

**§ 185.140**

(j) The authority head shall promptly serve each party to the appeal with a copy of the decision of the authority head and a statement describing the right of any person determined to be liable for a penalty or assessment to seek judicial review.

(k) Unless a petition for review is filed as provided in section 3805 of title 31, United States Code, after a defendant has exhausted all administrative remedies under this part and within 60 days after the date on which the authority head serves the defendant with a copy of the authority head's decision, a determination that a defendant is liable under §185.103 is final and not subject to judicial review.

[60 FR 7891, Feb. 10, 1995; 60 FR 22249, May 5, 1995]

**§ 185.140 Stays ordered by the Department of Justice.**

If, at any time, the Attorney General or an Assistant Attorney General designated by the Attorney General transmits to the authority head a written finding that continuation of the administrative process described in this part with respect to a claim or statement may adversely affect any pending or potential criminal or civil action related to such claim or statement, the authority head shall stay the process immediately. The authority head may order the process resumed only upon receipt of the written authorization of the Attorney General or of the Assistant Attorney General who ordered the stay.

**§ 185.141 Stay pending appeal.**

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

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

**§ 185.142 Judicial review.**

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

**5 CFR Ch. I (1-1-05 Edition)**

**§ 185.143 Collection of civil penalties and assessments.**

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

**§ 185.144 Right to administrative offset.**

The amount of any penalty or assessment which has become final, or for which a judgment has been entered under §185.142 or §185.143, or any amount agreed upon in a compromise or settlement under §185.146, may be collected by administrative offset under section 3716 of title 31, United States Code, except that an administrative offset may not be made under section 3716 against a refund of an overpayment of Federal taxes, then or later owing by the United States to the defendant.

**§ 185.145 Deposit in Treasury of the United States.**

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

**§ 185.146 Compromise or settlement.**

(a) Parties may make offers of compromise or settlement at any time.

(b) The reviewing official has the exclusive authority to compromise or settle a case under this part at any time after the date on which the reviewing official is permitted to issue a complaint and before the date on which the ALJ issues an initial decision.

(c) The authority head has exclusive authority to compromise or settle a case under this part at any time after the date on which the ALJ issues an initial decision, except during the pendency of any review under §185.142 or during the pendency of any action to collect penalties and assessments under §185.143.

(d) The Attorney General has exclusive authority to compromise or settle a case under this part during the pendency of any review under §185.142 or of

## Office of Personnel Management

## § 210.102

any action to recover penalties and assessments under section 3806 to title 31, United States Code.

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

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

### § 185.147 Limitations.

(a) The notice of hearing with respect to a claim or statement must be served in the manner specified in §185.108 within 6 years after the date on which such a claim or statement is made.

(b) If the defendant fails to file a timely answer, service of a notice under §185.110(b) shall be deemed a notice of hearing for purposes of this section.

(c) the statute of limitations may be executed by written agreement of the parties.

## PART 210—BASIC CONCEPTS AND DEFINITIONS (GENERAL)

### Subpart A—Applicability of Regulations; Definitions

Sec.

210.101 Applicability of various parts of regulations.

210.102 Definitions.

AUTHORITY: 5 U.S.C. 1302, 3301, 3302; E.O. 10577, 3 CFR, 1954-1958 Comp. p. 218.

### Subpart A—Applicability of Regulations; Definitions

#### § 210.101 Applicability of various parts of regulations.

(a) *General*. In most parts, the applicability of the part is stated specifically in the part or is otherwise apparent from the substance of the part.

(b) *Parts 315 through 339*. Parts 315 through 339 of this chapter apply to all positions in the competitive service and to all incumbents of those positions; and, except as specified by or in an individual part, these parts do not

apply to positions in the excepted service or to incumbents of those positions.

[33 FR 12407, Sept. 4, 1968, as amended at 44 FR 45587, Aug. 3, 1979]

#### § 210.102 Definitions.

(a) The definitions in paragraph (b) of this section apply throughout this chapter, except when a defined term is specifically modified in or specifically defined for the purpose of a particular part.

(b) In this chapter:

(1) *Appointing officer* means a person having power by law, or by lawfully delegated authority, to make appointments to positions in the service of the Federal Government or the government of the District of Columbia.

(2) *OPM* means the Office of Personnel Management.

(3) *Days*, unless otherwise defined or limited, means calendar days and not workdays. In computing a period of time prescribed in this chapter, the day of the action or event after which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included unless it is a Saturday, a Sunday, or a legal holiday in which event the period runs until the end of the next day which is neither a Saturday, a Sunday, nor a legal holiday.

(4) *Demotion* means a change of an employee, while serving continuously within the same agency:

(i) To a lower grade when both the old and the new positions are under the General Schedule or under the same type graded wage schedule; or

(ii) To a position with a lower rate of pay when both the old and the new positions are under the same type ungraded wage schedule, or are in different pay method categories.

(5) *Eligible* means an applicant who meets the minimum requirements for entrance to an examination and is rated 70 or more in the examination by OPM.

(6) *Employee* means a civilian officer or employee.

(7) *Metropolitan area of Washington, DC.*, means the District of Columbia; Alexandria, Fairfax, and Falls Church Cities, Va.; Arlington, Fairfax, Loudoun, and Prince William Counties,