

§ 1263.110 Intention to provide guidance.

This part is intended to provide guidance for the internal operation of NASA and is not intended to, does not, and may not be relied upon to create any right of benefit—substantive or procedural—enforceable at law against the United States or NASA.

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

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APPENDIX A TO PART 1264—NOTICE TO CONSENT TO THE CHAIRPERSON, NASA BOARD OF CONTRACT APPEALS (BCA), OR DESIGNEE, AS PRESIDING OFFICER

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

SOURCE: 52 FR 39498, Oct. 22, 1987, unless otherwise noted.

§ 1264.100 Basis and purpose.

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

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

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

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

§ 1264.101 Definitions.

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

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

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

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(d) *Benefit* means, in the context of *statement*, anything of value, including but not limited to any advantage, preference, privilege, license, permit, favorable decision, ruling, status, or loan guarantee.

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

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

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

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

(A) Provided such property or services;

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

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

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

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

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

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

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

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

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

(i) *Government* means the United States Government.

(j) *Individual* means a natural person.

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

(l) *Investigating official* means the NASA Inspector General, or designee who is serving in a position for which the rate of basic pay is not less than the minimum rate of basic pay for grade GS-16 under the General Schedule.

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

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

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

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

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

(o) *Person* means any individual, partnership, corporation, association, or private organization, and includes the plural of that term.

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

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

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

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

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

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

such Title and Subchapter III of Chapter 53 of such Title;

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

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

(q) *Representative* means an attorney who is in good standing of the bar of any State, Territory, or possession of the United States, or of the District of Columbia, or of the Commonwealth of Puerto Rico.

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

(s) *Statement* means any representation, certification, affirmation, document, record, or accounting or book-keeping entry made—

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

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

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

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

[52 FR 39498, Oct. 22, 1987, as amended at 54 FR 599, Jan. 9, 1989]

§ 1264.102 Basis for civil penalties and assessments.

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

(i) Is false, fictitious, or fraudulent;

(ii) Includes or is supported by any written statement which asserts a ma-

terial fact which is false, fictitious, or fraudulent;

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

(A) Omits a material fact;

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

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

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

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

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

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

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

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

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

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

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

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

(ii) Contains or is accompanied by an express certification or affirmation of