely appealed to the authority head, or a motion for reconsideration of the initial decision is timely filed, the initial decision shall constitute the final decision of the authority head and shall be final and binding on the parties 30 days after it is issued by the presiding officer.

#### § 1264.137 Reconsideration of initial decision.

(a) Except as provided in paragraph (d) of this section, any party may file a motion for reconsideration of the initial decision within 20 days of receipt of the initial decision. If service was made by mail, receipt will be presumed to be 5 days from the date of mailing in the absence of contrary proof.

(b) Every such motion must set forth the matters claimed to have been erroneously decided and the nature of the alleged errors. Such motion shall be accompanied by a supporting brief.

(c) Responses to such motions shall be allowed only upon request of the presiding officer.

(d) No party may file a motion for reconsideration of an initial decision that has been revised in response to a previous motion for reconsideration.

(e) The presiding officer may dispose of a motion for reconsideration by denying it or by issuing a revised initial decision.

(f) When a motion for reconsideration is made, the time periods for appeal to the authority head contained in § 1264.138, and for finality of the initial decision in paragraph (d) of § 1264.136, shall begin on the date the presiding officer issues the denial of the motion for reconsideration or a revised initial decision, as appropriate.

#### § 1264.138 Appeal to authority head.

(a) Any defendant who has filed a timely answer and who is determined in an initial decision to be liable for a civil penalty or assessment may appeal such decision to the authority head by filing a notice of appeal with the authority head in accordance with this section.

(b) The time for appeal to the authority head is as follows:

(1) No notice of appeal may be filed until the time period for filing a motion for reconsideration under § 1264.137 has expired.

(2) If a motion for reconsideration is timely filed, a notice of appeal must be filed within 30 days after the presiding officer denies the motion or issues a revised initial decision, whichever applies.

(3) If no motion for reconsideration is timely filed, a notice of appeal must be filed within 30 days after the presiding officer issues the initial decision.

(4) The authority head may extend the initial 30-day period for an additional 30 days if the defendant files with the authority head a request for an extension within the initial 30-day period and shows good cause.

(c) If the defendant files a timely notice of appeal with the authority head, the presiding officer shall forward the record of the proceeding to the authority head.

(d) A notice of appeal shall be accompanied by a written brief specifying exceptions to the initial decision and reasons supporting the exceptions.

(e) The representative for the Government may file a brief in opposition to exceptions within 30 days of receiving the notice of appeal and accompanying brief.

(f) There is no right to appear personally before the authority head.

(g) There is no right to appeal any interlocutory ruling by the presiding officer.

(h) In reviewing the initial decision, the authority head shall not consider any objection that was not raised before the presiding officer unless a demonstration is made of extraordinary circumstances causing the failure to raise the objection.

(i) If any party demonstrates to the satisfaction of the authority head that additional evidence not presented at such hearing is material and that there were reasonable grounds for the failure to present such evidence at such hearing, the authority head shall remand the matter to the presiding officer for consideration of such additional evidence.

(j) The authority head may affirm, reduce, reverse, compromise, remand, or settle any penalty or assessment, determined by the presiding officer in any initial decision.

(k) The authority head shall promptly serve each party to the appeal with a copy of the decision of the authority head. At the same time the authority head shall serve the defendant with a statement describing the defendant's right to seek judicial review.

(l) Unless a petition for review is filed as provided in 31 U.S.C. 3805 after a defendant has exhausted all

administrative remedies under this part and within 60 days after the date on which the authority head seves the defendant with a copy of the authority head's decision, a determination that a defendant is liable under § 1264.102 is final and is not subject to judicial review.

#### § 1264.139 Stays ordered by the Department of Justice.

If at any time the Attorney General or an Assistant Attorney General designated by the Attorney General transmits to the authority head a written finding that continuation of the administrative process described in this part with respect to a claim or statement may adversely affect any pending or potential criminal or civil action related to such claim or statement, the authority head shall stay the process immediately. If the process is before the presiding officer, the authority head shall promptly transmit the finding to the presiding officer, who, in turn, must stay the proceeding and give notice to all parties and their representatives. The authority head may order the process resumed only upon receipt of the written authorization of the Attorney General.

#### § 1264.140 Stay pending appeal.

(a) An initial decision is stayed automatically pending disposition of a motion for reconsideration or of an appeal to the authority head.

(b) No administrative stay is available following a final decision of the authority head.

#### § 1264.141 Judicial review.

Section 3805 of Title 31, United States Code, authorizes judicial review by an appropriate United States District Court of a final decision of the authority head imposing penalties or assessments under this part and specifies the procedures for such review.

#### § 1264.142 Collection of civil penalties and assessments.

Sections 3806 and 3808(b) of Title 31, United States Code, authorize actions for collection of civil penalties and assessments imposed under this part and specify the procedures for such actions.

#### § 1264.143 Right to administrative offset.

The amount of any penalty or assessment which has become final, or for which a judgment has been entered under § 1264.141 or § 1264.142, or any amount agreed upon in a compromise or settlement under § 1264.145, may be collected by administrative offset under 31 U.S.C. 3716, except that an administrative offset may not be made under this subsection against a refund of

an overpayment of Federal taxes, then or later owing by the United States to the defendant.

#### § 1264.144 Deposit in Treasury of United States.

All amounts collected pursuant to this part shall be deposited as miscellaneous receipts in the Treasury of the United States, except as provided in 31 U.S.C. 3806(g).

#### § 1264.145 Compromise or settlement.

(a) Parties may make offers of compromise or settlement at any time, including proposals for alternative dispute resolution.

(b) The reviewing official has the exclusive authority to compromise or settle a case under this part at any time after the date on which the reviewing official is permitted to refer allegations of liability to a presiding officer and before the date on which the presiding officer issues an initial decision.

(c) The authority head has exclusive authority to compromise or settle a case under this part at any time after the date on which the presiding officer issues an initial decision, except during the pendency of any judicial review under § 1264.141 or during the pendency of any civil action to collect penalties and assessments under § 1264.142.

(d) The Attorney General has exclusive authority to compromise or settle a case under this part during the pendency of any judicial review under 31 U.S.C. 3805 or of any civil action to recover penalties and assessments under 31 U.S.C. 3806.

(e) The investigating official may recommend settlement terms to the reviewing official, the authority head, or the Attorney General, as appropriate. The reviewing official may recommend settlement terms to the authority head, or the Attorney General, as appropriate.

(f) Any compromise or settlement must be in writing.

#### § 1264.146 Limitations.

(a) The notice of hearing with respect to a claim or statement must be served in the manner specified in § 1264.107 within 6 years after the date on which such claim or statement is made.

(b) If the defendant fails to file a timely answer, service of a notice under § 1264.109(b) shall be deemed a notice of hearing for purposes of this section.

(c) The statute of limitations may be extended by agreement of the parties.

**Appendix A—Notice to Consent to the Chairperson, NASA Board of Contract Appeals (BCA), or Designee, as Presiding Officer**

In accordance with the provisions of 14 CFR 1264.106, you are hereby notified that the

Chairperson, NASA Board of Contract Appeals (BCA), or designee, in addition to other duties, upon your consent, may conduct any or all proceedings as the presiding officer, pursuant to 14 CFR Part 1264 which implements the Program Fraud Civil Penalties Act of 1986.

You should be aware that your decision to consent, or not to consent, to the referral of this case to the NASA/BCA must be entirely voluntary. Only if you and the authority head consent to this reference will either the Chairperson or the designee to whom the case may be assigned be informed of your decision.

An appeal from a decision by the presiding officer under this consent procedure may be taken in the same manner as an appeal from a decision by any other presiding officer, as provided in 14 CFR 1264.136(d), 1264.137, 1264.138, and 1264.141.

If you consent, you must sign, date, and return this form within the 30-day period provided for your answer (see 14 CFR 1264.108, 1264.109).

I consent:

(Signature of person alleged to be liable)

(Print name)

(Date of signature)

James C. Fletcher,

Administrator.

October 13, 1987.

[FR Doc. 87-24323 Filed 10-21-87; 8:45 am]

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

#### 18 CFR Parts 2 and 284

[Docket Nos. RM87-34-001; Order No. 500-A]

#### Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol

October 14, 1987.

**AGENCY:** Federal Energy Regulatory Commission, DOE.

**ACTION:** Interim rule; order granting extension of time for responses to take-or-pay data request.

**SUMMARY:** The Federal Energy Regulatory Commission (Commission) is granting in part requests by interstate natural gas pipelines for additional time in which to respond to the take-or-pay data requests sent them by the Commission to develop the record in this proceeding. The Commission is extending the date for responses to November 2, 1987.

**DATE:** The date for filing responses to the data request is extended to November 2, 1987.