plate P/N 214–010–569–101 in accordance with Part I of BHTI ASB 214–86–36, dated October 8, 1986, or ASB 214ST–86–37, Rev. A, dated November 3, 1986, within the next 50 hours' time in service or within 30 days after the effective date of this AD, whichever comes first.

(b) Within the next 25 hours' time in service after completing the requirements of paragraph (a) and thereafter at intervals not to exceed 25 hours' time in service from the last inspection, visually inspect the hub and lower hub nut assembly for slippage in accordance with Part II of BHTI ASB 214–86–36, dated October 8, 1986, as ASB 214ST–86–37, Rev. A, dated November 3, 1986.

(c) Within the next 500 hours' time in service after completing the requirements of paragraph (a) and thereafter at intervals not to exceed 500 hours' time in service from the last inspection, perform the following in accordance with Part III of BHTI ASB 214–86–36, dated October 8, 1986 or ASB 214ST–86–37, Rev. A, dated November 3, 1986:

(1) Inspect the hub locking plate, P/N 214–010–569–101, for cracks.

(2) If a crack is found during this inspection, replace the hub locking plate with a serviceable part.

(3) Retorque the lower hub nut and install locking plate, P/N 214–010–569–101, as detailed in paragraph (a).

(d) Installation instructions for the scissors and sleeve may be found in the BHTI–214ST Maintenance Manual, Chapter 62–21–00, and 214B Maintenance Manual, Chapter 65–20–00.

(e) Upon compliance with this airworthiness directive, the inspections and actions required by priority letter Airworthiness Directive No. 86–12–01, issued June 6, 1986, may be discontinued.

(f) An alternate method of compliance which provides an equivalent level of safety with this AD may be used when approved by the Manager, Helicopter Certification Branch, Federal Aviation Administration, 4400 Blue Mound Road, Fort Worth, Texas 76106.

The procedure shall be done in accordance with BHTI ASB 214–86–36, dated October 8, 1986, or ASB 214ST–86–37, Rev. A., dated November 3, 1986.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a)(1). Copies may be obtained upon request to Bell Helicopter Textron, Inc., P.O. Box 482, Fort Worth, Texas 76101, Attention: Customer Support.

Copies may be inspected at the Office of Regional Counsel, FAA, Southwest Region, 4400 Blue Mound Road, Fort Worth, Texas, or at the Office of the Federal Register, 1100 L Street, NW., Room 8401 Washington, DC.

This amendment becomes effective May 26, 1987.

Issued in Fort Worth, Texas, on April 8, 1987.

Roger G. Knight,

Acting Director, Southwest Region.

[FR Doc. 87–11936 Filed 5–22–87; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 39

[Docket No. 87–ANE–11; Amdt. 39–5618]

Airworthiness Directives; Glasflugel Model Kestrel Gliders

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) applicable to Glasflugel Model Kestrel gliders which requires an initial visual inspection and replacement of the rudder actuating arm. This action was prompted by the determination that the rudder actuating arm can fail from fatigue damage incurred by handling the aircraft using the rudder. This condition, if not corrected, could result in the glider becoming uncontrollable.

DATE: *Effective:* May 29, 1987.

Compliance schedule. As prescribed in the body of the AD.

Incorporation by Reference. Approved by the Director of the Federal Register on May 29, 1987.

ADDRESS: The technical information and modification parts specified in this AD may be obtained from Hansjorg Streifeneder, Glasfaser-Flugzeugbau, Hofaner Weg, D–7431 Grabenstetten, Germany; telephone (07382) 1032. A copy of the technical note is contained in the Rules Docket, Federal Aviation Administration, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, Massachusetts 01803.

FOR FURTHER INFORMATION CONTACT: Mr. Munro Dearing, Brussels Aircraft Certification Office, Europe, Africa, and Middle East Office, Federal Aviation Administration, c/o American Embassy, 15 Rue de la Loi B–1040 Brussels, Belgium; telephone 513.38.30 Ext. 2710, or John J. Maher, ANE–172, Federal Aviation Administration, New England Region, New York Aircraft Certification Office, 181 S. Franklin Avenue, Room 202, Valley Stream, New York 11581; telephone 516–791–6221.

SUPPLEMENTARY INFORMATION: It has been determined that failure may occur in the rudder actuating arm from fatigue damage incurred by mishandling the aircraft by the rudder. The manufacturer (Hansjorg Streifeneder) has issued Technical Note No. 401–19, dated September 12, 1986, which requires replacement of the rudder actuating arm. The Luftfahrt-Bundesamt (LBA), who has responsibility and authority to maintain the continuing airworthiness of these gliders in the Federal Republic of Germany, has issued an AD requiring compliance with the provisions of Technical Note No. 401–19 on gliders operated under Federal Republic of Germany registration. The FAA relies upon the certification of the LBA combined with FAA review of pertinent documentation, in finding compliance of the design of these gliders with the applicable United States airworthiness requirements, and the airworthiness and conformity of products of this design certificated for operation in the United States.

The FAA has examined the available information related to the issuance of Hansjorg Streifeneder Technical Note No. 401–19 and the issuance of AD No. 86–221 Kestrel by the LBA. Based on the foregoing, the FAA has determined that the condition addressed by Hansjorg Streifeneder Technical Note No. 401–19 is an unsafe condition that may exist on other products of the same type design certificated for operation in the United States. Therefore, an AD is being issued to require an initial inspection and replacement of the rudder actuating arm on Glasflugel Model Kestrel gliders.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and public procedure hereon are impractical and good cause exists for making this amendment effective in less than 30 days.

Conclusion

The FAA has determined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation or analysis is not required). A copy of it, when filed, may be obtained by contacting the person identified under the caption "**FOR FURTHER INFORMATION CONTACT**".

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference.

Adoption of the Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration (FAA) amends Part 39 of the Federal Aviation Regulations (FAR) as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421, and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

2. By adding to Part 39 the following new airworthiness directive (AD):

Glasflugel: Applies to Model Kestrel gliders, all serial numbers, certificated in any category.

Compliance is required as indicated unless already accomplished.

To prevent the failure of the rudder actuating arm, P/N 301–45–10, which could result in the glider becoming uncontrollable, accomplish the following:

(a) Within the next 10 hours time-in-service after the effective date of this AD, unless compliance with paragraph (c) has been accomplished, visually inspect the rudder actuating arm, P/N 301–45–10, using a 10 power or greater magnifying glass, for cracks.

(b) If a cracked arm is found during the inspection required by paragraph (a) of this AD, before further flight, replace the rudder actuating arm with a serviceable arm, new P/N 301–45–13, in accordance with the action instructions of Hansjorg Streifeneder Technical Note No. 401–19, dated September 12, 1986.

(c) Prior to July 31, 1987, replace any rudder actuating arm, not replaced in accordance with paragraph (b) of this AD, with a serviceable rudder actuating arm, new P/N 301–45–13, in accordance with the action instructions of Hansjorg Streifeneder Technical Note No. 401–19, dated September 12, 1986.

Upon request, an equivalent means of compliance with the requirements of this AD may be approved by the Manager, Brussels Aircraft Certification Office, AEU–100, Europe, Africa, and Middle East Office, Federal Aviation Administration, c/o American Embassy, 15 Rue de la Loi B–1040 Brussels, Belgium; telephone 513.38.30 ext. 2710 or the Manager, New York Aircraft Certification Office, Federal Aviation Administration, New England Region, 181 South Franklin Avenue, Room 202, Valley Stream, New York 11581; telephone 516–791–6680.

Upon submission of substantiating data by an owner or operator through an FAA maintenance inspector, the Manager, Brussels Aircraft Certification Office or the Manager, New York Aircraft Certification Office, may adjust the compliance time specified in this AD.

Hansjorg Streifeneder Technical Note No. 401–19, dated September 12, 1986, identified and described in this document, is incorporated herein by reference and made a part hereof pursuant to 5 U.S.C. 552(a)(1). All persons affected by this directive who have not already received these documents from the manufacturer may obtain copies upon request to Hansjorg Streifeneder, Glasfaser Flugzeugbau, Hofaner Weg, D–7431 Grabenstetten, Germany; telephone no. (07382) 1032. This document also may be examined at the Office of Regional Counsel, ANE–7, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803, Room 311, Rules Docket 87–ANE–11, between the hours of 8:00 a.m. and 4:30 p.m.; Monday through Friday, except Federal holidays.

This amendment becomes effective on May 29, 1987.

Issued in Burlington, Massachusetts, on April 24, 1987.

Clyde DeHart Jr.,

Acting Director, New England Region.

[FR Doc. 87–11892 Filed 5–22–87; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket Number 86–ANE–4; Amdt. 39–5619]

Airworthiness Directives; Pratt & Whitney (PW) JT8D–1, –1A, –1B, –7, –7A, –7B, –9, –9A, –11, –15, –15A, –17, –17A, –17R, and –17AR Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that requires inspection of the combustion chamber outer case for cracks adjacent to the rear flange and around the periphery of the PS4 and drain boss welds on certain PW JT8D engines. This AD supersedes AD 86–04–01, Amendment 39–5236 (51 FR 5311), by requiring inspection of combustion chamber outer cases for cracks adjacent to the rear flange at reduced threshold cycles, and includes inspection of PS4 and drain boss welds on certain PW JT8D engines. The AD is needed to prevent rupture of the combustion chamber outer case due to fatigue cracking that can originate at the PS4 and drain boss welds, as well as in the rear flange bolt holes, which could result in uncontained case rupture, inflight shutdowns, engine cowl release, and airframe damage.

DATES: *Effective.* June 29, 1987.

Compliance Schedule. As prescribed in the body of the AD.

Incorporation by Reference. Approved by the Director of the Federal Register on June 29, 1987.

ADDRESSES: The applicable alert service bulletin (ASB) may be obtained from Pratt & Whitney, Publication Department, P.O. Box 611, Middletown, Connecticut 06457.

A copy of the ASB is contained in Rules Docket Number 86–ANE–4, in the Office of the Regional Counsel, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803, and may be examined between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except federal holidays.

FOR FURTHER INFORMATION CONTACT: James Jones, Engine Certification Branch, ANE–141, Engine Certification Office, Aircraft Certification Division, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803; telephone (617) 273–7121.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations (FAR) to include a new AD requiring inspection of the combustion chamber outer case for cracks adjacent to the rear flange and around the periphery of PS4 and drain boss welds on certain PW JT8D engines was published in the **Federal Register** on July 8, 1986, (51 FR 24716). The proposal was developed when the FAA determined that combustion chamber outer cases develop cracks during service. These cracks result from low cycle fatigue initiating in high stressed areas of the case. Analytical studies, substantiated by service experience, identify the high stressed areas to be in the periphery of the PS4 and drain boss welds, and the rear flange bolt holes. Cracks which develop along the circumference of the PS4 or drain boss welds or at the rear flange bolt holes can result in combustion chamber outer case ruptures.

There have been a total of ten reported combustion chamber outer case ruptures, four of which occurred during 1985 and one in 1986. Two of the ten ruptures occurred from a PS4 boss weld crack, and six occurred from drain boss weld cracks. The remaining two ruptures resulted from rear flange cracking, which prompted AD 86–04–01, Amendment 39–5236 (51 FR 5311). These ruptures caused both engine cowling and airframe damage.

On February 13, 1986, AD 86–04–01, Amendment 39–5236 (51 FR 5311), was published in the **Federal Register** requiring initial and repetitive visual inspections of the combustion chamber outer case for cracks adjacent to the rear flange bolt holes on certain PW JT8D engines. Fatigue cracks, which initiate in the rear flange bolt holes, can propagate into the wall of the case and progress in an axial direction until the case ruptures. The purpose of the inspection is to identify and remove from service, combustion chamber outer cases which have developed rear flange bolt hole cracks. This AD adjusts the requirements of Amendment 39–5236 by reducing the initial threshold levels from 35,000 cycles to 30,000 cycles for JT8D–1 through –7B engines; 30,000 cycles to 25,000 cycles for JT8D–9 through –11 engines; and 25,000 cycles to 20,000 cycles for JT8D–15 through –17AR engines. The repetitive inspection intervals remain unchanged from those of Amendment 39–5236. An alternate rear flange inspection, using an eddy current procedure, has been added that allows increased repetitive inspection intervals of 12,000 cycles for JT8D–1 through –11 engines and 8,000 cycles for JT8D–15 through –17AR engines.

Notes (1) and (2) of this amendment have been reworded for clarification and consistency with the engine manual. Note (1) considers case boss fluorescent penetrant and eddy current inspection methods accomplished in the shop, in accordance with PW JT8D engine manual, P/N 481672, as an equivalent means of inspection to Appendix B of PW ASB 5676. The rear flange visual in shop inspection and Appendix A references have been deleted. Note (2) considers in shop fluorescent penetrant inspection (FPI) of the rear flange as an equivalent means of inspection to Appendix C of PW ASB 5676. The reference to eddy current inspection has been deleted.

Two additional notes have been added. Note (5) adds provisions for not reinspecting engines inducted into the shop for other causes whose cases were recently inspected in accordance with this AD within a limited period of time. Note (6) allows visual inspection of case boss welds (in accordance with PW ASB 5676) to identify previously weld repaired cases, if records are not available.

A portion of paragraph (d)(3) was inadvertently omitted in the **Federal Register** (51 FR 24718). However, since the intent of the paragraph was clear as published, the complete wording is being adopted without further notice. In addition, the ASB referenced in this final rule has been revised since issuance of the notice of proposed rulemaking (NPRM), however, the changes do not reflect additional requirements beyond those proposed in the NPRM.

Since this condition is likely to exist or develop on other engines of the same type design, this AD supersedes AD 86–04–01, Amendment 39–5236 (51 FR 5311), and requires initial and repetitive inspections of the combustion chamber outer case for cracks adjacent to the rear flange bolt holes, as well as around the periphery of the PS4 and drain boss welds, on certain PW JT8D engines in accordance with PW ASB 5676, Revision 1, dated September 24, 1986.

Interested persons have been afforded the opportunity to participate in the making of this amendment, and due consideration has been given to all relevant data and comments received. Several comments were received concerning the proposed rule.

Discussion of Comments

One commenter questioned the reliability of the on-wing white light and extended mirror inspection method, and recommended limiting the rear flange reinspection interval to 200 cycles.

The FAA considers the on-wing white light and extended mirror inspection method to be a viable inspection technique that has been successfully used by the industry for over a year. The reinspection intervals resulted from an analytical model based on service experience, shop visit rates, missed inspections, and crack propagation data. The analysis indicates that crack propagation rates for combustion case flange bolt hole initiated cracks are relatively low and can be detected in time to maintain a sufficient margin of safety.

One commenter requested reduction of the JT8D–9 inspection threshold to address a combustion case failure that ruptured at 11,417 cycles.

The FAA has determined that the evidence concerning that combustion case failure is somewhat inconsistent with the service history and engineering analysis of the other failed combustion cases. This was a first run case that had never been removed from the airplane. Cause of the crack initiation has not been established. However, the FAA will continue to review the data associated with this isolated event and, if necessary, will adjust the compliance schedule by amending this AD.

Six commenters requested an extension to the comment period until delivery of the inspection equipment. One of those commenters also requested deletion of the rear flange reinspection requirements until the rear flange eddy current inspection is proven to be viable.

The inspection equipment has been delivered to the industry, with adequate time for comment, and has proven to be effective. The rear flange reinspection requirements remain as published.

Three commenters questioned the justification for inspection of the PS4 boss.

Justification for the PS4 boss inspection requirement is addressed in the "SUPPLEMENTARY INFORMATION" paragraph above. It is significant to note that a PS4 boss failure occurred in December 1986.

Two commenters stated that, since a requirement never existed for identification of repaired cases, many operators did not keep records on previous boss weld repairs. They suggested that the proposed rule may require some operators to inspect to the more stringent compliance times of paragraph (c). One of the commenters proposed the establishment of a category for cases with previously weld repaired bosses, subsequently inspected in the shop and found crack free.

The FAA disagrees due to variability of shop welding practices as compared to original manufacture. Available evidence does not support that repaired cases are equivalent to non-repaired cases. Therefore, on that basis, a separate category was established. Guidelines for identification of weld repaired cases with no records are addressed in *Note* (6) of this AD.

One commenter requested an extended compliance period for case bosses inspected in the shop in light of the extended compliance period provided for rear flanges inspected in the shop.

The rear flange has an extended compliance period for those cases inspected in the shop in accordance with the engine manual because the inspection is of a higher quality than the on-wing extended mirror and light method. Hence, the rear flange compliance schedule for the shop inspection is of a longer inspection interval than the on-wing inspection. The case boss on-wing ultrasonic and shop inspections performed in accordance with the engine manual are considered equivalent and carry the same compliance schedule. *Note* (1) in this AD addresses case boss inspection equivalency.

Two commenters indicated that *Note* (2) of the NPRM referenced a nonexistent rear flange eddy current requirement in the engine manual.

The FAA agrees and has deleted the rear flange eddy current manual reference.

One commenter stated that the inspection limits for cases which have operated in different rated engines, as defined in the proposed *Note* (4) should be restricted to the initial inspection only. Therefore, the repeat inspection should be based on its operation in the current engine. The commenter further stated that some operators are using higher rated cases on derated engines, and recommends that the compliance times should apply for the engine on which the case is actually installed.

Paragraph (e), formerly proposed *Note* (4), requires a case which has been operated in more than one model engine to be inspected to the criteria for the highest rated model engine in which it has ever been operated. This requirement was established because a significant reduction in total case life occurs during its initial operation on the higher rated model engine. The case life reduction is related to the stresses and increased temperatures imposed on the case by the higher rated model engine. The reduction in case life cannot be restored and is difficult to quantify by engineering analysis. Subsequent operation on a lower rated engine model does not take into account the distress that occurred during the previous operation on the higher rated model engine. Those operators who have higher rated engines that are presently installed and operated as lower rated engines and were never operated as a higher rated engine, may request an exemption from the higher rated engine model category through their cognizant FAA principal maintenance inspector, if proper documentation is presented.

One commenter stated that the latest definition of a "shop visit" in the "World Airline Technical Operations Glossary" does not include a gearbox or fuel nozzle removal. The commenter suggested that PW did not include these removals in their risk analysis, and requested deletion of the gearbox and fuel nozzle requirement from *Note* (4). Two other commenters stated that the gearbox and fuel nozzle removals were too restrictive.

The FAA disagrees that gearbox and fuel nozzle removals were not included in the PW risk analysis. Both were included in the engineering analysis. PW ASB 5676 includes the gearbox, but does not specifically reference fuel nozzle removal in the definition of a shop visit. However, the separation of a major engine flange is referenced. Fuel nozzles cannot be removed without separating a major engine flange.

Several commenters stated that the NPRM conflicted with the PW ASB regarding equivalency of the rear flange and case boss inspection methods.

The *Notes* provide clarification of the various inspection "equivalent means" in the AD.

One commenter stated that previous case shop inspections should be given extra credit based on the fact that shop inspections per the engine manual are of higher quality than the PW ASB procedures. The commenter suggested that the initial inspection should be established at an inspection interval that coincides with the longer reinspection interval.

The initial case inspection intervals were established to account for missed inspections. There is evidence of a case that was returned to service with a crack that was not detected during the shop inspections. The shorter initial inspection intervals are designed to identify and remove from service that population of cases with existing cracks.

One commenter stated that the inspection requirement at each shop visit, regardless of previous inspections, was too restrictive in that an inspection may have been accomplished in a relatively short time before the current shop visit.

The FAA agrees and, based on engineering analysis of fracture mechanics data, has provided relief for the above situation in *Note* (5) of this AD.

One commenter objected to the proposed rule in light of the operator's present combustion case maintenance program.

As stated above, the requirements of the NPRM were based on an engineering analysis to determine the service life of the case. The data used during the analysis included service history provided by the industry which indicates that current maintenance practices are not adequate to prevent case rupture. Operators whose maintenance programs are consistent with the inspection requirements of this AD should experience minimal impact.

One commenter questioned the reliability of the existing and new inspection equipment to detect cracks.

Crack detection capability has been satisfactorily demonstrated to the FAA and was included in the analysis that developed the inspection requirements of this AD. The AD contains a reporting requirement to determine if further action is required.

One commenter indicated that additional guidelines should be incorporated into the AD regarding owners with no engine records.

Note (3) of this AD provides guidelines for total cycle determination for operators with no engine history.

Conclusion

The FAA has determined that this regulation involves approximately 6,367 engines at an approximate total cost of 2.2 million dollars. It has also been determined that few, if any, small entities within the meaning of the Regulatory Flexibility Act will be affected since the rule affects only operators using aircraft in which PW JT8D engines are installed, none of which are believed to be small entities. Therefore, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained by contacting the person identified under the caption: **"FOR FURTHER INFORMATION CONTACT".**

List of Subjects in 14 CFR Part 39

Engines, Air transportation, Aircraft, Aviation safety, Incorporation by reference.

Adoption of the Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration (FAA) amends Part 39 of the Federal Aviation Regulations (FAR) as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421, and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding to § 39.13 the following new airworthiness directive (AD) which supersedes AD 86–04–01, Amendment 39–5236 (51 FR 5311).

Pratt & Whitney: Applies to Pratt & Whitney (PW) JT8D–1, –1A, –1B, –7, –7A, –7B, –9, –9A, –11, –15, –15A, –17, –17A, –17R, and –17AR turbofan engines.

Compliance is required as indicated, unless already accomplished.

To prevent combustion chamber outer case rupture, inspect combustion chamber outer case assembly Part Numbers (P/N) 490547, 542155, 616315, 728829, 730413, 730414, 767197, and 767279, in accordance with PW Alert Service Bulletin (ASB) 5676, Revision 1, dated September 24, 1986, as follows:

(a) Inspect combustion chamber outer case PS4 boss, drain bosses, and rear flange for cracks at each engine shop visit.

(b) Inspect combustion chamber outer case PS4 boss and drain bosses, which have not been weld repaired, for cracks in accordance with the following schedule:

(1) PW JT8D–1, –1A, –1B, –7, –7A, and –7B engine cases with 24,000 total cycles in service (CIS) or more on the effective date of this AD; inspect within the next 2,500 CIS, or within 6,000 CIS since last inspection (SLI),

whichever occurs later. Thereafter, reinspect at intervals not to exceed 6,000 CIS SLI.

(2) PW JT8D-1, -1A, -1B, -7, -7A, and -7B engine cases with less than 24,000 total CIS on the effective date of this AD; inspect before the accumulation of 26,500 total CIS, or within 6,000 CIS SLI, whichever occurs later. Thereafter, reinspect at intervals not to exceed 6,000 CIS SLI.

(3) PW JT8D-9, -9A, and -11 engine cases with 16,000 total CIS or more on the effective date of this AD; inspect within the next 2,500 CIS, or within 6,000 CIS SLI, whichever occurs later. Thereafter, reinspect at intervals not to exceed 6,000 CIS SLI.

(4) PW JT8D-9, -9A, and -11 engine cases with less than 16,000 total CIS on the effective date of this AD; inspect before the accumulation of 18,500 total CIS, or within 6,000 CIS SLI, whichever occurs later. Thereafter, reinspect at intervals not to exceed 6,000 CIS SLI.

(5) PW JT8D-15 and -15A engine cases with 12,000 total CIS or more on the effective date of this AD; inspect within the next 1,600 CIS, or within 4,000 CIS SLI, whichever occurs later. Thereafter, reinspect at intervals not to exceed 4,000 CIS SLI.

(6) PW JT8D-15 and -15A engine cases with less than 12,000 total CIS on the effective date of this AD; inspect before the accumulation of 13,600 total CIS, or within 4,000 CIS SLI, whichever occurs later. Thereafter, reinspect at intervals not to exceed 4,000 CIS SLI.

(7) PW JT8D-17, -17A, -17R, and -17AR engine cases with 9,600 total CIS or more on the effective date of this AD; inspect within the next 1,600 CIS, or within 4,000 CIS SLI, whichever occurs later. Thereafter, reinspect at intervals not to exceed 4,000 CIS SLI.

(8) PW JT8D-17, -17A, -17R, and 17AR engine cases with less than 9,600 total CIS on the effective date of this AD; inspect before the accumulation of 11,200 total CIS, or within 4,000 CIS SLI, whichever occurs later. Thereafter, reinspect at intervals not to exceed 4,000 CIS SLI.

(c) Inspect combustion chamber outer case PS4 boss and drain bosses, which have been weld repaired, for cracks in accordance with the following schedule:

(1) PW JT8D-1, -1A, -1B, -7, -7A, -7B, -9, -9A, and -11 engine cases regardless of total CIS; inspect within the next 1,500 CIS or within 3,500 CIS since weld repair or SLI, whichever occurs later. Thereafter, reinspect at intervals not to exceed 3,500 CIS SLI.

(2) PW JT8D-15, -15A, -17A, -17R, and 17AR engine cases regardless of total CIS; inspect within the next 1,000 CIS or within 2,500 CIS since weld repair or SLI, whichever occurs later. Thereafter, reinspect at intervals not to exceed 2,500 CIS SLI.

(d) Inspect combustion chamber outer case rear flange for cracks in accordance with the following schedule:

(1) PW JT8D-1, -1A, -1B, -7, -7A, and -7B engine cases with 30,000 total CIS or more on the effective date of this AD; inspect in accordance with Appendix A of PW ASB 5676, within the next 200 CIS, or within 3,000 CIS SLI, whichever occurs later. Thereafter, reinspect at intervals not to exceed 3,000 CIS SLI. As an alternate means of compliance, the case may be inspected in accordance with Appendix C of PW ASB 5676, and reinspection in accordance with Appendix C requirements may be accomplished at intervals not to exceed 12,000 CIS SLI.

(2) PW JT8D-1, -1A, -1B, -7, -7A and -7B engine cases with less than 30,000 total CIS on the effective date of this AD; inspect in accordance with Appendix A of PW ASB 5676, before the accumulation of 30,200 total CIS, or within 3,000 CIS SLI, whichever occurs later. Thereafter, reinspect at intervals not to exceed 3,000 CIS SLI. As an alternate means of compliance, the case may be inspected in accordance with Appendix C of PW ASB 5676, and reinspection in accordance with Appendix C requirements may be accomplished at intervals not to exceed 12,000 CIS SLI.

(3) PW JT8D-9, -9A, and -11 engine cases with 25,000 total CIS or more on the effective date of this AD; inspect in accordance with Appendix A of PW ASB 5676, within the next 200 CIS, or within the next 2,000 CIS SLI, whichever occurs later. Thereafter, reinspect at intervals not to exceed 2,000 CIS SLI. As an alternate means of compliance, the case may be inspected in accordance with Appendix C of PW ASB 5676, and reinspection in accordance with Appendix C requirements may be accomplished at intervals not to exceed 12,000 CIS SLI.

(4) PW JT8D-9, -9A and -11 engine cases with less than 25,000 total CIS on the effective date of this AD; inspect in accordance with Appendix A of PW ASB 5676, before the accumulation of 25,200 total CIS, or within 2,000 CIS SLI, whichever occurs later. Thereafter, reinspect at intervals not to exceed 2,000 CIS SLI. As an alternate means of compliance, the case may be inspected in accordance with Appendix C of PW ASB 5676, and reinspection in accordance with Appendix C requirements may be accomplished at intervals not to exceed 12,000 CIS SLI.

(5) PW JT8D-15 and -15A engine cases with 20,000 total CIS or more on the effective date of this AD; inspect in accordance with Appendix A of PW ASB 5676, within the next 200 CIS, or within 1,500 CIS SLI, whichever occurs later. Thereafter, reinspect at intervals not to exceed 1,500 CIS SLI. As an alternate means of compliance, the case may be inspected in accordance with Appendix C of PW ASB 5676, and reinspection in accordance with Appendix C requirements may be accomplished at intervals not to exceed 8,000 CIS SLI.

(6) PW JT8D-15 and -15A engine cases with less than 20,000 total CIS on the effective date of this AD; inspect in accordance with Appendix A of PW ASB 5676, before the accumulation of 20,200 total CIS, or within 1,500 CIS SLI, whichever occurs later. Thereafter, reinspect at intervals not to exceed 1,500 CIS SLI. As an alternate means of compliance, the case may be inspected in accordance with Appendix C of PW ASB 5676, and reinspection in accordance with Appendix C requirements may be accomplished at intervals not to exceed 8,000 CIS SLI.

(7) PW JT8D-17, -17A, -17R, and -17AR engine cases with 20,000 total CIS or more on the effective date of this AD; inspect in accordance with Appendix A of PW ASB 5676, within the next 200 CIS, or within 1,000 CIS SLI, whichever occurs later. Thereafter, reinspect at intervals not to exceed 1,000 CIS SLI. As an alternate means of compliance, the case may be inspected in accordance with Appendix C of PW ASB 5676, and reinspection per Appendix C requirements may be accomplished at intervals not to exceed 8,000 CIS SLI.

(8) PW JT8D-17, -17A, -17R, and -17AR engine cases with less than 20,000 total CIS on the effective date of this AD; inspect in accordance with Appendix A of PW ASB 5676, before the accumulation of 20,200 total CIS, or within 1,000 CIS SLI, whichever occurs later. Thereafter, reinspect at intervals not to exceed 1,000 CIS SLI. As an alternate means of compliance, the case may be inspected in accordance with Appendix C of PW ASB 5676, and reinspection in accordance with Appendix C requirements may be accomplished at intervals not to exceed 8,000 CIS SLI.

(e) Inspect cases which have been operated in more than one model engine in accordance with the criteria for the highest rated model engine in which it was operated.

(f) Remove cracked cases from service prior to further flight.

(g) Report the following information in writing, if a case is found to be cracked, within 30 days of the inspection, to the Manager, Engine Certification Office, Aircraft Certification Division, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803; Telex Number 949301 FAANE BURL. Reporting approved by the Office of Management and Budget (OMB) under OMB Number 2120-0056:

(1) Engine serial number (S/N)
(2) Inspection date
(3) Case P/N and S/N
(4) Case total time and cycles (if estimate, so note)
(5) Case time and cycles since last inspection
(6) Method of inspection used
(7) Crack location and size

Notes: (1) Inspection at shop visit of the case PS4 and drain boss welds by fluorescent penetration or eddy current, in accordance with PW JT8D Engine Manual, P/N 481672, is considered an equivalent means of inspection to Appendix B of PW ASB 5676.

(2) Fluorescent penetrant inspection at shop visit of the rear flange in accordance with the PW JT8D Engine Manual, P/N 481672, is considered an equivalent means of inspection to Appendix C of PW ASB 5676.

(3) Cases for which the total cycles in service cannot be determined from engine records or manufacturer's production records must be assigned a total cycle count equal to the highest cycle engine of that model in the owners'/operators' fleet.

(4) Shop visit is defined as the input of an engine to a repair shop where the subsequent engine maintenance entails any of the following:

(a) Separation of a major engine flange (lettered or numbered) other than flanges mating with major sections of the nacelle or reverser. Separation of flanges purely for purposes of shipment, without subsequent internal maintenance, is not a "shop visit".

(b) Removal of a disk, hub, or spool.

(c) Removal of the main or angle gearbox.

(d) Removal of the fuel nozzle.

(5) Engines inducted into the shop for other causes within 1,000 cycles of a previous case inspection, do not require reinspection, and may continue to complete the appropriate reinspection interval.

(6) If records are not available, a visual inspection of the case boss welds in accordance with PW ASB 5676, should be used to identify previously weld repaired cases.

Aircraft may be ferried in accordance with the provisions of FAR 21.197 and 21.199 to a base where the AD may be accomplished.

Upon request, an equivalent means of compliance with the requirements of this AD may be approved by the Manager, Engine Certification Office, Aircraft Certification Division, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803.

Upon submission of substantiating data by an owner or operator through an FAA maintenance inspector, the Manager Engine Certification Office, New England Region, may adjust the compliance times specified in this AD.

PW ASB 5676, Revision 1, dated September 24, 1986, identified and described in this document, is incorporated herein and made a part hereof pursuant to 5 U.S.C. 552(a)(1). All persons affected by this directive who have not already received this document from the manufacturer may obtain copies upon request to Pratt & Whitney, Publication Department, P.O. Box 611, Middletown, Connecticut 06457. This document also may be examined at the Office of the Regional Counsel, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803; Rules Docket Number 86–ANE–4, Room 311, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except federal holidays.

This amendment becomes effective on June 29, 1987.

This amendment supersedes Amendment 39–5236 (51 FR 5311), AD 86–04–01.

Issued in Burlington, Massachusetts, on April 24, 1987.

Clyde DeHart, Jr.,

Acting Director, New England Region.

[FR Doc. 87–11893 Filed 5–22–87; 8:45 am]

BILLING CODE 4910–13–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

14 CFR Part 1261

Processing of Monetary Claims (General)

AGENCY: National Aeronautics and Space Administration.

ACTION: Final rule.

SUMMARY: NASA amends 14 CFR Part 1261 by revising Subpart 1261.4, "Collection of Civil Claims of the United States Arising Out of the Activities of the National Aeronautics and Space Administration," and by adding Subpart 1261.5, "Administrative Offset," and Subpart 1261.6, "Salary Offset." The regulations reflect changes pursuant to the Debt Collection Act of 1982 (Pub. L. 97–365, enacted October 25, 1982), as implemented by the Federal Claims Collection Standards issued jointly by the General Accounting Office and the Department of Justice (4 CFR Parts 101 through 105), and by the Office of Personnel Management (5 CFR Part 550, Subpart K, §§ 550.1101 through 550.1107, as finalized on May 6, 1986, 51 FR 16669).

EFFECTIVE DATE: May 26, 1987.

ADDRESS: Office of General Counsel, Code G, NASA Headquarters, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Sara Najjar, 202–453–2432.

SUPPLEMENTARY INFORMATION: These regulations have been updated to comply with the joint regulation of the General Accounting Office (GAO) and the Department of Justice (DJ), and the regulation of the Office of Personnel Management (OPM). NASA received no comments on its proposed regulations, which were published in 50 FR 13228, April 3, 1985. With modifications reflecting the changes in the OPM regulations, the final NASA regulations are set forth in this final rule.

These regulations do not constitute a major rule for the purpose of Executive Order 12291 (46 FR 13193, February 19, 1981).

These regulations will not have a significant economic impact on a substantial number of small entities under 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 1261

Administrative practice and procedures, Claims, Debt collections, Administrative offset, Government employees, Pay administration, Salary offset, Wages.

PART 1261—PROCESSING OF MONETARY CLAIMS (GENERAL)

For reasons set out in the Preamble, 14 CFR Part 1261 is amended as follows:

1. The authority for 14 CFR Part 1261, Subparts 1261.4, 1261.5, and 1261.6 reads as follows:

Authority: 42 U.S.C. 2473(c); 31 U.S.C. 3711 *et seq.*; 5 U.S.C. 5514; 4 CFR Parts 101–105; 5 CFR Part 550 Subpart K, §§ 550.1101–550.1107.

2. Subpart 1261.4 is revised, and subparts 1261.5 and 1261.6 are added to read as follows:

Subpart 1261.4—Collection of Civil Claims of the United States Arising Out of the Activities of the National Aeronautics and Space Administration (NASA)

Subpart 1261.5—Administrative Offset of Claims.

Subpart 1261.6—Collection by Offset from Indebted Government Employees.

Subpart 1261.4—Collection of Civil Claims of the United States Arising Out of the Activities of the National Aeronautics and Space Administration (NASA)

§ 1261.400 Scope of subpart.

(a) These regulations do the following:

(1) Prescribe standards for the administrative collection, compromise, suspension or termination of collection, and referral to the General Accounting Office (GAO), and/or to the Department of Justice (DJ) for litigation, of civil claims as defined by 31 U.S.C. 3701(b), arising out of the activities of NASA;

(2) Designate the responsible NASA officials authorized to effect actions hereunder; and

(3) Require compliance with the GAO/DJ joint regulations at 4 CFR Parts 101 through 105 and the Office of Personnel Management (OPM) regulations at 5 CFR Part 550, Subpart K.

(b) Failure to comply with any provision of the GAO/DJ or OPM regulations shall not be available as a defense to any debtor (4 CFR 101.8).

(c) These regulations do not include any claim based in whole or in part on violation of the anti-trust laws; any claim as to which there is an indication of fraud, the presentation of a false claim, or misrepresentation on the part of the debtor or any party having an interest in the claim; tax claims; or Federal interagency claims (4 CFR 101.3).

§ 1261.401 Definitions.

(a) *Claim and debt.* The terms denote a civil claim arising from the activities of NASA for an amount of money, or return or value of property (see 4 CFR 101.5), owing to the United States from any person, organization, or entity, except another Federal agency. The words "claim" and "debt" have been used interchangeably and are considered synonymous.

(b) *Delinquent debt.* The debt is "delinquent" if it has not been paid by the date specified in the initial written notification (e.g., § 1261.407) or applicable contractual agreement, unless other acceptable (to NASA) payment arrangements have been made by that date, or if, at any time thereafter, the debtor fails to satisfy an obligation under the payment agreement.

(c) *Referral for litigation.* Referral through the NASA installation's legal counsel to the Department of Justice (Main Justice or the United States Attorney, as appropriate) for legal proceedings.

§ 1261.402 Delegation of authority.

The following NASA officials are delegated authority, as qualified by § 1261.403, to take such action as is authorized by these regulations to collect, compromise, suspend/terminate collection, and upon consultation with and through legal counsel, to refer the claim (as applicable) to the GAO or Department of Justice:

(a) For field installations, with regard to Subpart 1261.4 and Subpart 1261.5: The Director of the Installation or a designee who reports directly to the Installation Director. A copy of such designation, if any, shall be sent to the Director, Financial Management Division, NASA Headquarters.

(b) For Headquarters, with regard to Subpart 1261.4 and Subpart 1261.5: The Associate Administrator for Management or a designee who reports directly to the Associate Administrator for Management. A copy of such designation, if any, shall be sent to the Director, Financial Management Division, NASA Headquarters.

(c) With respect to the analysis required by § 1261.413: The NASA Comptroller or designee.

(d) NASA wide, with regard to Subpart 1261.6: The NASA Comptroller or designee.

(e) NASA wide, for complying with pertinent provisions under these regulations for agency hearing or review (see § 1261.408(b), § 1261.503, and § 1261.603(c)): The NASA General Counsel or designee.

§ 1261.403 Consultation with appropriate officials; negotiation.

(a) The authority pursuant to § 1261.402 to determine to forego collection of interest, to accept payment of a claim in installments, or, as to claims which do not exceed $20,000, exclusive of interest and related charges, to compromise a claim or to refrain from doing so, or to refrain from, suspend or terminate collection action, shall be exercised only after consultation with legal counsel for the particular installation and the following NASA officials or designees, who may also be requested to negotiate the appropriate agreements or arrangements with the debtor:

(1) With respect to claims against contractors or grantees arising in connection with contracts or grants—the contracting officer and the financial management officer of the installation concerned.

(2) With respect to claims against commercial carriers for loss of or damage to NASA freight shipment—the cognizant transportation officers or the official who determined the amount of the claim, as appropriate, and the financial management officers of the installation concerned.

(3) With respect to claims against employees of NASA incident to their employment—the personnel officer and the financial management officer of the installation concerned.

(b) The appropriate counsel's office shall review and concur in the following:

(1) All communications to and agreements with debtors relating to claims collection.

(2) All determinations to compromise a claim, or to suspend or terminate collection action.

(3) All referrals of claims, other than referrals to the Department of Justice pursuant to § 1261.404(b)(1).

(4) All documents releasing debtors from liability to the United States.

(5) All other actions relating to the collection of a claim which in the opinion of the official designated in or pursuant to § 1261.402 may affect the rights of the United States.

§ 1261.404 Services of the Inspector General.

(a) At the request of an official designated in or pursuant to § 1261.402, the Office of the Inspector General will, where practicable, conduct such investigations as may assist in the collection, compromise, or referral of claims of the United States, including investigations to determine the location and financial resources of the debtors.

(b) Any claim which, in the opinion of an official designated in or pursuant to § 1261.402 or § 1261.403, may indicate fraud, presentation of a false claim, or misrepresentation, on the part of the debtor or any other party having an interest in the claim, shall be referred by the designated official to the Inspector General (IG), NASA Headquarters, or to the nearest office of the NASA IG. After an investigation as may be appropriate, the IG shall:

(1) Notice the official, from whom the claim was received, of the findings and refer the claim to the Department of Justice in accordance with the provisions of 4 CFR 101.3; or

(2) If it were found that there is no such indication of fraud, the presentation of a false claim, or misrepresentation, return the claim to the official from whom it was received.

§ 1261.405 Subdivision of claims not authorized; other administrative proceedings.

(a) *Subdivision of claims.* Claims may not be subdivided to avoid the $20,000 ceiling, exclusive of interest, penalties, and administrative costs, for purposes of compromise (§ 1261.414) or suspension or termination of collection (§ 1261.416). The debtor's liability arising from a particular transaction or contract shall be considered a single claim (4 CFR 101.6).

(b) Required administrative proceedings. Nothing contained in these regulations is intended to require NASA to omit, foreclose, or duplicate administrative proceedings required by contract or other applicable laws and implementing regulations (4 CFR 101.7).

§ 1261.406 Aggressive collection action; documentation.

(a) NASA shall take aggressive action, on a timely basis with effective followup, to collect all claims of the United States for money or property arising out of NASA activities, and to cooperate with the other Federal agencies in debt collection activities.

(b) All administrative collection action shall be documented and the bases for compromise, or for termination or suspension of collection action, should be set out in detail. Such documentation, including the Claims Collection Litigation Report under § 1261.417(e), should be retained in the appropriate claims file.

§ 1261.407 Demand for payment; limitation periods.

(a) Appropriate written demands shall be made promptly upon a debtor of the United States in terms which inform the debtor of the consequences of failure to cooperate. A total of three progressively stronger written demands at not more than 30-day intervals will normally be made unless a response to the first or second demand indicates that a further demand would be futile and the debtor's response does not require rebuttal. In determining the timing of demand letters, NASA will give due regard to the need to act promptly so that, as a general rule, if necessary to refer the debt to the Department of Justice for litigation, such referral can be made within one year of the agency's final determination of the fact and the amount of the debt. When necessary to protect the Government's interests (for example, to prevent the statute of limitations, 28 U.S.C. 2415, from expiring), written demand may be preceded by other appropriate actions, including immediate referral for litigation.

(b) The initial demand letter should inform the debtor of:

(1) The basis for the indebtedness and whatever rights the debtor may have to seek review within the agency;

(2) The applicable standards for assessing interest, penalties, and administrative costs (§ 1261.412); and

(3) The date by which payment is to be made, which normally should be not more than 30 days from the date that the initial demand letter was mailed or hand delivered. The responsible official should exercise care to ensure that demand letters are mailed or hand delivered on the same day that they are actually dated. Apart from these requirements, there is no prescribed format for demand letters. However, as appropriate to the circumstances, the responsible official may consider including, either in the initial demand letter or in subsequent letters, such items the NASA's willingness to discuss alternative methods of payment, or intentions with respect to referral of the debt to the Department of Justice for litigation.

(c) NASA should respond promptly to communications from the debtor, within 30 days whenever feasible, and should advise debtors who dispute the debt to furnish available evidence to support their contentions.

(d) If either prior to the initiation of, any time during, or after completion of the demand cycle, a determination to pursue offset is made, then the procedures specified in Subparts 1261.5 and 1261.6, as applicable, should be followed. The availability of funds for offset and NASA's determination to pursue it release the agency from the necessity of further compliance with paragraphs (a), (b), and (c) of this section. If the agency has not already sent the first demand letter, the agency's written notification of its intent to offset must give the debtor the opportunity to make voluntary payment, a requirement which will be satisfied by compliance with the notice requirements of § 1261.502 or § 1261.603(a), as applicable.

(e) NASA should undertake personal interviews with its debtors whenever this is feasible, having regard for the amounts involved and the proximity of agency representatives to such debtors; and may attempt to effect compromise of the claim in accordance with § 1261.414.

(f) When a debtor is employed by the Federal government or is a member of the military establishment or the Coast Guard, and collection by offset cannot be accomplished in accordance with Subpart 1261.6, the employing agency will be contacted for the purpose of arranging with the debtor for payment of the indebtedness by allotment or otherwise in accordance with section 206 of Executive Order 11222, May 8, 1965, 30 FR 6469, which provides that: "An employee is expected to meet all just financial obligations, especially those—such as Federal, State, or local taxes—which are imposed by law" (4 CFR 102.81).

§ 1261.408 Use of consumer reporting agency.

(a) The term "consumer reporting agency" has the meaning provided in the Federal Claims Collection Act of 1966, as amended (31 U.S.C. 3701(a)(3)):

(1) A consumer reporting agency as that term is defined in section 603(f) of the Fair Credit Reporting Act (15 U.S.C. 1681a(f); or

(2) A person that, for money or on a cooperative basis, regularly—

(i) Gets information on consumers to give the information to a consumer reporting agency; or

(ii) Serves as a marketing agent under an arrangement allowing a third party to get the information from a consumer reporting agency.

(b) NASA Headquarters Financial Management Division, shall be the focal contact between NASA and consumer reporting agencies. The following procedures shall apply when such agencies are employed by NASA:

(1) After the appropriate notice pursuant to 5 U.S.C. 552a(e)(4) has been published, NASA may disclose, in accordance with 5 U.S.C. 552a(b)(12), information about a debtor to a consumer reporting agency. Such information may include:

(i) That a claim has been determined to be valid and is overdue (including violation by debtor of a repayment plan or other claim settlement agreement);

(ii) The name, address, taxpayer identification number, and any other information necessary to establish the identity of the individual responsible for the claim;

(iii) Amount, status, and history of the claim;

(iv) Program or pertinent activity under which the claim arose.

(2) Before disclosing the information specified in paragraph (b)(1) of this section, NASA shall comply with 31 U.S.C. 3711(f) by:

(i) Taking reasonable action to locate the individual if a current address is not available;

(ii) If a current address is available, noticing the individual by certified mail, return receipt requested, that: The designated NASA official has reviewed the claim and determined that it is valid and overdue; within not less than 60 days after sending this notice, NASA intends to disclose to a consumer reporting agency the specific information to be disclosed under paragraph (b)(1) of this section; the individual may request a complete explanation of the claim, dispute the information in the records of NASA about the claim, and file for an administrative review or repeal of the claim or for reconsideration of the initial decision on the claim.

(3) If an administrative review or reconsideration is requested, the responsible official or designee shall refer the request to the appropriate NASA legal counsel for an impartial review and determination by counsel or designee based on the entire written record. If the reviewer cannot resolve the question of indebtedness based upon the available documentary evidence, verified written statements by the debtor or the responsible official may be requested on any pertinent matter not addressed by the available record.

(c) If the information is to be submitted to a consumer reporting agency, the responsible official shall obtain a verified statement from such agency which gives satisfactory assurances that the particular agency is complying with all laws of the United States related to providing consumer credit information; and thereafter ensure that the consumer reporting agency is promptly informed of any substantial change in the condition or amount of the claim, or, on request of such agency, promptly verify or correct information about the claim.

§ 1261.409 Contracting for collection services.

(a) When NASA determines that there is a need to contract for collection services, the following conditions must attach:

(1) The authority to resolve disputes, compromise claims, suspend or terminate collection action, and refer the matter for litigation must be retained by NASA.

(2) The contractor shall be subject to the Privacy Act of 1974, as amended, to the extent specified in 5 U.S.C. 552a(m), and to applicable Federal and State laws and regulations pertaining to debt collection practices—for example, the Fair Debt Collection Practices Act (15 U.S.C. 1692), and 26 U.S.C. 6103(p)(4) and applicable regulations of the Internal Revenue Service;

(3) The contractor must be required to account strictly for all amounts collected; and

(4) The contractor must agree to provide any data contained in its files relating to collection actions and related reports, current address of debtor, and reasonably current credit information upon returning an account to NASA for subsequent referral to the Department of Justice for litigation.

(b) Funding of collection service contracts:

(1) NASA may fund a collection service contract on a fixed-fee basis—that is, payment of a fixed fee determined without regard to the amount actually collected under the contract. However, such contract may be entered into only if and to the extent provided in the appropriation act or other legislation, except that this requirement does not apply to the use of a revolving fund authorized by statute. Accordingly, payment of the fixed-fee must be charged to available agency appropriations. See 4 CFR 102.6(b) (1) and (3).

(2) NASA may also fund a collection service contract on a contingent-fee basis—that is, by including a provision in the contract permitting the contractor to deduct its fee from amounts collected under the contract. The fee should be based on a percentage of the amount collected, consistent with prevailing commercial practice. See 4 CFR 102.6(b)(2).

(3) Except as authorized under paragraph (b)(2) of this section, or unless otherwise specifically provided by law, NASA must deposit all amounts recovered under collection service contracts (or by NASA employees on behalf of the agency) in the Treasury Department as miscellaneous receipts pursuant to 31 U.S.C. 3302. See 4 CFR 102.6(b)(4).

§ 1261.410 Suspension or revocation of license or eligibility; liquidation of collateral.

(a) In seeking the collection of statutory penalties, forfeitures, or debts provided for as an enforcement aid or for compelling compliance, NASA will give serious consideration to the suspension or revocation of licenses or other privileges for any inexcusable, prolonged, or repeated failure of a debtor to pay such a claim. In the case of a contractor under 48 CFR Chapter 18, NASA will comply with the debarment, suspension, and ineligibility requirements of the NASA Federal Acquisition Regulation Supplement (NASA/FAR Supplement) at 48 CFR 1809.4. Likewise, in making, guaranteeing, insuring, acquiring, or participating in loans, NASA will give serious consideration to suspending or disqualifying any lender, contractor, broker, borrower, or other debtor from doing further business with it or engaging in programs sponsored by it if such a debtor fails to pay its debts to the Government within a reasonable time. The failure of any surety to honor its obligations in accordance with 31 U.S.C. 9305 must be reported to the Treasury Department at once. Notification that a surety's certificate of authority to do business with the Federal Government has been revoked or forfeited by the Treasury Department will be forwarded by that Department to all interested agencies.

(b) If NASA is holding security or collateral which may be liquidated and the proceeds applied on debts due it through the exercise of a power of sale in the security instrument or a nonjudicial foreclosure, it should do so by such procedures if the debtor fails to pay the debt within a reasonable time after demand, unless the cost of disposing of the collateral will be disproportionate to its value or special circumstances require judicial foreclosure. NASA will provide the debtor with reasonable notice of the sale, an accounting of any surplus proceeds, and any other procedures required by applicable contract or law. Collection from other sources, including liquidation of security or collateral, is not a prerequisite to requiring payment by a surety or insurance concern unless such action is expressly required by statute or contract.

§ 1261.411 Collection in installments.

(a) Whenever feasible, and except as otherwise provided by law, debts owed to the United States, together with interest penalties, and administrative costs as required by § 1261.412, should be collected in full in one lump sum. This is true whether the debt is being collected by administrative offset or by another method, including voluntary payment. However, if the debtor is financially unable to pay the indebtedness in one lump sum, payment may be accepted in regular installments. Debtors who represent that they are unable to pay the debt in one lump sum must submit financial statements. If NASA agrees to accept payment in regular installments, it will obtain a legally enforceable written agreement from the debtor which specifies all of the terms of the arrangement and which contains a provision accelerating the debt in the event the debtor defaults. The size and frequency of installment payments should bear a reasonable relation to the size of the debt and the debtor's ability to pay. If possible, the installment payments should be sufficient in size and frequency to liquidate the Government's claim in not more than 3 years. Installment payments of less than $50 per month should be accepted only if justifiable on the grounds of financial hardship or for some other reasonable cause. If the claim is unsecured, an executed confess-judgment note, comparable to the Department of Justice Form USA–70a, should be obtained from a debtor when the total amount of the deferred installments will exceed $750. Such notes may be sought when an unsecured obligation of a lesser amount is involved. When attempting to obtain confess-judgment notes, the debtor should be provided with written explanation of the consequences of signing the note, and documentation should be maintained sufficient to demonstrate that the debtor has signed the note knowingly and voluntarily. Security for deferred payments other than a confess-judgment note may be accepted in appropriate cases. NASA, at its option, may accept installment payments notwithstanding the refusal of a debtor to execute a confess-judgment note or to give other security.

(b) If the debtor owes more than one debt and designates how a voluntary installment payment is to be applied as among those debts, that designation must be followed. If the debtor does not designate the application of the payment, agencies should apply payments to the various debts in accordance with the best interests of the United States, as determined by the facts and circumstances of the particular case, paying special attention to applicable statutes of limitations.

§ 1261.412 Interest, penalties, and administrative costs.

(a) Pursuant to 31 U.S.C. 3717, NASA shall assess interest, penalties, and administrative costs on debts owed to the United States. Before assessing these charges, NASA must mail or hand deliver a written notice to the debtor explaining the requirements concerning the charges (see § 1261.407(b)).

(b) Interest shall accrue from the date on which notice of the debt and the interest requirements is first mailed or hand delivered to the debtor (on or after October 25, 1982), using the most current address that is available to the agency. If an "advance billing" procedure is used—that is, a bill is mailed before the debt is actually owed—it can include the required interest notification in the advance billing, but interest may not start to accrue before the debt is actually owed. Designated officials should exercise care to ensure that the notices required by this section are dated and mailed or hand delivered on the same day.

(c) The rate of interest assessed shall be the rate of the current value of funds to the United States Treasury (i.e., the Treasury tax and loan account rate), as prescribed and published by the Secretary of the Treasury in the **Federal Register** and the Treasury Fiscal Requirements Manual Bulletins annually or quarterly, in accordance with 31 U.S.C. 3717. NASA may assess a higher rate of interest if it reasonably determines that a higher rate is necessary to protect the interests of the United States. The rate of interest, as initially assessed, shall remain fixed for the duration of the indebtedness, except that where a debtor has defaulted on a repayment agreement and seeks to enter into a new agreement, NASA may set a new interest rate which reflects the current value of funds to the Treasury Department at the time the new agreement is executed. Interest should not be assessed on interest, penalties, or administrative costs required by this section. However, if the debtor defaults on a previous repayment agreement, charges which accrued but were not collected under the defaulted agreement shall be added to the principal to be paid under a new repayment agreement.

(d) NASA shall assess against a debtor charges to cover administrative costs incurred as a result of a delinquent debt—that is, the additional costs incurred in processing and handling the debt because it became delinquent as defined in § 1261.401(b). Calculations of administrative costs should be based upon actual costs incurred or upon cost analyses establishing an average of actual additional costs incurred by the agency in processing and handling claims against other debtors in similar stages of delinquency. Administrative costs may include costs incurred in obtaining a credit report or in using a private debt collector, to the extent they are attributable to delinquency.

(e) NASA shall assess a penalty charge, not to exceed 6 percent a year, on any portion of a debt that is delinquent as defined in § 1261.401(b) for more than 90 days. This charge need not be calculated until the 91st day of delinquency, but shall accrue from the date that the debt became delinquent.

(f) When a debt is paid in partial or installment payments, amounts received by the agency shall be applied first to outstanding penalty and administrative cost charges, second to accrued interest, and third to outstanding principal.

(g) NASA must waive the collection of interest on the debt or any portion of the debt which is paid within 30 days after the date on which interest began to accrue. NASA may extend this 30-day period, on a case-by-case basis, if it reasonably determines that such action is appropriate. Also, NASA may waive, in whole or in part, the collection of interest, penalties, and/or administrative costs (assessed under this section) under the criteria specified in § 1261.414 relating to the compromise of claims (without regard to the amount of the debt), or if NASA determines that collection of these charges would be against equity and good conscience or not in the best interests of the United States. See 4 CFR 101.13(g). Such optional waivers should be handled on a case-by-case basis, in consultation with officials designated under § 1261.403. Examples of situations in which NASA may consider waiving interest and other related charges are:

(1) Pending consideration of a request for reconsideration or administrative review;

(2) Acceptance of an installment plan or other compromise agreement, where there is no indication of lack of good faith on the part of the debtor in not repaying the debt, and the debtor has provided substantiating information of inability to pay or other unavoidable hardship which reasonably prevented the debt from being repaid.

(h) Where a mandatory waiver or review statute applies, interest and related charges may not be assessed for those periods during which collection action must be suspended under § 1261.416(c)(3).

(i) *Exemptions.* (1) The provisions of 31 U.S.C. 3717 do not apply:

(i) To debts owed by any State or local government;

(ii) To debts arising under contracts which were executed prior to, and were in effect on (i.e., were not completed as of) October 25, 1982;

(iii) To debts where an applicable statute, regulation required by statute, loan agreement, or contract either prohibits such charges or explicitly fixes the charges that apply to the debts involved; or

(iv) Debts arising under the Social Security Act, the Internal Revenue Code of 1954, or the tariff laws of the United States.

(2) NASA may, however, assess interest and related charges on debts which are not subject to 31 U.S.C. 3717 to the extent authorized under the common law or other applicable statutory authority.

§ 1261.413 Analysis of costs; automation; prevention of overpayments, delinquencies, or defaults.

The Office of the NASA Comptroller will:

(a) Issue internal procedures to provide for periodic comparison of costs incurred and amounts collected. Data on costs and corresponding recovery rates for debts of different types and in various dollar ranges should be used to compare the cost effectiveness of alternative collection techniques, establish guidelines with respect to points at which costs of further collection efforts are likely to exceed recoveries, and assist in evaluating offers in compromise.

(b) Consider the need, feasibility, and cost effectiveness of automated debt collection operation.

(c) Establish internal controls to identify causes, if any, of overpayments, delinquencies, and defaults, and establish procedures for corrective actions as needs dictate.

§ 1261.414 Compromise of claims.

(a) Designated NASA officials (see § 1261.402 and § 1261.403) may compromise claims for money or property arising out of the activities of the agency where the claim, exclusive of interest, penalties, and administrative costs, does not exceed $20,000, prior to the referral of such claims to the General Accounting Office, or to the Department of Justice for litigation. The Comptroller General may exercise such compromise authority with respect to claims referred to the General Accounting Office (GAO) prior to their further referral for litigation. Only the Comptroller General may effect the compromise of a claim that arises out of an exception made by the GAO in the account of an accountable officer, including a claim against the payee, prior to its referral by the GAO for litigation.

(b) When the claim, exclusive of interest, penalties, and administrative costs, exceeds $20,000, the authority to accept the compromise rests solely with the Department of Justice. NASA should evaluate the offer, using the factors set forth in paragraphs (c) through (f) of this section, and may recommend compromise for reasons under one, or more than one, of those paragraphs. If NASA then wishes to accept the compromise, it must refer the matter to the Department of Justice, using the Claims Collection Litigation Report. See § 1261.417(e) or 4 CFR 105.2(b). Claims for which the gross amount is over $200,000 shall be referred to the Commercial Litigation Branch, Civil Division, Department of Justice, Washington, DC 20530. Claims for which the gross original amount is $200,000 or less shall be referred to the United States Attorney in whose judicial district the debtor can be found. The referral should specify the reasons for the agency's recommendation. If NASA has a debtor's firm written offer of compromise which is substantial in amount and the agency is uncertain as to whether the offer should be accepted, it may refer the offer, the supporting data, and particulars concerning the claim to the General Accounting Office or to the Department of Justice. The General Accounting Office or the Department of Justice may act upon such an offer or return it to the agency with instructions or advice. If NASA wishes to reject the compromise, GAO or Department of Justice approval is not required.

(c) A claim may be compromised pursuant to this section if NASA cannot collect the full amount because of the debtor's inability to pay the full amount within a reasonable time, or the refusal of the debtor to pay the claim in full and the Government's inability to enforce collection in full within a reasonable time by enforced collection proceedings. In determining the debtor's inability or refusal to pay, the following factors, among others, may be considered:

(1) Age and health of the debtor;

(2) Present and potential income;

(3) Inheritance prospects;

(4) The possibility that assets have been concealed or improperly transferred by the debtor;

(5) The availability of assets or income which may be realized by enforced collection proceedings; and

(6) The applicable exemptions available to the debtor under State and Federal law in determining the Government's ability to enforce collection. Uncertainty as to the price which collateral or other property will bring at forced sale may properly be considered in determining the Government's ability to enforce collection. The compromise should be for an amount which bears a reasonable relation to the amount which can be recovered by enforced collection procedures, having regard for the exemptions available to the debtor and the time which collection will take.

(d) A claim may be compromised if there is a real doubt concerning the Government's ability to prove its case in court for the full amount claimed, either because of the legal issues involved or a bona fide dispute as to the facts. The amount accepted in compromise in such cases should fairly reflect the probability of prevailing on the legal question involved, the probabilities with respect to full or partial recovery of a judgment, paying due regard to the availability of witnesses and other evidentiary support for the Government claim, and related pragmatic considerations. In determining the litigative risks involved, proportionate weight should be given to the probable amount of court costs and attorney fees pursuant to the Equal Access to Justice Act which may be assessed against the Government if it is unsuccessful in litigation. See 28 U.S.C. 2412.

(e) A claim may be compromised if the cost of collecting the claim does not justify the enforced collection of the full amount. The amount accepted in compromise in such cases may reflect an appropriate discount for the administrative and litigative costs of collection, paying heed to the time which it will take to effect collection. Costs of collecting may be a substantial factor in the settlement of small claims, but normally will not carry great weight in the settlement of large claims. In determining whether the cost of collecting justifies enforced collection of the full amount, it is legitimate to consider the positive effect that enforced collection of some claims may have on the collection of other claims. Since debtors are more likely to pay when first requested to do so if an agency has a policy of vigorous collection of all claims, the fact that the cost of collection of any one claim may exceed the amount of the claim does not necessarily mean that the claim should be compromised. The practical benefits of vigorous collection of a small claim may include a demonstration to other debtors that resistance to payment is not likely to succeed.

(f) *Enforcement policy.* Statutory penalties, forfeitures, or debts established as an aid to enforcement and to compel compliance may be compromised pursuant to this part if the agency's enforcement policy in terms of deterrence and securing compliance, both present and future, will be adequately served by acceptance of the sum to be agreed upon. Mere accidental or technical violations may be dealt with less severely than willful and substantial violations.

(g) Compromises payable in installments are to be discouraged. However, if payment of a compromise by installments is necessary, a legally enforceable agreement for the reinstatement of the prior indebtedness less sums paid thereon and acceleration of the balance due upon default in the payment of any installment should be obtained, together with security in the manner set forth in § 1261.411, in every case in which this is possible.

(h) If the agency's files do not contain reasonably up-to-date credit information as a basis for assessing a compromise proposal, such information may be obtained from the individual debtor by obtaining a statement executed under penalty of perjury showing the debtor's assets and liabilities, income, and expenses. Forms such as Department of Justice Form OBD-500 or OBD-500B may be used for this purpose. Similar data may be obtained from corporate debtors using a form such as Department of Justice Form OBD-500C or by resort to balance sheets and such additional data as seems required. Samples of the Department of Justice forms are available from the Office of the NASA General Counsel. Neither a percentage of a debtor's profits nor stock in a debtor corporation will be accepted in compromise of a claim. In negotiating a compromise with a business concern, consideration should be given to requiring a waiver of the tax-loss-carry-back rights of the debtor.

(i) *Joint and several liability.* When two or more debtors are jointly and severally liable, collection action will not be withheld against one such debtor until the other or others pay their proportionate shares. NASA will not attempt to allocate the burden of paying such claims as between the debtors but will proceed to liquidate the indebtedness as quickly as possible. Care should be taken that a compromise agreement with one such debtor does not release the agency's claim against the remaining debtors. The amount of a compromise with one such debtor shall not be considered a precedent or as morally binding in determining the amount which will be required from other debtors jointly and severally liable on the claim.

§ 1261.415 Execution of releases.

Upon receipt of full payment of a claim, or the amount in compromise of a claim as determined pursuant to § 1261.414, the official designated in § 1261.402 will prepare and execute, on behalf of the United States, an appropriate release, which shall include the provision that it shall be void if procured by fraud, misrepresentation, the presentation of a false claim, or mutual mistake of fact.

§ 1261.416 Suspending or terminating collection action.

(a) The standards set forth in this section apply to the suspension or termination of collection action pursuant to 31 U.S.C. 3711(a)(3) on claims which do not exceed $20,000, exclusive of interest, penalties, and administrative costs, after deducting the amount of partial payments or collections, if any. NASA may suspend or terminate collection action under this part with respect to claims for money or property arising out of activities of the agency, prior to the referral of such claims to the General Accounting Office or to the Department of Justice for litigation. The Comptroller General (or designee) may exercise such authority with respect to claims referred to the General Accounting Office prior to their further referral for litigation.

(b) If, after deducting the amount of partial payments or collections, if any, a claim exceeds $20,000, exclusive of interest, penalties, and administrative costs, the authority to suspend or terminate rests solely with the Department of Justice. If the designated official believes suspension or termination may be appropriate, the matter should be evaluated using the factors set forth in paragraphs (c) and (d) of this section. If the agency concludes that suspension or termination is appropriate, it must refer the matter, with its reasons for the recommendation, to the Department of Justice, using the Claims Collection Litigation Report. See § 1261.417(e) or 4 CFR 105.2(b). If NASA decides not to suspend or terminate collection action on the claim, Department of Justice approval is not required; or if it determines that its claim is plainly erroneous or clearly without legal merit, it may terminate collection action regardless of the amount involved, without the need for Department of Justice concurrence.

(c) *Suspension of collection activity*—(1) *Inability to locate debtor.* Collection action may be suspended temporarily on a claim when the debtor cannot be located after diligent effort and there is reason to believe that future collection action may be sufficiently productive to justify periodic review and action on the claim, with due consideration for the size and amount which may be realized thereon. The following sources may be of assistance in locating missing debtors: Telephone directories; city directories; postmasters; drivers' license records; automobile title and registration records; state and local government agencies; the Internal Revenue Service (see 4 CFR 102.18); other Federal agencies; employers, relatives, friends; credit agency skip locate reports, and credit bureaus. Suspension as to a particular debtor should not defer the early liquidation cf security for the debt. Every reasonable effort should be made to locate missing debtors sufficiently in advance of the bar of the applicable statute of limitations, such as 28 U.S.C. 2415, to permit the timely filing of suit if such action is warranted. If the missing debtor has signed a confess-judgment note and is in default, referral of the note for the entry of judgment should not be delayed because of the debtor's missing status.

(2) *Financial condition of debtor.* Collection action may also be suspended temporarily on a claim when the debtor owns no substantial equity in realty or personal property and is unable to make payments on the Government's claim or effect a compromise at the time, but the debtor's future prospects justify retention of the claim for periodic review and action, and:

(i) The applicable statute of limitations has been tolled or started running anew; or

(ii) Future collection can be effected by offset, notwithstanding the statute of limitations, with due regard to the 10-year limitation prescribed by 31 U.S.C. 3716(c)(1); or

(iii) The debtor agrees to pay interest on the amount of the debt on which collection action will be temporarily suspended, and such temporary suspension is likely to enhance the debtor's ability to fully pay the principle amount of the debt with interest at a later date.

(3) Request for waiver or administrative review. If the statute under which waiver or administrative review is sought is "mandatory," that is, if it prohibits the agency from collecting the debt prior to the agency's consideration of the request for waiver or review (see *Califano* v. *Yamasaki,* 422 U.S. 682 (1979)), then collection action must be suspended until either: The agency has considered the request for waiver/review; or the applicable time limit for making the waiver/review request, as prescribed in a written notice, has expired and the debtor, upon notice, has not made such a request. If the applicable waiver/review statute is "permissive," that is, if it does not require all requests for waiver/review to be considered, and if it does not prohibit collection action pending consideration of a waiver/request (for example, 5 U.S.C. 5584), collection action may be suspended pending agency action on a waiver/review request based upon appropriate consideration, on a case-by-case basis, as to whether:

(i) There is a reasonable possibility that waiver will be granted or that the debt (in whole or in part) will be found not owing from the debtor;

(ii) The Government's interests would be protected, if suspension were granted, by reasonable assurance that the debt could be recovered if the debtor does not prevail; and

(iii) Collection of the debt will cause undue hardship.

(4) If the applicable statutes and regulations would not authorize refund by the agency to the debtor of amounts collected prior to agency consideration of the debtor's waiver/review request (in the event the agency acts favorably on it), collection action should ordinarily be suspended, without regard to the factors specified for permissive waivers, unless it appears clear, based on the request and the surrounding circumstances, that the request is frivolous and was made primarily to delay collection. See 4 CFR 104.2.

(d) *Termination of collection activity.* Collection activity may be terminated and NASA may close its file on the claim based on the following:

(1) Inability to collect any substantial amount. Collection action may be terminated on a claim when it becomes clear that the Government cannot collect or enforce collection of any significant sum from the debtor, having due regard for the judicial remedies available to the Government, the debtor's future financial prospects, and the exemptions available to the debtor under State and Federal law. In determining the debtor's inability to pay, the following factors, among others, may be considered: Age and health of the debtor; present and potential income; inheritance prospects; the possibility that assets have been concealed or improperly transferred by the debtor; the availability of assets or income which may be realized by enforced collection proceedings.

(2) *Inability to locate debtor.* Collection action may be terminated on a claim when the debtor cannot be located, and either:

(i) There is no security remaining to be liquidated; or

(ii) The applicable statute of limitations has run and the prospects of collecting by offset, notwithstanding the bar of the statute of limitations, are too remote to justify retention of the claim.

(3) *Cost will exceed recovery.* Collection action may be terminated on a claim when it is likely that the cost of further collection action will exceed the amount recoverable thereby.

(4) *Claim legally without merit.* Collection action should be terminated immediately on a claim whenever it is determined that the claim is legally without merit.

(5) *Claim cannot be substantiated by evidence.* Collection action should be terminated when it is determined that the evidence necessary to prove the claim cannot be produced or the necessary witnesses are unavailable and efforts to reduce voluntary payment are unavailing.

(e) *Transfer of claim.* When NASA has doubt as to whether collection action should be suspended or terminated on a claim, it may refer the claim to the General Accounting Office for advice. When a significant enforcement policy is involved in reducing a statutory penalty or forfeiture to judgment, or recovery of a judgment is a prerequisite to the imposition of administrative sanctions, such as the suspension or revocation of a license or the privilege of participating in a Government sponsored program, NASA may refer such a claim for litigation even though termination of collection activity might otherwise be given consideration under paragraphs (d)(1) and (2) of this section. Claims on which NASA holds a judgment by assignment or otherwise will be referred to the Department of Justice for further action if renewal of the judgment lien or enforced collection proceedings are justified under the criteria discussed in this section.

§ 1261.417 Referral to Department of Justice (DJ) or General Accounting Office (GAO).

(a) *Prompt referral.* Except as provided in paragraphs (b) and (c) of this section, claims on which aggressive collection action has been taken in accordance with § 1261.406 and which cannot be compromised, or on which collection action cannot be suspended or terminated, in accordance with § 1261.414 and § 1261.416, shall be promptly referred to the Department of Justice for litigation.

(1) Claims for which the gross original amount is over $200,000 shall be referred to the Commercial Litigation Branch, Civil Division, Department of Justice, Washington, DC 20530.

(2) Claims for which the gross original amount is $200,000 or less shall be referred to the United States Attorney in whose judicial district the debtor can be found. Referrals should be made as early as possible, consistent with aggressive agency collection action and the observance of the regulations contained in this subpart, and in any event, well within the period for bringing a timely suit aqainst the debtor. Ordinarily, referrals should be made within l year of the agency's final determination of the fact and the amount of the debt.

(3) *Minimum amount.* NASA is not to refer claims of less than $600, exclusive of interest, penalties, and administrative costs, for litigation unless:

(i) Referral is important to a significant enforcement policy; or

(ii) The debtor not only has the clear ability to pay the claim but the Government can effectively enforce payment, having due regard for the exemptions available to the debtor under State and Federal law and the judicial remedies available to the Government.

(b) Claims arising from audit exceptions taken by the GAO to payments made by agencies must be referred to the GAO for review and approval prior to referral to the Department of Justice for litigation, unless NASA has been granted an exception by the GAO. Referrals shall comply with instructions, including monetary limitations, contained in the GAO Policy and Procedures Manual for Guidance to Federal Agencies and paragraphs (e) and (f) of this section.

(c) When the merits of the claim, the amount owed on the claim, or the propriety of acceptance of a proposed compromise, suspension, or termination are in doubt, the designated official should refer the matter to the General Accounting Office for resolution and instructions prior to proceeding with collection action and/or referral to the Department of Justice for litigation.

(d) Once a claim has been referred to GAO or to the Department of Justice pursuant to this section, NASA shall refrain from having any contact with the debtor about the pending claim and shall direct the debtor to GAO or to the DJ, as appropriate, when questions concerning the claim are raised by the debtor. GAO or the DJ, as appropriate, shall be immediately notified by NASA of any payments which are received from the debtor subsequent to referral of a claim under this section.

(e) *Claims Collection Litigation Report (CCLR).* Unless an exception has been granted by the Department of Justice in consultation with the General Accounting Office, the Claims Collection Litigation Report (CCLR), which was officially implemented by NASA, effective March 1, 1983, shall be used with all referrals of administratively uncollectible claims. As required by the CCLR, the following information must be included:

(1) *Report of prior collection actions.* A checklist or brief summary of the actions previously taken to collect or compromise the claim. If any of the administrative collection actions have been omitted, the reason for their omission must be provided. GAO, the United States Attorney, or the Civil Division of the Department of Justice may return claims at their option when there is insufficient justification for the omission of one or more of the

administrative collection actions enumerated in this subpart (see 4 CFR Part 102).

(2) *Current address of debtor.* The current address of the debtor, or the name and address of the agent for a corporation upon whom service may be made. Reasonable and appropriate steps will be taken to locate missing parties in all cases. Referrals to the Department of Justice for the commencement of foreclosure of other proceedings, in which the current address of any party is unknown, will be accompanied by a listing of the prior known addresses of such party and a statement of the steps taken to locate that party.

(3) *Credit data.* Reasonably current credit data which indicates that there is a reasonable prospect of effecting enforced collection from the debtor, having due regard for the exemptions available to the debtor under State and Federal law and the judicial remedies available to the Government. Such credit data may take the form of:

(i) A commercial credit report;

(ii) An agency investigative report showing the debtor's assets, liabilities, income, and expenses;

(iii) The individual debtor's own financial statement executed under penalty of perjury reflecting the debtor's assets, liabilities, income, and expenses; or

(iv) An audited balance sheet of a corporate debtor.

(4) Reasons for credit data omissions. The credit data may be omitted if:

(i) A surety bond is available in an amount sufficient to satisfy the claim in full;

(ii) The forced sale value of the security available for application to the Government's claim is sufficient to satisfy the claim in full;

(iii) NASA wishes to liquidate loan collateral through judicial foreclosure but does not desire a deficiency judgment;

(iv) The debtor is in bankruptcy or receivership;

(v) The debtor's liability to the Government is fully covered by insurance, in which case NASA will furnish such information as it can develop concerning the identity and address of the insurer and the type and amount of insurance coverage; or

(vi) The status of the debtor is such that credit data is not normally available or cannot reasonably be obtained, for example, a unit of State or local government.

(f) *Preservation of evidence.* Care will be taken to preserve all files, records, and exhibits on claims referred or to be referred to the Department of Justice for litigation. Under no circumstances should original documents be sent to the Department of Justice or the United States Attorney without specific prior approval to do so. Copies of relevant documents should be sent whenever necessary.

Subpart 1261.5—Administrative Offset of Claims.

§ 1261.500 Scope of subpart.

(a) This subpart applies to collection of claims by administrative offset under section 5 of the Federal Claims Collection Act of 1966 as amended by the Debt Collection Act of 1982 (31 U.S.C. 3716), other statutory authority, or the common law; it does not include "Salary Offset," which is governed by Subpart 1261.6, infra. Consistent with 4 CFR 102.3, collection by administrative offset will be undertaken by NASA on all liquidated or certain in amount claims in every instance in which such collection is determined to be feasible and not otherwise prohibited.

(b) Whether collection by administrative offset is feasible is a determination to be made by NASA on a case-by-case basis, in the exercise of sound discretion. NASA will consider not only whether administrative offset can be accomplished, both practically and legally, but also whether offset is best suited to further and protect all of the Government's interests. In appropriate circumstances, NASA may give due consideration to the debtor's financial condition; or whether offset would tend to substantially interfere with or defeat the purposes of the program authorizing the payments against which offset is contemplated. For example, under a grant program in which payments are made in advance of the grantee's performance, offset will normally be inappropriate.

(c) NASA is not authorized by 31 U.S.C. 3716 to use administrative offset with respect to:

(1) Debts owed by any State or local Government;

(2) Debts arising under or payments made under the Social Security Act, the Internal Revenue Code of 1954, or the tariff laws of the United States; or

(3) Any case in which collection of the type of debt involved by administrative offset is explicitly provided for or prohibited by another statute. However, unless otherwise provided by contract or law, debts or payments which are not subject to administrative offset under 31 U.S.C. 3716 may be collected by administrative offset under the common law or other applicable statutory authority.

§ 1261.501 Definition.

"Administrative offset"—the term, as defined in 31 U.S.C. 3701(a)(1), means "withholding money payable by the United States Government to, or held by the Government for, a person to satisfy a debt the person owes the Government."

§ 1261.502 Notification procedures.

(a) Before collecting any claims through administrative offset, a 30-day written notice must be sent to the debtor by certified mail, return receipt requested. The notice must include:

(1) The nature and amount of the debt;

(2) NASA's intention to collect by administrative offset; and

(3) An explanation of the debtor's rights under 31 U.S.C. 3716(a), or other relied upon statutory authority, which must include a statement that the debtor has the opportunity, within the 30-day notice period, to:

(i) Inspect and copy records of NASA with respect to the debt;

(ii) Request a review by NASA of its decision related to the claim; and

(iii) Enter into a written agreement with the designated official (see § 1261.402) to repay the amount of the claim. However, sound judgment should be exercised in determining whether to accept a repayment agreement in lieu of offset. The determination should balance the Government's interest in collecting the debt against fairness to the debtor. If the debt is delinquent and the debtor has not disputed its existence or amount, NASA should accept a repayment agreement in lieu of offset only if the debtor is able to establish that offset would result in undue financial hardship or would be against equity and good conscience.

(b) NASA may effect administrative offset against a payment to be made to a debtor prior to the completion of the procedures required by paragraph (a) of this section if:

(1) Failure to take the offset would substantially prejudice the Government's ability to collect the debt; and

(2) The time before the payment is to be made does not reasonably permit the completion of those procedures. Such prior offset must be promptly followed by the completion of those procedures. Amounts recovered by offset but later found not to be owed to the Government shall be promptly refunded.

(3) In cases where the procedural requirements of paragraph (a) of this section had previously been provided to the debtor in connection with the same debt under some other statutory or regulatory authority, such as pursuant to

a notice of audit disallowance or salary offset under § 1261.603, the agency is not required to duplicate those requirements before taking administrative offset.

§ 1261.503 Agency records inspection; hearing or review.

(a) NASA shall provide the debtor with a reasonable opportunity for an "oral hearing" when:

(1) An applicable statute authorizes or requires the agency to consider waiver of the indebtedness involved, the debtor requests waiver of the indebtedness, and the waiver determination turns on an issue of credibility or veracity; or

(2) The debtor requests reconsideration of the debt and the agency determines that the question of the indebtedness cannot be resolved by review of the documentary evidence, for example, when the validity of the debt turns on an issue of credibility or veracity. Unless otherwise required by law, an oral hearing under this section is not required to be a formal evidentiary-type hearing, although significant matters discussed at the hearing should be carefully documented. See 4 CFR 102.3(c)(1). Such hearing may be an informal discussion/interview with the debtor, face-to-face meeting between debtor and cognizant NASA personnel, or written formal submission by the debtor and response by the NASA cognizant personnel with an opportunity for oral presentation. The hearing will be conducted before or in the presence of an official designated by the NASA General Counsel or designee on a case-by-case basis. The decision of the reviewing/hearing official should be communicated in writing (no particular form is required) to the affected parties, and will constitute the final administrative decision of the agency.

(b) Paragraph (a) of this section does not require an oral hearing with respect to debt collection systems in which determinations of indebtedness or waiver rarely involve issues of credibility or veracity and NASA has determined that review of the written record is ordinarily an adequate means to correct prior mistakes. In administering such a system, the agency is not required to sift through all of the requests received in order to accord oral hearings in those few cases which may involve issues of credibility or veracity. See 4 CFR 102.3(c)(2).

(c) In those cases where an oral hearing is not required or granted, NASA will nevertheless accord the debtor a "paper hearing"—that is, the agency will make its determination on the request for waiver or reconsideration based upon a review of the available written record. See 4 CFR 102.3(c)(3). In such case, the responsible official or designee shall refer the request to the appropriate NASA legal counsel for review and determination by counsel or designee.

(d) A request to inspect and/or copy the debtor's own debt records or related files, and/or for a hearing or review accompanied by a statement of the basis or grounds for such hearing or review, must be submitted within 30 calendar days of the receipt of the written notice under § 1261.502(a). A reasonable time to inspect and copy records will be provided during official working hours, but not to exceed 5 business days, unless a verified statement showing good cause requires a longer period. Any suspension of collection or other charges during the period of the inspection, or hearing or review, shall comply with § 1261.412 and § 1261.416. Requests for or consideration of compromising the debt must comply with § 1261.414.

§ 1261.504 Interagency requests.

(a) Requests to NASA by other Federal agencies for administrative offset should be in writing and forwarded to the Office of the NASA Comptroller, NASA Headquarters, Washington, DC 20546.

(b) Requests by NASA to other Federal agencies holding funds payable to the debtor should be in writing and forwarded, certified return receipt, as specified by that agency in its regulations; however, if such rule is not readily available or identifiable, the request should be submitted to that agency's office of legal counsel with a request that it be processed in accordance with their internal procedures.

(c) Requests to and from NASA should be processed within 30 calendar days of receipt. If such processing is impractical or not feasible, notice to extend the time period for another 30 calendar days should be forwarded 10 calendar days prior to the expiration of the first 30-day period.

(d) Requests from or to NASA must be accompanied by a certification that the debtor owes the debt (including the amount) and that the provisions of (or comparable to) Subpart 1261.5 or Subpart 1261.6, as applicable, have been fully complied with. NASA will cooperate with other agencies in effecting collection.

§ 1261.505 Multiple debts.

When collecting multiple debts by administrative offset, NASA will apply the recovered amounts to those debts in accordance with the best interests of the United States, as determined by the facts and circumstances of the particular case, paying special attention to applicable statutes of limitations.

§ 1261.506 Limitation periods.

NASA may not initiate administrative offset to collect a debt under 31 U.S.C. 3716 more than 10 years after the Government's right to collect the debt first accrued, unless facts material to the Government's right to collect the debt were not known and could not reasonably have been known by the official or officials of the Government who were charged with the responsibility to discover and collect such debts. Determination of when the debt first accrued is to be made in accordance with existing law regarding the accrual of debts, such as under 28 U.S.C. 2415. See 4 CFR 102.3(b)(3).

§ 1261.507 Civil Service Retirement and Disability Fund.

(a) Unless otherwise prohibited by law, NASA may request that moneys which are due and payable to a debtor from the Civil Service Retirement and Disability Fund be administratively offset in reasonable amounts in order to collect in one full payment or a minimal number of payments debts owed to the United States by the debtor. Such requests shall be made to the appropriate officials of the Office of Personnel Management (OPM) in accordance with the OPM regulations (see 5 CFR 831.1801, *et seq.*).

(b) When making a request for administrative offset under paragraph (a) of this section, NASA shall include a written certification that:

(1) The debtor owes the United States a debt, including the amount of the debt;

(2) NASA has complied with the applicable statutes, regulations, and procedures of the Office of Personnel Management; and

(3) NASA has complied with the requirements of this Subpart 1261.5 which implements 4 CFR 102.3, including any required hearing or review.

(c) Once NASA has decided to request administrative offset under this section, the request should be made as soon as practical after completion of the applicable procedures in order that the Office of Personnel Management may identify and "flag" the debtor's account in anticipation of the time when the debtor requests or becomes eligible to receive payments from the Fund. This will satisfy any requirement that offset be initiated prior to expiration of the applicable statute of limitations. At such time as the debtor makes a claim for payments from the Fund, if at least a year has elapsed since the offset request was originally made, the debtor should be permitted to offer a satisfactory repayment plan in lieu of offset upon establishing that changed financial circumstances would render the offset unjust.

(d) If NASA collects part or all of the debt by other means before deductions are made or completed pursuant to paragraph (a) of this section, the designated official should act promptly to modify or terminate the agency's request to OPM for offset.

(e) OPM is not required or authorized by 4 CFR 102.4 to review the merits of NASA's determination with respect to:

(1) The amount and validity of the debt;

(2) Waiver under an applicable statute; or

(3) Provide or not provide an oral hearing.

§ 1261.508 Offset against a judgment.

Collection by offset against a judgment obtained by a debtor against the United States shall be accomplished in accordance with 31 U.S.C. 3728.

Subpart 1261.6—Collection by Offset From Indebted Government Employees

§ 1261.600 Purpose of subpart.

This subpart implements 5 U.S.C. 5514 in accordance with the OPM regulation and establishes the procedural requirements for recovering pre-judgment debts from the current pay account of an employee through what is commonly called salary offset, including a situation where NASA (the current paying agency) is not the employee's creditor agency. Salary offset to satisfy a judgment or a court determined debt is governed by section 124 of Pub. L. 97-276 (October 2, 1982), 5 U.S.C. 5514 *note*.

§ 1261.601 Scope of subpart.

(a) Coverage. This subpart applies to agencies and employees as defined in § 1261.602.

(b) Applicability. This subpart and 5 U.S.C. 5514 apply in recovering certain prejudgment debts by administrative offset except where the employee consents to the recovery, from the current pay account of an employee. Because it is an administrative offset, debt collection procedures for salary offset which are not specified in 5 U.S.C. 5514 and this subpart should be consistent with Subpart 1261.5.

(1) Excluded debts or claims. The procedures contained in this subpart do not apply to debts or claims arising under the Internal Revenue Code of 1954 as amended (26 U.S.C. 1 *et seq.*), the Social Security Act (42 U.S.C. 301 *et seq.*), or the tariff laws of the United States; or to any case where collection of a debt by salary offset is explicitly provided for or prohibited by another statute (e.g., travel advances in 5 U.S.C. 5705, employee training expenses in 5 U.S.C. 4108, and debts determined by a court as provided in 5 U.S.C. 5514 *note*).

(2) Waiver requests and claims to the General Accounting Office. This subpart does not preclude an employee from requesting waiver of a salary overpayment under 5 U.S.C. 5584, 10 U.S.C. 2774, or 32 U.S.C. 716, or in any way questioning the amount or validity of a debt by submitting a subsequent claim to the General Accounting Office in accordance with procedures prescribed by the General Accounting Office. Similarly, in the case of other types of debts, it does not preclude an employee from requesting waiver, if waiver is available under any statutory provision pertaining to the particular debt being collected.

§ 1261.602 Definitions.

For purposes of this subpart:

(a) "Agency" means:

(1) An Executive agency as defined in section 105 of title 5, United States Code, including U.S. Postal Service and the U.S. Postal Rate Commission;

(2) A military department as defined in section 102 of Title 5, United States Code;

(3) An agency or court in the judicial branch, including a court as defined in section 610 of Title 28, United States Code, the District Court for the Northern Mariana Islands, and the Judicial Panel on Multidistrict Litigation;

(4) An agency of the legislative branch, including the U.S. Senate and the U.S. House of Representatives; and

(5) Other independent establishments that are entities of the Federal Government.

(b) "Creditor agency" means the agency to which the debt is owed.

(c) "Debt" means an amount owed to the United States from sources which include loans insured or guaranteed by the United States and all other amounts due the United States from fees, leases, rents, royalties, services, sales of real or personal property, overpayments, penalties, damages, interest, fines and forfeitures (except those arising under the Uniform Code of Military Justice), and all other similar sources.

(d) "Disposable pay" means that part of current basic pay, special pay, incentive pay, retired pay, retainer pay, or in the case of an employee not entitled to basic pay, other authorized pay remaining after the deduction of any amount required by law to be withheld. NASA must exclude deductions listed in OPM's garnishment regulations at 5 CFR 581.105 (b) through (f) to determine disposable pay subject to salary offset.

(e) "Employee" means a current employee of an agency, including a current member of the Armed Forces or a Reserve of the Armed Forces (Reserves).

(f) "Paying agency" means the agency employing the individual and authorizing the payment of his or her current pay.

(g) "Salary offset" means an administrative offset to collect a debt under 5 U.S.C. 5514 by deduction(s) at one or more officially established pay intervals from the current pay account of an employee without his or her consent.

(h) "Waiver" means the cancellation, remission, forgiveness, or nonrecovery of a debt allegedly owed by an employee to an agency as permitted or required by 5 U.S.C. 8346(b), or any other law.

§ 1261.603 Procedures for salary offset.

If NASA is both the paying and creditor agency, the following requirements must be met before a deduction is made from the current pay account of an employee.

(a) *Written notice*. The employee must be sent a minimum of 30 days written notice, which specifies:

(1) The origin, nature and amount of the indebtedness, and the official to contact within the agency (ordinarily, the designated financial management official for the particular installation);

(2) The intention of the agency to initiate collection of the debt through salary offset by deductions from the employee's current disposable pay, stating the amount, frequency, proposed beginning date, and duration of intended deductions (the amount to be deducted for any period, without the consent of the employee, may not exceed 15 percent of disposable pay);

(3) An explanation of any interest, penalties, or administrative costs included in the amount, and that such assessment must be made unless excused in accordance with 14 CFR 1261.412;

(4) The right for an opportunity (which does not toll the running of the 30-day period) to inspect and copy NASA records relating to the debt or to request and receive (if reasonable) a copy of such records, provided that such opportunity must be exercised on or before the 15th day following receipt of the notice and can be conducted only during official working hours for a reasonable period of time not to exceed 5 working days;

(5) If not previously provided, the opportunity (under terms agreeable to NASA) to establish a schedule for the voluntary repayment of the debt or to enter into a written agreement to establish a schedule for repayment of the debt in lieu of offset. The agreement must be in writing, signed by both the employee and the authorized agency official (see 14 CFR 1261.402) and documented in NASA's files (see 14 CFR 1261.407(d));

(6) An opportunity for a hearing, as provided in paragraph (c) of this section, on the agency's determination concerning the existence and amount of the debt, and the terms of the repayment schedule (in the case of an employee whose repayment schedule is established other than by written agreement);

(7) The hearing request should be addressed to the Office of the NASA General Counsel or to the Office of Chief Counsel of the NASA installation involved, as appropriate; counsel's name and address will be as stated in the notice.

(8) Any other rights and remedies available to the employee under statutes or regulations governing the program for which the collection is being made; and

(9) Unless there are applicable contractual or statutory provisions to the contrary, that amounts paid on or deducted for the debt which are later waived or found not owed to the United States will be promptly refunded to the employee.

(b) *Exception to entitlement to written notice.* NASA is not required to comply with paragraph (a) of this section for any adjustment to pay arising out of an employee's election of coverage or a change in coverage under a Federal benefits program requiring periodic deductions from pay, if the amount to be recovered was accumulated over four pay periods or less.

(c) *Petition filing; hearing; decision and review.* The notice described in paragraph (a) of this section should include the following provisions, which may be copied and attached to the notice.

(1) The employee may petition for a hearing, but such petition must be in writing and received by NASA on or before the 15th day following receipt of the notice, and include a statement of the reasons for such hearing. No particular form is required, and a timely, legible letter request (with the stated reasons) will suffice; however, the employee must sign the petition and include with it, with reasonable specificity, all the supporting facts and evidence, including a list of the witnesses, if any.

(2) The petition should be addressed to the agency counsel designated in the notice, but the hearing will be conducted by an official not under the supervision or control of the NASA Administrator or by appointment of an administrative law judge. Notice of the name and address of the hearing official will be sent to the employee within 10 days of receipt of petition. A hearing official will be designated on a case-by-case basis under reimbursable arrangements or through direct payment as events may warrant.

(3) The timely filing of the petition will stay the commencement of collection; and the final decision on the hearing will be issued at the earliest practicable date, but not later than 60 days after the filing of the petition requesting the hearing unless the employee requests and the hearing official grants a delay in the proceedings.

(4) Any knowingly false or frivolous statements, representations, or evidence may subject the employee to:

(i) Disciplinary procedures appropriate under Chapter 75 of Title 5, United States Code, 5 CFR Part 752, or any other applicable statutes or regulations;

(ii) Penalties under the False Claims Act, sections 3729 through 3731 of Title 31, United States Code, or any other applicable statutory authority; or

(iii) Criminal penalties under sections 286, 287, 1001, and 1002 of Title 18, United States Code, or any other applicable statutory authority.

(5) The form and content of the hearing will be determined by the hearing official depending on the nature and complexity of the transaction giving rise to the debt. The hearing is not an adversarial adjudication, and need not take the form of an evidentiary hearing. However, depending on the particular facts and circumstances, the hearing may be analogous to a fact-finding proceeding with oral presentations; or an informal meeting with or interview of the employee; or formal written submissions, with an opportunity for oral presentation, and decision based on the available written record. Ordinarily, hearings may consist of informal conferences before the hearing official in which the employee and agency officials will be given full opportunity to present evidence, witnesses, and argument. The employee may represent himself or herself or be represented by an individual of his or her choice. The hearing official must maintain a summary record of the hearing provided under this subpart. For additional guidance, see 14 CFR 1261.503.

(6) The decision will be in writing and state:

(i) The facts purported to evidence the nature and origin of the alleged debt;

(ii) The respective positions of the agency and of the employee;

(iii) The hearing official's analysis (which address the employee's/agency's grounds, the amount and validity of the alleged debt, and, where applicable, the repayment schedule); and

(iv) The hearing official's findings and conclusions.

(7) The hearing official will notify the employee, the NASA Comptroller or designee, and the designated agency counsel of the decision.

(8) The decision of the hearing official shall constitute the Final Administrative Decision of the agency.

(d) Petition after time expiration. No petition for a hearing is to be granted if made after the 15-day period prescribed in paragraph (c)(1) of this section, unless the employee can show to the satisfaction of the agency official indicated on the notice that the delay was caused by circumstances beyond his or her control (for example, proven incapacity, illness, or hospitalization), or that the agency did not give notice of the time limit and the employee was otherwise unaware of such limit.

(e) *Limitation on amount and duration of deductions.* Ordinarily, debts must be collected in one lump-sum payment. However, if the employee is financially unable to pay in one lump sum or if the amount of the debt exceeds 15 percent of disposable pay for an officially established pay interval, collection must be made in installments. The size of installment deductions must bear a reasonable relationship to the size of the debt and the employee's ability to pay (see 14 CFR 1261.411), but the amount deducted for any period must not exceed 15 percent of the disposable pay from which the deduction is made (unless the employee has agreed in writing to the deduction of a greater amount). Deduction must commence with the next full pay interval (ordinarily, the next biweekly pay period). Such installment deductions must be made over a period not greater than the anticipated period of active duty or employment, as the case may be, except as provided in paragraph (f) of this section.

(f) *Determining ability to pay.* An offset may produce an extreme financial hardship for an employee if it prevents the employee from meeting costs necessarily incurred for essential subsistence expenses for food, reasonable housing, clothing, transportation, and medical care. In determining whether an offset would prevent the employee from meeting the essential subsistence expenses, the employee may be required to show income from all sources (including spouse and dependents, if applicable), list all known assets, explain exceptional expenses, and produce any other relevant factors.

(g) *Liquidation from final check; other recovery.* If the employee retires or resigns from Federal service, or if his or her employment or period of active duty ends before collection of the debt is completed, the balance may be deducted from the final salary payment and any remaining balance from the lump-sum leave, if applicable. If the debt is not fully paid by offset from any final payment due the former employee as of the date of separation, offset may be made from later payments of any kind due the former employee from the United States (as provided in 14 CFR Part 1261 Subpart 1261.5, including offset from the Civil Service Retirement and Disability Fund under 14 CFR 1261.507).

(h) *Interest, penalties, and administrative costs.* Assessment of interest, penalties, and administrative costs, on debts being collected under this subpart, shall be in accordance with 14 CFR 1261.412 which implements 4 CFR 102.13.

§ 1261.604 Nonwaiver of rights by involuntary setoff.

The employee's involuntary payment of all or any portion of the debt, being collected under this subpart, must not be construed as a waiver of any rights which the employee may have under an existing written contract applicable to the specific debt or under any other pertinent statutory authority for the collection of claims of the United States or the agency.

§ 1261.605 Refunds.

(a) NASA will promptly refund to the employee amounts paid or deducted under this subpart when:

(1) A debt is waived or otherwise found not owing the United States (unless expressly prohibited by statute or regulation); or

(2) The employee's paying agency is directed by an administrative or judicial order to refund amounts deducted from his or her current pay.

(b) Refunds are not to bear any interest unless the law applicable to that particular debt specifically requires or permits a stated interest amount on refunds.

§ 1261.606 Salary offset request by a creditor agency other than NASA (the current paying agency).

(a) *Format of the request.* Upon completion of the procedures established by the creditor agency under 5 U.S.C. 5514, the creditor agency must:

(1) Certify, in writing, that the employee owes the debt, the amount and basis of the debt, the date on which payment(s) is/are due, the date the Government's right to collect the debt first accrued, and that the creditor agency's regulations implementing 5 U.S.C. 5514 have been approved by OPM;

(2) If the collection must be made in installments, the creditor agency must also advise NASA of the number of installments to be collected, the amount of each installment, and the commencing date of the first installment, if a date other than the next officially established pay period is required; and

(3) Unless the employee has consented to the salary offset in writing or signed a statement acknowledging receipt of the required procedures and the writing or statement is attached to the debt claim request, the creditor agency must also indicate the action(s) taken under 5 U.S.C. 5514(a)(2) and give the date(s) the action(s) was/were taken.

(b) *Limitation period.* The creditor agency may not initiate offset to collect a debt more than 10 years after the Government's right to collect the debt first accrued, except as provided in 14 CFR 1261.506, which implements 4 CFR 102.3(b)(3).

(c) *Employees who are separating or have separated*— (1) *Employees who are in the process of separating.* If the employee is in the process of separating, the creditor agency must submit its debt claim to the employee's paying agency for collection as provided in 5 CFR 550.1104(1) of the OPM regulations (14 CFR 1261.603(f)) for "liquidation from final check." NASA must then certify the total amount of its collection and notify the creditor agency and the employee as provided in paragraph (c)(3) of this section. If NASA is aware that the employee is entitled to payments from the Civil Service Retirement and Disability Fund, or other similar payments, it should notify the creditor agency and forward the copy of the debt claim and certification to the agency responsible for making such payments as notice that a debt is outstanding. However, the creditor agency, not NASA, must submit a properly certified claim to the agency responsible for making such payments before collection can be made.

(2) *Employees who have already separated.* If the employee is already separated and all payments due from NASA have been paid, NASA must return the claim to the creditor agency for any further collection, indicating the employee's date of separation and the current employment and mailing address(es), if known.

(3) Employee who transfers from NASA to another Federal agency.

(i) *Certification of amount collected.* If, after the creditor agency has submitted the debt claim to NASA, the employee transfers to another Federal agency before the debt is collected in full, NASA must then certify the total amount of the collection made on the debt. A copy of the certification should be furnished the employee, and another copy furnished to the creditor agency along with notice of the employee's transfer.

(ii) *Official personnel folder insertion; new paying agency.* Information on the debt claim must be inserted in the employee's official personnel folder along with a copy of the certification of the amount which has been collected. Upon receiving the official personnel folder, the new paying agency must resume the collection from the employee's current pay account and notify the employee and the creditor agency of the resumption. It will not be necessary for the creditor agency to repeat the due process procedures described by 5 U.S.C. 5514 of this subpart in order to resume the collection. However, it will be the responsibility of the creditor agency to review the debt upon receiving NASA's notice of the employee's transfer to make sure the collection is resumed by the new paying agency.

(d) *Processing the debt claim upon receipt*— (1) *Incomplete claim.* If NASA receives incomplete debt claim information, it must return the request with a notice that procedures under 5 U.S.C. 5514 and this subpart must be provided and complete debt claim information received before action will be taken to collect from the employee's current pay account.

(2) *Complete claim.* If NASA receives a properly documented debt claim, deductions should be scheduled to begin prospectively at the next officially established pay interval. A copy of the debt claim request must be given to the debtor, along with notice of the date deductions will commence if different from that stated on the debt claim request.

(3) NASA is not required or authorized to review the merits of the creditor agency's determination with respect to the amount or validity of the debt as stated in the debt claim request.

§ 1261.607 Obtaining the services of a hearing official.

(a) When the debtor does not work for the creditor agency and the creditor agency cannot provide a prompt and appropriate hearing before an administrative law judge or before a hearing official furnished pursuant to another lawful arrangement, the creditor agency may contact an agent of the paying agency designated in Appendix A of 5 CFR Part 581 to arrange for a hearing official, and the paying agency must then cooperate as provided by 4 CFR 102.1 and provide a hearing official.

(b) When the debtor works for the creditor agency, the creditor agency may contact any agent (of another agency) designated in Appendix A of 5 CFR Part 581 to arrange for a hearing official. Agencies must then cooperate as required by 4 CFR 102.1 and provide a hearing official.

May 14, 1987.

James C. Fletcher,

Administrator.

[FR Doc. 87-11606 Filed 5-22-87; 8:45 am]

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COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 11

Publication of Appendix Setting Forth Informal Procedure Relating to the Recommendation of Enforcement Proceedings

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of informal procedure.

SUMMARY: The Commodity Futures Trading Commission ("Commission") hereby adopts Appendix A to Part 11 of the Commission's Regulations, setting forth an informal procedure regarding the submission of voluntary written statements by persons who may be named in proposed enforcement proceedings. The procedure is intended to inform the public that the Division of Enforcement ("Division") will review information submitted by potential respondents and forward it to the Commission upon request before the Commission votes to commence an enforcement action. The purpose of this procedure is to make information available to assist in the Division's determination to recommend the action and, ultimately, in the Commission's determination whether and in what manner it is in the public interest to commence an enforcement proceeding.

EFFECTIVE DATE: May 26, 1987.

FOR FURTHER INFORMATION CONTACT: Ray Sandona, Esq., Chief Counsel, Division of Enforcement, Commodity Futures Trading Commission, 2033 K St. NW., Washington, DC 20581 (202) 254-7424.

SUPPLEMENTARY INFORMATION: The Commission has adopted Appendix A to Part 11 of its Regulations, the rules relating to investigations. Adopted at the recommendation of its Division of Enforcement ("Division"), Appendix A provides an informal procedure for persons who may be named in proposed enforcement proceedings to submit written statements on matters relevant to the recommendation of the proposed proceeding. The Commission adopts Appendix A upon the completion of a one-year operation of an interim informal procedure adopted April 15, 1986. *See* 51 FR 13548 (April 21, 1986).

The Commission contemplates that the procedure set forth in Appendix A will be the sole vehicle for communications regarding proposed enforcement proceedings between the Commission and persons who may be named in such proceedings. The procedure is intended to inform the public that the Division will review information submitted by potential respondents and forward it to the Commission upon request before the Commission votes to commence an enforcement action. In addition, this release highlights aspects of the procedure that may affect an individual's decision to submit such a statement.

The Division, in its discretion, may orally inform persons who may be named in a proposed enforcement proceeding of the nature of the proposed allegations pertaining to them. The decision whether to inform such persons of a proposed enforcement proceeding is entirely within the discretion of the Division. There is no obligation that the Division inform anyone of the proposed proceeding. In many cases, premature disclosure to the persons suspected of a violation could inhibit effective Commission action. Moreover, notwithstanding any representation of the staff, the Commission may commence an action against any persons before a written submission is made. Applicable provisions of the Procedure, *e.g.*, page limits, should also be followed by persons involved in a Division investigation who wish to submit a statement on their own initiative.

Appendix A provides that a succinct written statement of no more than 20 pages may be submitted to the Director, Division of Enforcement, with copies to the staff conducting the investigation. All submissions should refer clearly to the specific investigation to which they relate. Any submission is voluntary and while it may include a statement of the events, factual circumstances or other matters relevant to the commencement of a proposed enforcement action, the Commission is more interested in a submission that focuses upon legal and policy argument.[1] Any statement of fact must be sworn to by a person with personal knowledge of such fact and may not simply be made by counsel upon information and belief. In this regard, it should be noted that submission of a written statement may result in the use of the statement, including factual admissions, in an administrative or judicial proceeding by the Commission, as well as use by another governmental agency or even by a private party who may obtain the statement under the Freedom of Information Act or pursuant to subpoena.[2]

The purpose of this procedure is to make information available to assist in the Division's determination to recommend the action and, ultimately, in the Commission's determination whether and in what manner it is in the public interest to commence an enforcement proceeding. The procedure permits a written statement only and neither creates a right nor an obligation to make such a statement. In adopting Appendix A, the Commission is not soliciting any presentation from any member of the public. Moreover, Appendix A does not in any way affect the Commission's right to act prior to receipt of a statement or prior to notification pursuant to the procedure. A written statement with supporting

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[1] The Commission does not envision use of a submission to resolve factual representations between the staff and a potential respondent. As noted by the Securities and Exchange Commission in connection with its Wells procedure, *see* Sec. Act Release No. 5310 (September 27, 1972), disagreements as to factual matters are best left to be resolved through litigation because the Commission is not well positioned to adjudicate factual disputes in the absence of a fully developed factual record. Accordingly, the Commission anticipates that submissions under this procedure will in general be confined to matters of law or policy directly bearing on the question of whether an enforcement action should be authorized with respect to the person or entity on whose behalf the submission is made.

[2] The requirement that any statement of fact submitted on behalf of a proposed respondent be made under oath by persons with personal knowledge is one substantive difference from the SEC's Wells procedure. In addition, unless otherwise provided for by the Director of the Division, all submissions must be no longer than 20 pages and must be provided within 14 days of notice.