

(c) The presiding officer does not have the authority to find Federal statutes or regulations invalid.

[52 FR 39498, Oct. 22, 1987, as amended at 54 FR 600, Jan. 9, 1989]

**§ 1264.118 Prehearing conferences.**

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

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

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

- (1) Simplification of the issues;
- (2) The necessity or desirability of amendments to the pleadings, including the need for a more definite statement;
- (3) Stipulations and admissions of fact or as to the contents and authenticity of documents;
- (4) Whether the parties can agree to submission of the case on a stipulated record;
- (5) Whether a party chooses to waive appearance at an oral hearing and to submit only documentary evidence (subject to the objections of other parties) and written arguments;
- (6) Limitation of the number of witnesses;
- (7) Scheduling dates for the exchange of witness lists and of proposed exhibits;
- (8) Discovery;
- (9) The time and place for the hearing; and
- (10) Such other matters, including settlement, as may tend to expedite the fair and just disposition of the proceedings.

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

[52 FR 39498, Oct. 22, 1987, as amended at 54 FR 600, Jan. 9, 1989]

**§ 1264.119 Disclosure of documents.**

(a) Upon written request to the reviewing official, the defendant may review any relevant and material documents, transcripts, records, and other

materials that relate to the allegations set out in the complaint and upon which the findings and conclusions of the investigating official under § 1264.103(b) are based unless such documents are subject to a privilege under Federal law. Upon payment of a reasonable fee for duplication, the defendant may obtain copies of such documents.

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

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

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

**§ 1264.120 Discovery.**

(a) The following types of discovery are authorized:

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

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

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