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UNITED STATES
NUCLEAR REGULATORY COMMISSION
Office of Governmental and Public Affairs
Washington, D.C. 20555

No. 90-130
Tel. 301/492-0240

FOR IMMEDIATE RELEASE
(Wednesday, September 26, 1990)

NRC PROPOSES REGULATIONS TO IMPLEMENT PROGRAM FRAUD CIVIL REMEDIES ACT

The Nuclear Regulatory Commission is proposing regulations to implement the Program Fraud Civil Remedies Act (Public Law 99-509) which applies to false claims and statements, involving sums not exceeding $150,000, made by any person (employees as well as members of the public) to an agency covered by the Act.

It authorizes a covered agency to impose civil penalties of up to $5,000 for each separate claim and assessments of up to double the amount falsely claimed. When the Act became law in 1986, it did not apply to the NRC but the Inspector General Amendments Act of 1988 (Public Law 100-504) operated to add the NRC to the agencies covered by the former Act.

The NRC's proposed implementing regulations essentially adopt a model set of regulations developed by an interagency task force under the sponsorship of the President's Council on Integrity and Efficiency. The proposed regulations require taking certain steps in agency action against any person suspected of being liable under the Act.

First, an investigation of an alleged false claim or statement must be conducted by an "investigating official", in the NRC's case, the Inspector General or that office's Assistant Director for Investigations.

Second, before an administrative action can be taken, the investigation report must be reviewed by a "reviewing official"--the NRC's Deputy General Counsel for Licensing and Regulation or his designee--who determines if there is adequate evidence to believe that a person is liable under the Act.

Third, upon an affirmative finding, the reviewing official would then refer the matter to the Attorney General with notice of intent to initiate administrative proceedings against the subject. Such action can be taken only with the concurrence of the Attorney General or a designated Assistant Attorney General.

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Fourth, any hearing would have to be conducted by an administrative law judge. Then, any person held liable could appeal to the "authority head"--in the case of the NRC, the Commission itself--which could affirm, reduce, reverse, compromise, remand or settle any penalty or assessment determined by the Administrative Law Judge. However, at any time prior to issuance of the Administrative Law Judge's decision on liability, the reviewing official could settle the matter without the consent of the Administrative Law Judge.

Fifth, the agency's decision would be subject to review in an appropriate United States District Court.

Sixth, judicial enforcement of any civil penalty or enforcement order would be obtained through the Attorney General.

Written comments on the addition of proposed Part 13 to the NRC's regulations should be received by November 24, 1990. They should be addressed to the Secretary of the Commission, Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch.

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docket line should read as set forth above.

BILLING CODE 1505-01-D

NUCLEAR REGULATORY COMMISSION

10 CFR Part 13

RIN 3150-AD71

Program Fraud Civil Remedies Act, Implementation

Correction

In proposed rule document 90-22877 beginning on page 39158 in the issue of Tuesday, September 25, 1990, under the "DATES" paragraph, "November 24, 1990"should read "November 26, 1990".

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Proposed Rules

Federal Register
Vol. 55, No. 186
Tuesday, September 25, 1990

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 13

RIN 3150-AD71

Program Fraud Civil Remedies Act, Implementation

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission proposes regulations to implement the Program Fraud Civil Remedies Act of 1986. The Act authorizes certain Federal agencies, including the Nuclear Regulatory Commission, to impose, through administrative adjudication, civil penalties and assessments against any person who makes, submits, or presents a false, fictitious, or fraudulent claim or written statement to the agency. These proposed regulations establish the procedures the Commission will follow in implementing the provisions of the Act and specifies the hearing and appeal rights of persons subject to penalties and assessments under the Act.

DATES: The comment period expires on November 24, 1990. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before this date.

ADDRESSES: Send written comments to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch. Comments may also be delivered to the Office of the Secretary, U.S. Nuclear Regulatory Commission, One White Flint North, 11555 Rockville Pike, Rockville, Maryland, between 7:45 am and 4:15 pm Federal workdays. Copies of any comments received may be examined and copied for a fee at the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC between the hours of 7:45 am and 4:15 pm Federal workdays.

FOR FURTHER INFORMATION CONTACT: John Cho, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone: 301-492-1585.

SUPPLEMENTARY INFORMATION:

Background

In October 1986, Congress enacted the Program Fraud Civil Remedies Act, Pub. L. No. 99-509 (codified 31 U.S.C. 3801 through 3812), to establish an administrative remedy against any person who makes a false claim or written statement to any of certain Federal agencies. In brief, it requires the affected Federal agencies to follow certain procedures in recovering penalties (up to $5000 per claim) and assessments (up to double the amount falsely claimed) against persons who file false claims or statements for which the liability is $150,000 or less. The Act further requires each affected agency to promulgate rules and regulations necessary to implement its provisions.

Following the Act's enactment, at the request of the President's Council on Integrity and Efficiency (PCIE) an interagency task force was established under the leadership of the Department of Health and Human Services to develop model regulations for implementation of the Act by all affected agencies. This action was in keeping with the stated desire of the Senate Governmental Affairs Committee that "the regulations would be substantially uniform throughout the government" (S. Rep. No. 99-212, 99th Cong., 1st Sess. 12 (1985). Upon their completion, the PCIE recommended adoption of the model rules by all affected agencies.

At that time, the Act did not apply to the Nuclear Regulatory Commission. However, that Act has since become applicable to the Commission as a result of the enactment of the Inspector General Act Amendments, Pub. L. 100-504, October 18, 1988. Those amendments, *inter alia*, added the Nuclear Regulatory Commission as an "establishment" under the Inspector General Act and, by doing so, operated to bring the Commission within the provisions of the Program Fraud Civil Remedies Act.

These proposed regulations are essentially the same as the model rules recommended by the PCIE. They incorporate, where appropriate, definitions to fit the Commission's organization. They prescribe the procedure under which false claims and statements subject to the Act will be investigated and reviewed, and the rules under which any ensuing hearing will be conducted.

Statutory Scheme

Under the Act, false claims and statements subject to its provisions are to be investigated by an agency's investigating official. The results of the investigation are then reviewed by an agency reviewing official who determines whether there is adequate evidence to believe that the person named in the report is liable under the Act. Upon an affirmative finding of adequate evidence, the reviewing official sends to the Attorney General a written notice of the official's intent to refer the matter to a presiding officer for an administrative hearing. The agency institutes administrative proceedings against the person only if the Attorney General or the Attorney General's designee approves. Any penalty or assessment imposed under the Act may be collected by the Attorney General through the filing of a civil action, or by offsetting amounts, other than tax refunds, owed the particular party by the Federal government.

For purposes of this Act, these proposed regulations designate the Inspector General or the Assistant Inspector General for investigations as the agency's investigating official. They also designate the Deputy General Counsel for Licensing and Regulation or his or her designee as the reviewing official. Any administrative adjudication under the Act will be presided over by an Administrative Law Judge and any appeals from the Administrative Law Judge's decision will be decided by the Commission.

A more detailed discussion of the model rules' provisions is found in the promulgations of several of the agencies that adopted them earlier, including those of the Departments of Justice (53 FR 4034; February 11, 1988 and 53 FR 11645; April 8, 1988); Health and Human Services (52 FR 27423; July 21, 1987 and 53 FR 11656, April 8, 1988); and Transportation (52 FR 38968; October 2, 1987 and 53 FR 880, January 14, 1988). Anyone desiring further explanation of

See 55 FR 40997

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the model rules is referred to the cited references.

Environmental Impact: Categorical Exclusion

The NRC has determined that this proposed rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(1). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this proposed rule.

Paperwork Reduction Act Statement

This proposed rule contains no information collection requirements and therefore is not subject to the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Regulatory Analysis

The Program Fraud Civil Remedies Act of 1986 (Pub. L. 99-509, 31 U.S.C. 3801-3812) established an administrative remedy for false claims or statements submitted to various agencies. Under the Act, anyone who knowingly submits a false, fictitious, or fraudulent claim to any of these agencies is liable for up to a $5,000 penalty and an assessment of double damages. Each affected agency is required to issue implementing regulations governing the investigation of such claims and their adjudication by the agency. Although the Act did not apply to the NRC at the time of its enactment, its provisions became applicable to the NRC upon later enactment of the Inspector General Act Amendments, Pub. L. 100-504, October 18, 1988.

The proposed rule carries out the requirements of that Act.It essentially adopts the model rules prepared under the auspices of the President's Council on Integrity and Efficiency. This is in keeping with the expectation of the Senate Governmental Affairs Committee, expressed in its report on the Act, that the agency regulations throughout the Government would be substantively uniform, except as necessary to meet the specific needs of a particular agency or progam. S. Rep. No. 99-212, 99th Cong., 1st Sess. 12 (1985).

Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), the Commission certifies that this rule, if adopted, will not have a significant economic impact on a substantial number of small entities. The proposed rule establishes the procedural mechanism for investigating and adjudicating allegations of false claims or statements made against affected agencies. The proposed rule, by itself, does not impose any obligations on entities including any regulated entities that may fall within the definition of "small entities" as set forth in section 601(3) of the Regulatory Flexibility Act, or within the definition of "small business" as found in Section 3 of the Small Business Act, 15 U.S.C. 632, or within the Small Business Size Standards found in 13 CFR part 121. These obligations would not be created until an order is issued, at which time the person subject to the order would have a right to a hearing in accordance with the regulations.

Backfit Analysis

The NRC has determined that the backfit rule, 10 CFR 50.109, does not apply to this proposed rule, and therefore, that a backfit analysis is not required for this proposed rule, because these amendments do not involve any provisions which would impose backfits as defined in 10 CFR 50.109(a)(1).

List of Subjects in 10 CFR Part 13

Claims, Fraud, Organization and function (government agencies), Penalties.

1. A new part 13 is added to 10 CFR chapter I to read as follows:

PART 13—PROGRAM FRAUD CIVIL REMEDIES

Sec.

Authority: Pub. L. 99-509, secs. 6101-6104, 100 Stat. 1874 (31 U.S.C. 3801-3812).

§ 13.1 Basis and purpose.

(a) *Basis.* This part implements the Program Fraud Civil Remedies Act of 1986, Pub. L. No. 99-509, sections 6101-6104, 100 Stat. 1874 (October 21, 1986) (31 U.S.C. 3801-3812). 31 U.S.C. 3809 requires each authority head to promulgate regulations necessary to implement the provisions of that Act.

(b) *Purpose.* This part:

(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.

§ 13.2 Definitions.

As used in this part:

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.

Authority means the Nuclear Regulatory Commission.

Authority head means the Commission of five members or a quorum thereof sitting as a body, as provided by section 201 of the Energy Reorganization Act of 1974 (88 Stat. 1242).

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.

Claim means any request, demand, or submission—

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

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

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

(i) Provided such property or services;

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

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

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

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

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

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

Complaint means the administrative complaint served by the reviewing official on the defendant under § 13.7.

Defendant means any person alleged in a complaint under § 13.7 to be liable for a civil penalty or assessment under § 13.3.

Government means the United States Government.

Individual means a natural person.

Initial decision means the written decision of the ALJ required by § 13.10 or § 13.37, and includes a revised initial decision issued following a remand or a motion for reconsideration.

Investigating official means the Inspector General of the Nuclear Regulatory Commission or the Assistant Inspector General for Investigations, Office of the Inspector General.

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

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

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

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

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.

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

Representative means any person designated by a party in writing.

Reviewing offical means the Deputy General Counsel for Licensing and Regulation of the Nuclear Regulatory Commission or his or her designee who is—

(a) Not subject to supervision by, or required to report to, the investigating official;

(b) Not employed in the organizational unit of the authority in which the investigating official is employed; and

(c) 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.

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

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

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

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

(2) 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 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.

§ 13.3 Basis for civil penalties and assessments.

(a) *Claims.* (1) Except as provided in paragraph (c) of this section, any person who makes a claim that the person knows or has reason to know—

(i) Is false, fictitious, or fraudulent;

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

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

(A) Omits a material fact;

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

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

(iv) Is for payment for the provision of property or services which the person has not provided as claimed, shall be subject, in addition to any other remedy that may be prescribed by law, to a civil penalty of not more than $5,000 for each such claim.

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

(3) A claim shall be considered made to 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 of paragraph (a)(1) of this section. Such assessment shall be in lieu of damages sustained by the Government because of such claim.

(b) *Statements.* (1) Except as provided in paragraph (c) of this section, any person who makes a written statement that—

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

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

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

(ii) Contains or is accompanied by an express certification or affirmation of the truthfulness and accuracy of the contents of the statement, shall be subject, in addition to any other remedy that may be prescribed by law, to a civil penalty of not more than $5,000 for each such statement.

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

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

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

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

(e) In any case in which it is determined that more than one person is liable for making a claim under this section on which the Government has made payment (including transferred

property or provided services), an assessment may be imposed against any such person or jointly and severally against any combination of such persons.

§ 13.4 Investigation.

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

(1) The subpoena so issued shall notify the person to whom it is addressed of the authority under which the subpoena is issued and shall identify the records or documents sought;

(2) The investigating official may designate a person to act on his or her behalf to receive the documents sought; and

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

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

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

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

§ 13.5 Review by the reviewing official.

(a) If, based on the report of the investigating official under § 13.4(b), the reviewing official determines that there is adequate evidence to believe that a person is liable under § 13.3 of this part, the reviewing official shall transmit to the Attorney General a written notice of the reviewing official's intention to issue a complaint under § 13.7.

(b) Such notice shall include—

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

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

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

(4) An estimate of the amount of money or the value of property, services, or other benefits requested or demanded in violation of § 13.3 of this part;

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

(6) A statement that there is a reasonable prospect of collecting an appropriate amount of penalties and assessments.

§ 13.6 Prerequisites for issuing a complaint.

(a) The reviewing official may issue a complaint under § 13.7 only if—

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

(2) In the case of allegations of liability under § 13.3(a) with respect to a claim, the reviewing official determines that, with respect to such claim or a group of related claims submitted at the same time such claim is submitted (as defined in paragraph (b) of this section), the amount of money or the value of property or services demanded or requested in violation of § 13.3(a) does not exceed $150,000.

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

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

§ 13.7 Complaint.

(a) On or after the date the Department of Justice approves the issuance of a complaint in accordance with 31 U.S.C. 3803(b)(1), the reviewing official may serve a complaint on the defendant, as provided in § 13.8.

(b) The complaint shall state—

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

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

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

(4) That failure to file an answer within 30 days of service of the complaint will result in the imposition of the maximum amount of penalties and assessments without right to appeal, as provided in § 13.10.

(c) At the same time the reviewing official serves the complaint, he or she shall serve the defendant with a copy of these regulations.

§ 13.8 Service of complaint.

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

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

(1) Affidavit of the individual serving the complaint by delivery;

(2) A United States Postal Service return receipt card acknowledging receipt; or

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

§ 13.9 Answer.

(a) The defendant may request a hearing by filing an answer with the reviewing official within 30 days of service of the complaint. Service of an answer shall be made by delivering a copy to the reviewing official or by placing a copy in the United States mail, postage prepaid and addressed to the reviewing official. An answer shall be deemed to be a request for hearing.

(b) In the answer, the defendant—

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

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

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

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

(c) If the defendant is unable to file an answer meeting the requirements of paragraph (b) of this section within the

time provided, the defendant may, before the expiration of 30 days from service of the complaint, file with the reviewing official a general answer denying liability and requesting a hearing, and a request for an extension of time within which to file an answer meeting the requirements of paragraph (b) of this section. The reviewing official shall file promptly with the ALJ the complaint, the general answer denying liability, and the request for an extension of time as provided in § 13.11. For good cause shown, the ALJ may grant the defendant up to 30 additional days within which to file an answer meeting the requirements of paragraph (b) of this section.

§ 13.10 Default upon failure to file an answer.

(a) If the defendant does not file an answer within the time prescribed in § 13.9(a), the reviewing official may refer the complaint to the ALJ.

(b) Upon the referral of the complaint, the ALJ shall promptly serve on defendant in the manner prescribed in § 13.8 a notice that an initial decision will be issued under this section.

(c) The ALJ shall assume the facts alleged in the complaint to be true, and, if such facts establish liability under § 13.3, the ALJ shall issue an initial decision imposing the maximum amount of penalties and assessments allowed under the statute.

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

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

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

(g) A decision of the ALJ denying a defendant's motion under paragraph (e) of this section is not subject to reconsideration under § 13.38.

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

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

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

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

(l) If the authority head decides that the defendant's failure to file a timely answer is not excused, the authority head shall reinstate the initial decision of the ALJ, which shall become final and binding upon the parties 30 days after the authority head issues s[illegible]

§ 13.11 Referral of complaint and answer to the ALJ.

Upon receipt of an answer, the reviewing official shall file the complaint and answer with the ALJ.

§ 13.12 Notice of hearing.

(a) When the ALJ receives the complaint and answer, the ALJ shall promptly serve a notice of hearing upon the defendant in the manner prescribed by § 13.8. At the same time, the ALJ shall send a copy of such notice to the representative of the authority.

(b) Such notice shall include—

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

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

(3) The matters of fact and law to be asserted;

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

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

(6) Such other matters as the ALJ deems appropriate.

§ 13.13 Parties to the hearing.

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

(b) Pursuant to 31 U.S.C. 3730(c)(5), a private plaintiff under the False Claims Act may participate in these proceedings to the extent authorized by the provisions of that Act.

§ 13.14 Separation of functions.

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

(1) Participate in the hearing as the ALJ;

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

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

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

(c) Except as provided in paragraph (a) of this section, the representative for the Government may be employed anywhere in the authority, including in the offices of either the investigating official or the reviewing official.

§ 13.15 Ex parte contacts.

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

§ 13.16 Disqualification of reviewing official or ALJ.

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

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

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

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

(e) Upon the filing of such a motion and affidavit, the ALJ shall proceed no further in the case until he or she resolves the matter of disqualification in accordance with paragraph (f) of this section.

(f) (1) If the ALJ determines that a reviewing official is disqualified, the ALJ

shall dismiss the complaint without prejudice.

(2) If the ALJ disqualifies himself or herself, the case shall be reassigned promptly to another ALJ.

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

§ 13.17 Rights of parties.

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

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

(b) Participate in any conference held by the ALJ;

(c) Conduct discovery;

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

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

(f) Present and cross-examine witnesses;

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

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

§ 13.18 Authority of the ALJ.

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

(b) The ALJ has the authority to—

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

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

(3) Hold conferences to identify or simplify the issues, or to consider other matters that may aid in the expeditious disposition of the proceeding;

(4) Administer oaths and affirmations;

(5) Issue subpoenas requiring the attendance of witnesses and the production of documents at depositions or at hearings;

(6) Rule on motions and other procedural matters;

(7) Regulate the scope and timing of discovery;

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

(9) Examine witnesses;

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

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

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

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

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

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

§ 13.19 Prehearing conferences.

(a) The ALJ may schedule prehearing conferences as appropriate.

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

(c) The ALJ 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 appearances at an oral hearing and to submit only documentary evidence (subject to the objection of other parties) and written argument;

(6) Limitation of the number of witnesses;

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

(8) Discovery;

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

(10) Such other matters as may tend to expedite the fair and just disposition of the proceedings.

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

§ 13.20 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 § 13.4(b) are based, unless such documents are subject to a privilege under Federal law. Upon payment of fees 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 § 13.5 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 ALJ following the filing of an answer pursuant to § 13.9.

§ 13.21 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 §§ 13.22 and 13.23, the term "documents" includes information, documents, reports, answers, records, accounts, papers, and other data and documentary evidence. 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 ALJ. The ALJ shall regulate the timing of discovery.

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

(2) Within ten days of service, a party may file an opposition to the motion and/or a motion for protective order as provided in § 13.24.

(3) The ALJ may grant a motion for discovery only if he or she finds that the discovery sought—

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

(ii) Is not unduly costly or burdensome;

(iii) Will not unduly delay the proceeding; and

(iv) Does not seek privileged information.

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

(5) The ALJ may grant discovery subject to a protective order under § 13.24.

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

(2) The party seeking to depose shall serve the subpoena in the manner prescribed in § 13.8.

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

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

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

§ 13.22 Exchange of witness lists, statements, and exhibits.

(a) At least 15 days before the hearing or at such other times as may be ordered by the ALJ, the parties shall exchange witness lists, copies of prior statements of proposed witnesses, and copies of proposed hearing exhibits, including copies of any written statements that the party intends to offer in lieu of live testimony in accordance with § 13.33(b). At the time the above documents are exchanged, any party that intends to rely on the transcript of deposition testimony in lieu of live testimony at the hearing, if permitted by the ALJ, shall provide each party with a copy of the specific pages of the transcript it intends to introduce into evidence.

(b) If a party objects, the ALJ shall not admit into evidence the testimony of any witness whose name does not appear on the witness list or any exhibit not provided to the opposing party as provided above unless the ALJ finds good cause for the failure or that there is no prejudice to the objecting party.

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

§ 13.23 Subpoenas for attendance at hearing.

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

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

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

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

(e) The party seeking the subpoena shall serve it in the manner prescribed in § 13.8. A subpoena on a party or upon an individual under the control of a party may be served by first class mail.

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

§ 13.24 Protective order.

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

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

(1) That the discovery not be had;

(2) That the discovery may be had only on specified terms and conditions, including a designation of the time or place;

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

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

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

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

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

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

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

§ 13.25 Fees.

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

§ 13.26 Form filing and service of papers.

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

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

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

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

(b) *Service.* A party filing a document with the ALJ shall at the time of filing, serve a copy of such document on every other party. Service upon any party of any document other than those required to be served as prescribed in § 13.8 shall be made by delivering a copy or by placing a copy of the document in the United States mail, postage prepaid and addressed, to the party's last known address. When a party is represented by a representative, service shall be made upon such representative in lieu of the actual party.

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

§ 13.27 Computation of time.

(a) In computing any period of time under this part or in an order issued thereunder, the time begins with the day following the act, event, or default, and includes the last day of the period,

unless it is a Saturday, Sunday, or legal holiday observed by the Federal government, in which event it includes the next business day.

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

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

§ 13.29 Motions.

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

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

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

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

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

§ 13.29 Sanctions.

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

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

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

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

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

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

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

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

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

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

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

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

§ 13.30 The hearing and burden of proof.

(a) The ALJ shall conduct a hearing on the record in order to determine whether the defendant is liable for a civil penalty or assessment under § 13.3 and, if so, the appropriate amount of any such civil penalty or assessment considering any aggravating or mitigating factors.

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

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

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

§ 13.31 Determining the amount of penalties and assessments.

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

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

(1) The number of false, fictitious, or fraudulent claims or statements;

(2) The time period over which such claims or statements were made;

(3) The degree of the defendant's culpability with respect to the misconduct;

(4) The amount of money or the value of the property, services, or benefit falsely claimed;

(5) The value of the Government's actual loss as a result of the misconduct, including foreseeable consequential damages and the costs of investigation;

(6) The relationship of the amount imposed as civil penalties to the amount of the Government's loss;

(7) The potential or actual impact of the misconduct upon national defense, public health or safety, or public confidence in the management of Government programs and operations, including particularly the impact on the intended beneficiaries of such programs;

(8) Whether the defendant has engaged in a pattern of the same or similar misconduct;

(9) Whether the defendant atempted to conceal the misconduct;

(10) The degree to which the defendant has involved others in the misconduct or in concealing it;

(11) Where the misconduct of employees or agents is imputed to the defendant, the extent to which the defendant's practices fostered or attempted to preclude such misconduct;

(12) Whether the defendant cooperated in or obstructed an investigation of the misconduct;

(13) Whether the defendant assisted in identifying and prosecuting other wrongdoers;

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

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

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

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

§ 13.32 Location of hearing.

(a) The hearing may be held—

(1) In any judicial district of the United States in which the defendant resides or transacts business;

(2) In any judicial district of the United States in which the claim or statement in issue was made; or

(3) In such other place as may be agreed upon by the defendant and the ALJ.

(b) Each party shall have the opportunity to present argument with respect to the location of the hearing.

(c) The hearing shall be held at the place and at the time ordered by the ALJ.

§ 13.33 Witnesses.

(a) Except as provided in paragraph (b) of this section, testimony at the hearing shall be given orally by witnesses under oath or affirmation.

(b) At the discretion of the ALJ, testimony may be admitted in the form of a written statement or deposition. Any such written statement must be provided to all other parties along with the last known address of such witness, in a manner which allows sufficient time for other parties to subpoena such witness for cross-examination at the hearing. Prior written statements of witnesses proposed to testify at the hearing and deposition transcripts shall be exchanged as provided in § 13.22(a).

(c) The ALJ shall exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence so as to:

(1) Make the interrogation and presentation effective for the ascertainment of the truth;

(2) Avoid needless consumption of time; and

(3) Protect witnesses from harassment or undue embarrassment.

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

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

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

(1) A party who is an individual;

(2) In the case of a party that is not an individual, an officer or employee of the party appearing for the entity pro se or designated by the party's representative; or

(3) An individual whose presence is shown by a party to be essential to the presentation of its case, including an individual employed by the Government engaged in assisting the representative for the Government.

§ 13.34 Evidence.

(a) The ALJ shall determine the admissibility of evidence.

(b) Except as provided in this part, the ALJ shall not be bound by the Federal Rules of Evidence. However, the ALJ may apply the Federal Rules of Evidence where appropriate, *e.g.*, to exclude unreliable evidence.

(c) The ALJ shall exclude irrelevant and immaterial evidence.

(d) Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or by considerations of undue delay or needless presentation of cumulative evidence.

(e) Although relevant, evidence may be excluded if it is privileged under Federal law.

(f) Evidence concerning offers of compromise or settlement shall be inadmissible to the extent provided in Rule 408 of the Federal Rules of Evidence.

(g) The ALJ shall permit the parties to introduce rebuttal witnesses and evidence.

(h) All documents and other evidence offered or taken for the record shall be open to examination by all parties, unless otherwise ordered by the ALJ pursuant to § 13.24.

§ 13.35 The record.

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

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

(c) The record may be inspected and copied (upon payment of a reasonable fee) by anyone, unless otherwise ordered by the ALJ pursuant to § 13.24.

§ 13.36 Post-hearing briefs.

The ALJ may require the parties to file post-hearing briefs. In any event, any party may file a post-hearing brief. The ALJ shall fix the time for filing such briefs, not to exceed 60 days from the date the parties receive the transcript of the hearing or, if applicable, the stipulated record. Such briefs may be accompanied by proposed findings of fact and conclusions of law. The ALJ may permit the parties to file reply briefs.

§ 13.37 Initial decision.

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

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

(1) Whether the claims or statements identified in the complaint, or any portions thereof, violate § 13.3; and

(2) If the person is liable for penalties or assessments, the appropriate amount of any such penalties or assessments considering any mitigating or aggravating factors that he or she finds in the case, such as those described in § 13.31.

(c) The ALJ shall promptly serve the initial decision on all parties within 90 days after the time for submission of post-hearing briefs and reply briefs (if permitted) has expired. The ALJ shall at the same time serve all parties with a statement describing the right of any defendant determined to be liable for a civil penalty or assessment to file a motion for reconsideration with the ALJ or a notice of appeal with the authority head. If the ALJ fails to meet the deadline contained in this paragraph, he or she shall notify the parties of the reason for the delay and shall set a new deadline.

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

§ 13.38 Reconsideration of initial decision.

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

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

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

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

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

(f) If the ALJ denies a motion for reconsideration, the initial decision shall constitute the final decison of the authority head and shall be final and binding on the parties 30 days after the ALJ denies the motion, unless the initial decision is timely appealed to the authority head in accordance with § 13.39.

(g) If the ALJ issues a revised initial decision, that decision shall constitute the final decision of the authority head and shall be final and binding on the parties 30 days after it is issued, unless it is timely appealed to the authority head in accordance with § 13.39.

§ 13.39 Appeal to authority head.

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

(b)(1) A notice of appeal may be filed at any time within 30 days after the ALJ issues an initial decision. However, if another party files a motion for reconsideration under § 13.38, consideration of the appeal shall be stayed automatically pending resolution of the motion for reconsideration.

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

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

(c) If the defendant files a timely notice of appeal with the authority head and the time for filing motions for reconsideration under § 13.38 has expired, the ALJ shall forward the record of the proceeding to the authority head.

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

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

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

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

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

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

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

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

(l) Unless a petition for review is filed as provided in 31 U.S.C. 3805 after a defendant has exhausted all administrative remedies under this part and within 60 days after the date on which the authority head serves the defendant with a copy of the authority head's decision, a determination that a defendant is liable under § 13.3 is final and is not subject to judicial review.

§ 13.40 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.

§ 13.41 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.

§ 13.42 Judicial review.

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

§ 13.43 Collection of civil penalties and assessments.

Section 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.

§ 13.44 Right to administrative offset.

The amount of any penalty or assessment which has become final, or for which a judgment has been entered under § 13.42 or § 13.43, or any amount agreed upon in a compromise or settlement under § 13.46, may be collected by administrative offset under 31 U.S.C. 3716, except that an administrative offset may not be made under this subsection against a refund of an overpayment of Federal taxes, then or later owing by the United States to the defendant.

§ 13.45 Deposit in Treasury of United States.

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

§ 13.46 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 § 13.42 or during the pendency of any action to collect penalties and assessments under § 13.43.

(d) The Attorney General has exclusive authority to compromise or settle a case under this part during the pendency of any review under § 13.42 or

of any action to recover penalties and assessments under 31 U.S.C. 3806.

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

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

§ 13.47 Limitations.

(a) The notice of hearing with respect to a claim or statement must be served in the manner specified in § 13.8 within 6 years after the date on which such claim or statement is made.

(b) If the defendant fails to serve a timely answer, service of a notice under § 13.10(b) shall be deemed a notice of hearing for purposes of this section.

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

Dated at Rockville, Maryland, this 19th day of September 1990.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 90-22077 Filed 9-24-90; 8:45 am]

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DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Parts 563 and 571

[No. 90-1494]

RIN 1550-AA05

Bonds for Directors, Officers, Employees, and Agents; Form and Amount of Bonds

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Office of Thrift Supervision ("Office") is proposing to amend its regulations pertaining to fidelity bond coverage in order to address the disparity between the fidelity bond insurance requirements of savings associations and those of commercial banks and to recognize the limitations of product availability in the insurance bond marketplace. The Office is proposing to substitute the requirement that savings associations obtain coverage under Standard Form No. 22 with the requirement that they obtain bond coverage under Standard Form No. 24. Savings associations currently holding bonds written on Standard Form No. 22 will be considered in compliance with the revised regulation.

DATES: Comments must be received on or before October 25, 1990.

ADDRESSES: Comments may be submitted to: Director, Information Services Division, Office of Communications, 1700 G Street NW., Washington, DC 20552. Comments will be available for public inspection at 1735 I Street NW., Ninth Floor.

FOR FURTHER INFORMATION CONTACT: William W. Templeton, Staff Attorney, Corporate and Securities Division, (202) 906-7354, Julie L. Williams, Deputy Chief Counsel for Securities and Corporate Structure, (202) 906-6549, Corporate and Securities Division; Linda Matthias, Policy Analyst, (202) 906-5747, Edward Charity, Jr., Policy Analyst, (202) 906-7933, Supervision Policy, Office of Thrift Supervision, 1700 G Street NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: The Office is proposing to amend its regulations pertaining to fidelity bond coverage. This action is taken in order to address the disparity between the fidelity bond insurance requirements of savings associations and those of commercial banks and in recognition of the limitations of product availability in the insurance bond marketplace.

The Office recognizes that the insurance bond marketplace has undergone changes since 1968 when the Federal Home Loan Bank Board adopted the regulatory requirement that all FSLIC-insured savings associations obtain and maintain fidelity bond insurance under the form known as Standard Form No. 22. That form of coverage has not been widely available to the thrift industry since 1986. In its place, fidelity bond underwriters are offering to savings associations the same form of fidelity bond coverage that is available to commercial banks. The bond form known as the Financial Institution Bond, Standard Form No. 24 is the form of fidelity bond maintained by commercial banks in accordance with the provisions of 12 U.S.C. 1828(e).[1]

The Office notes that banks maintain fidelity bond coverage under Standard Form No. 24. In view of the provisions of 12 U.S.C. 1828(e), and because the Office sees no compelling reason why thrifts should not be placed in a position of parity with banks in this regard, the Office proposes to amend 12 CFR 563.190 to delete the requirement that savings associations must obtain coverage under Standard Form No. 22 and to substitute the requirement that savings associations obtain bond coverage under Standard Form No. 24. Savings associations that currently hold fidelity bonds written on Standard Form No. 22 will be deemed to comply with the amended regulation.[2]

While implementing the Standard Form No. 24 coverage requirement, the proposed amendment removes from the regulation the schedule of the required minimum amounts of coverage. In the Office's view, the appropriate levels of coverage are best determined by the management of each savings association. This position is shared by other bank regulatory agencies. It is the duty of the savings association's management to identify, analyze and treat the risk exposure created by its operations. Management, working together with a reliable insurance professional, can analyze the need for coverage and control the exposure to loss by choosing the appropriate levels of coverage and, when appropriate, purchasing endorsements or riders to the standard form that broaden the scope of coverage. Management should assess this fidelity loss risk by means of a thorough review of all aspects of the association's present and prospective operations. This comprehensive review of internal controls may also reveal the need to take additional procedural steps in order to limit a particular risk. Of course, examiner review and analysis of the adequacy of the savings association's insurance program is necessary.

The amended regulation also requires the board of directors to formally approve the savings association's bond coverage, to monitor the ongoing operations and to assess the need for additional coverage periodically. The Office expects that this amendment, together with regulatory bulletins to be issued subsequently, will provide management with clear guidance on the proper course to set for meeting the savings association's fidelity bond coverage needs. Any deviations from

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[1] Section 18(e) of the Federal Deposit Insurance Act reads as follows:

The Corporation may require any insured depository institution to provide protection and indemnity against burglary, defalcation and other similar insurable losses. Whenever any insured depository institution refuses to comply with such requirement, the Corporation may contract for such protection and indemnity and add the cost thereof to the assessment otherwise payable by such bank.

12 U.S.C. 1828(e) (1982), as amended by the Financial Institutions Reform, Recovery and Enforcement Act of 1989, Pub. L. No. 101-73, § 951, 103 Stat. 183 (1989).

[2] Throughout this preamble, "fidelity bond coverage" refers to the coverage provided under Standard Form No. 24.

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MODEL REGULATIONS IMPLEMENTING THE PROGRAM FRAUD CIVIL REMEDIES ACT OF 1986

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MODEL REGULATIONS IMPLEMENTING THE
PROGRAM FRAUD CIVIL REMEDIES ACT OF 1986

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MODEL REGULATIONS IMPLEMENTING THE PROGRAM FRAUD CIVIL REMEDIES ACT OF 1986

1. Basis and purpose.

(a) Basis. This part implements the Program Fraud Civil Remedies Act of 1986, Pub. L. No. 99-509, §§ 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 (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.

2. Definitions.

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.

[NOTE: These regulations use the term ALJ throughout because it applies to most agencies. If your agency is not subject to subchapter II of chapter 5 of title 5, U.S.C., you should include a definition for "presiding officer" (see below) and substitute that term for "ALJ" wherever the latter term appears in the body of these regulations.]

Authority means

[Name your agency if it fits one of the definitions below:]

(a) an executive department;
(b) a military department;
(c) an establishment (as such term is defined in section 11(2) of the Inspector General Act of 1978) which is not an executive department; or
(d) the United States Postal Service.

[For HHS:]

the Department of Health and Human Services.

Authority head means

[Adapt from among the following for your agency:]

(a) the head of your authority; or

(b) an official or employee of your authority designated, in regulations promulgated by the head of the authority, to act on behalf of the head of the authority;

[For HHS:]

the Secretary or the Under Secretary of the Department of Health and Human Services.

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

Claim means any request, demand, or submission--

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

(b) made to a recipient of property, services, or money from the authority or to a party to a contract with the authority--

(1) for property or services if the United States--

(i) provided such property or services;

(ii) provided any portion of the funds for the purchase of such property or services; or

(iii) will reimburse such recipient or party for the purchase of such property or services; or

(2) for the payment of money (including money representing grants, loans, insurance, or benefits) if the United States--

(i) provided any portion of the money requested or demanded; or

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

(c) made to the authority which has the effect of decreasing an obligation to pay or account for property, services, or money[,][.]

[Applicable to the Department of the Treasury:]

[except that such term does not include any claim made in any return of tax imposed by the Internal Revenue Code of 1954.]

Complaint means the administrative complaint served by the reviewing official on the defendant under § 7.

Defendant means any person alleged in a complaint under § 7 to be liable for a civil penalty or assessment under § 3.

[Department means the Department of Health and Human Services.]

Government means the United States Government.

Individual means a natural person.

Initial decision means the written decision of the ALJ required by § 10 or § 37, and includes a revised initial decision issued following a remand or a motion for reconsideration.

Investigating official means

[Name the office that fits the applicable definition below, generally, the Inspector General of your authority:]

An individual who--

(a)(1) in the case of an authority in which an Office of Inspector General is established by the Inspector General Act of 1978 or by any other Federal law, the Inspector General of that authority or an officer or employee of such Office designated by the Inspector General;

(2) in the case of an authority in which an Office of Inspector General is not established by the Inspector General Act of 1978 or by any other Federal law, an officer or employee of the authority designated by the authority head to conduct investigations under § 4 of this part; or

(3) in the case of a military department, the Inspector General of the Department of Defense or an officer or employee of the Office of Inspector General of the Department of Defense who is designated by the Inspector General; and

(b) who, if a member of the Armed Forces of the United States on active duty, is serving in grade O-7 or above or, if a civilian employee, 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.

[For HHS:]

the Inspector General of the Department of Health and Human Services or an officer or employee of the Office of the Inspector General designated by the Inspector General and 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.

Knows or has reason to know, means that a person, with respect to a claim or statement--

(a) has actual knowledge that the claim or statement is false, fictitious, or fraudulent;

(b) acts in deliberate ignorance of the truth or falsity of the claim or statement; or

(c) acts in reckless disregard of the truth or falsity of the claim or statement.

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.

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

[Presiding officer means (if the authority is not subject to the provisions of subchapter II of chapter 5 of title 5, U.S.C.) an officer or employee of the authority who--

(a) is selected under chapter 33 of title 5 pursuant to the competitive examination process applicable to administrative law judges;

(b) is appointed by the authority head to conduct hearings under this part;[1]

(c) is assigned to cases in rotation so far as practicable;

(d) may not perform duties inconsistent with the duties and responsibilities of a presiding officer;

(e) 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;

(f) is not subject to performance appraisal pursuant to chapter 43 of such title; and

(g) may be removed, suspended, furloughed, or reduced in grade or pay only for good cause established and determined

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[1]The statute provides "is appointed by the authority head to conduct hearings under § 3803 of such title," referring evidently to this title, as there is no § 3803 in title 5, U.S.C.

by the Merit Systems Protection Board on the record after opportunity for hearing by such Board.]

Representative means an attorney [and if your agency elects to permit non-attorney representatives to appear in proceedings under this part, you may add: "or other representative meeting the qualifications of a non-attorney representative found at (and here list your agency's regulations, not internal guidelines, for allowing non-attorney representatives to appear before your agency in administrative hearings) and designated by a party in writing."]

Reviewing official means

[Designate an officer or employee of your authority who meets the following criteria or define the reviewing official as follows:]

An officer or employee of the authority--
(a) who is designated by the authority head to make the determination required under § 5 of this part;

(b) who, if a member of the Armed Forces of the United States on active duty, is serving in grade O-7 or above or, if a civilian employee, 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; and

(c) who is--

(1) not subject to supervision by, or required to report to, the investigating official; and

(2) not employed in the organizational unit of the authority in which the investigating official is employed.

[For HHS:]

the General Counsel of the Department or his designee who is--

(1) not subject to supervision by, or required to report to, the investigating official; and

(2) not employed in the organizational unit of the authority in which the investigating official is employed.

Statement means any representation, certification, affirmation, document, record, or accounting or bookkeeping entry made--

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

(b) with respect to (including relating to eligibility for)--

(1) a contract with, or a bid or proposal for a contract with; or

(2) 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[.][,]

[Applicable to the Department of the Treasury:]

[except that such term does not include any statement made in any return of tax imposed by the Internal Revenue Code of 1954.]

3. Basis for civil penalties and assessments.

(a) Claims.

(1) Except as provided in (c) below, any person who makes a claim that the person knows or has reason to know--

(i) is false, fictitious, or fraudulent;

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

(iii) includes or is supported by any written statement that--

(A) omits a material fact;

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

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

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

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

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

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

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

(5) If the Government has made any payment (including transferred property or provided services) on a claim, a person subject to a civil penalty under paragraph (1) 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 of paragraph (1). Such assessment shall be in lieu of damages sustained by the Government because of such claim.

(b) Statements.

(1) Except as provided in (c) below, any person who makes a written statement that--

(i) the person knows or has reason to know--

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

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

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

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

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

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

[NOTE: Subsection (c) should be included in your agency's regulations only if your agency administers one of the benefit programs listed in paragraph (c)(2) below.]

(c)(1) In the case of any claim or statement made by any individual relating to any of the benefits listed in paragraph (2) received by such individual, such individual may be held liable for penalties and assessments under this section only if such claim or statement is made by such individual in making application for such benefits with respect to such individual's eligibility to receive such benefits.

(2) For purposes of this paragraph, the term "benefits" means--

[List those among the following, any benefits that are administered by your authority:]

(i) benefits under the food stamp program (as defined in § 3(h) of the Food Stamp Act of 1977);

(ii) benefits under chapters 11, 13, 15, 17, and 21 of title 38;

(iii) benefits under the Black Lung Benefits Act;

(iv) any annuity or other benefit under the Railroad Retirement Act of 1974;

(v) benefits under the National School Lunch Act;

(vi) benefits under any housing assistance program for lower income families or elderly or handicapped persons which is administered by the Secretary of Housing and Urban Development or the Secretary of Agriculture; or

(vii) benefits under the special supplemental food program for women, infants, and children established under § 17 of the Child Nutrition Act of 1966; or

(viii) benefits under part A of the Energy Conservation in Existing Buildings Act of 1976,

which are intended for the personal use of the individual who receives the benefits or for a member of the individual's family.

[For HHS:]

(i) benefits under the supplemental security income program under title XVI of the Social Security

Act;

(ii) old age, survivors, and disability insurance benefits under title II of the Social Security Act;

(iii) benefits under title XVIII of the Social Security Act;

(iv) aid to families with dependent children under a State plan approved under § 402(a) of the Social Security Act;

(v) medical assistance under a State plan approved under § 1902(a) of the Social Security Act;

(vi) benefits under title XX of the Social Security Act;

(vii) benefits under § 336 of the Older Americans Act;

(viii) benefits under the Low-Income Home Energy Assistance Act of 1981,

which are intended for the personal use of the individual who receives the benefits or for a member of the individual's family.

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

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

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

4. Investigation.

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

(1) The subpoena so issued shall notify the person to whom it is addressed of the authority under which the subpoena is issued and shall identify the records or documents sought;

(2) He or she may designate a person to act on his behalf to receive the documents sought; and

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

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

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

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

5. Review by the reviewing official.

(a) If, based on the report of the investigating official under § 4(b), the reviewing official determines that there is adequate evidence to believe that a person is liable under § 3 of this part, the reviewing official shall transmit to the Attorney General a written notice of the reviewing official's intention to issue a complaint under § 7.

(b) Such notice shall include--

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

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

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

(4) An estimate of the amount of money or the value of property, services, or other benefits requested or demanded in violation of § 3 of this part;

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

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

6. Prerequisites for issuing a complaint.

(a) The reviewing official may issue a complaint under § 7 only if--

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

(2) In the case of allegations of liability under § 3(a) with respect to a claim, the reviewing official determines that, with respect to such claim or a group of related claims submitted at the same time such claim is submitted (as defined in (b)), the amount of money or the value of property or services demanded or requested in violation of § 3(a) does not exceed $150,000.

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

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

7. Complaint.

(a) On or after the date the Department of Justice approves the issuance of a complaint in accordance with 31 U.S.C.

§ 3803(b)(1), the reviewing official may serve a complaint on the defendant, as provided in § 8.

(b) The complaint shall state--

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

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

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

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

(c) At the same time the reviewing official serves the complaint, he or she shall serve the defendant with a copy of these regulations.

8. Service of complaint.

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

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

(1) Affidavit of the individual making service;

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

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

9. Answer.

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

(b) In the answer, the defendant--

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

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

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

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

10. Default upon failure to file an answer.

(a) If the defendant does not file an answer within the time prescribed in § 9(a), the reviewing official may refer the complaint to the ALJ.

(b) Upon the referral of the complaint, the ALJ shall promptly serve on defendant in the manner prescribed in § 8, a notice that an initial decision will be issued under this section.

(c) If the defendant fails to answer, the ALJ shall assume the facts alleged in the complaint to be true and, if such facts establish liability under § 3, the ALJ shall issue an initial decision imposing the maximum amount of penalties and assessments allowed under the statute.

(d) Except as otherwise provided in this section, by failing to file a timely answer, the defendant waives any right to further review of the penalties and assessments imposed under (c), and the initial decision shall become

final and binding upon the parties 30 days after it is issued.

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

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

(g) A decision of the ALJ denying a defendant's motion under paragraph (e) is not subject to reconsideration under § 38.

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

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

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

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

(l) If the authority head decides that the defendant's failure to file a timely answer is not excused, the authority head shall reinstate the initial decision of the ALJ, which shall become final and binding upon the parties 30 days after the authority head issues such decision.

11. Referral of complaint and answer to the ALJ.
Upon receipt of an answer, the reviewing official shall file the complaint and answer with the ALJ.

12. Notice of hearing.

(a) When the ALJ receives the complaint and answer, the ALJ shall promptly serve a notice of hearing upon the defendant in the manner prescribed by § 8. At the same time, the ALJ shall send a copy of such notice to the representative for the Government.

(b) Such notice shall include--

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

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

(3) The matters of fact and law to be asserted;

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

(5) The name, address, and telephone number of the representative of the Government and of the defendant, if any; and

(6) Such other matters as the ALJ deems appropriate.

13. Parties to the hearing.

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

(b) Pursuant to 31 U.S.C. § 3730(c)(5), a private plaintiff under the False Claims Act may participate in these proceedings to the extent authorized by the provisions of that Act.

14. Separation of functions.

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

(1) Participate in the hearing as the ALJ;

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

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

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

(c) Except as provided in (a), the representative for the Government may be employed anywhere in the authority, including in the offices of either the investigating official or the reviewing official.

15. Ex parte contacts.

No party or person (except employees of the ALJ's office) shall communicate in any way with the ALJ on any matter at issue in a case, unless on notice and opportunity for all parties to participate. This provision does not prohibit a

person or party from inquiring about the status of a case or asking routine questions concerning administrative functions or procedures.

16. Disqualification of reviewing official or ALJ.

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

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

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

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

(e) Upon the filing of such a motion and affidavit, the ALJ shall proceed no further in the case until he or she

resolves the matter of disqualification in accordance with paragraph (f).

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

(2) If the ALJ disqualifies himself or herself, the case shall be reassigned promptly to another ALJ.

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

17. Rights of parties.

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

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

(b) Participate in any conference held by the ALJ;

(c) Conduct discovery;

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

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

(f) Present and cross-examine witnesses;

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

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

18. Authority of the ALJ.

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

(b) The ALJ has the authority to--

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

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

(3) Hold conferences to identify or simplify the issues, or to consider other matters that may aid in the expeditious disposition of the proceeding;

(4) Administer oaths and affirmations;

(5) Issue subpoenas requiring the attendance of witnesses and the production of documents at depositions or at hearings;

(6) Rule on motions and other procedural matters;

(7) Regulate the scope and timing of discovery;

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

(9) Examine witnesses;

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

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

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

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

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

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

19. Prehearing conferences.

(a) The ALJ may schedule prehearing conferences as appropriate.

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

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

(1) Simplification of the issues;

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

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

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

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

(6) Limitation of the number of witnesses;

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

(8) Discovery;

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

(10) Such other matters as may tend to expedite the fair and just disposition of the proceedings.

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

20. 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 § 4(b) are based unless such documents are subject to a privilege under Federal law. Upon payment of fees 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 § 5 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 ALJ following the filing of an answer pursuant to § 9.

21. 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 §§ 22 and 23, the term "documents" includes information, documents, reports, answers, records, accounts, papers, and other data and documentary evidence. 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 ALJ. The ALJ shall regulate the timing of discovery.

(d) Motions for discovery.

(1) A party seeking discovery may file a motion with the ALJ. Such a motion shall be accompanied by a copy of the requested discovery, or in the case of

depositions, a summary of the scope of the proposed deposition.

(2) Within ten days of service, a party may file an opposition to the motion and/or a motion for protective order as provided in § 24.

(3) The ALJ may grant a motion for discovery only if he finds that the discovery sought--

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

(ii) Is not unduly costly or burdensome;

(iii) Will not unduly delay the proceeding; and

(iv) Does not seek privileged information.

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

(5) The ALJ may grant discovery subject to a protective order under § 24.

(e) Depositions.

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

(2) The party seeking to depose shall serve the subpoena in the manner prescribed in § 8.

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

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

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

22. Exchange of witness lists, statements and exhibits.

(a) At least 15 days before the hearing or at such other time as may be ordered by the ALJ, the parties shall exchange witness lists, copies of prior statements of proposed witnesses, and copies of proposed hearing exhibits, including copies of any written statements that the party intends to offer in lieu of live testimony in accordance with § 33(b). At the time the above documents are exchanged, any party that intends to rely on the transcript of deposition testimony in lieu of live testimony at the hearing, if permitted by the ALJ, shall provide each party with a copy of the specific pages of the transcript it intends to introduce into evidence.

(b) If a party objects, the ALJ shall not admit into evidence the testimony of any witness whose name does not appear on the witness list or any exhibit not provided to

the opposing party as provided above unless the ALJ finds good cause for the failure or that there is no prejudice to the objecting party.

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

23. Subpoenas for attendance at hearing.

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

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

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

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

(e) The party seeking the subpoena shall serve it in the manner prescribed in § 8. A subpoena on a party or upon an individual under the control of a party may be served by first class mail.

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

24. Protective order.

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

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

(1) That the discovery not be had;

(2) That the discovery may be had only on specified terms and conditions, including a designation of time or place;

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

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

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

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

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

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

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

25. Fees.

The party requesting a subpoena shall pay the cost of the fees and mileage of any witness subpoenaed in the amounts

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

26. Form, filing and service of papers.

(a) Form.

(1) Documents filed with the ALJ shall include an original and two copies.

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

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

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

(b) Service. A party filing a document with the ALJ shall, at the time of filing, serve a copy of such document on

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

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

27. Computation of time.

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

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

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

28. Motions.

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

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

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

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

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

29. Sanctions.

(a) The ALJ may sanction a person, including any party or representative for--

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

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

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

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

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

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

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

(3) Prohibit the party failing to comply with such order from introducing evidence concerning, or

otherwise relying upon testimony relating to the information sought; and

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

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

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

30. The hearing and burden of proof.

(a) The ALJ shall conduct a hearing on the record in order to determine whether the defendant is liable for a civil penalty or assessment under § 3 and, if so, the appropriate amount of any such civil penalty or assessment considering any aggravating or mitigating factors.

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

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

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

31. Determining the amount of penalties and assessments.

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

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

(1) The number of false, fictitious, or fraudulent claims or statements;

(2) The time period over which such claims or statements were made;

(3) The degree of the defendant's culpability with respect to the misconduct;

(4) The amount of money or the value of the property, services, or benefit falsely claimed;

(5) The value of the Government's actual loss as a result of the misconduct, including foreseeable consequential damages and the costs of investigation;

(6) The relationship of the amount imposed as civil penalties to the amount of the Government's loss;

(7) The potential or actual impact of the misconduct upon national defense, public health or safety, or public confidence in the management of Government programs and operations, including particularly the impact on the intended beneficiaries of such programs;

(8) Whether the defendant has engaged in a pattern of the same or similar misconduct;

(9) Whether the defendant attempted to conceal the misconduct;

(10) The degree to which the defendant has involved others in the misconduct or in concealing it;

(11) Where the misconduct of employees or agents is imputed to the defendant, the extent to which the defendant's practices fostered or attempted to preclude such misconduct;

(12) Whether the defendant cooperated in or obstructed an investigation of the misconduct;

(13) Whether the defendant assisted in identifying and prosecuting other wrongdoers;

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

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

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

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

32. Location of hearing.

(a) The hearing may be held--

(1) In any judicial district of the United States in which the defendant resides or transacts business;

(2) In any judicial district of the United States in

which the claim or statement in issue was made; or

(3) In such other place as may be agreed upon by the defendant and the ALJ.

(b) Each party shall have the opportunity to present argument with respect to the location of the hearing.

(c) The hearing shall be held at the place and at the time ordered by the ALJ.

33. Witnesses.

(a) Except as provided in paragraph (b), testimony at the hearing shall be given orally by witnesses under oath or affirmation.

(b) At the discretion of the ALJ, testimony may be admitted in the form of a written statement or deposition. Any such written statement must be provided to all other parties along with the last known address of such witness, in a manner which allows sufficient time for other parties to subpoena such witness for cross-examination at the hearing. Prior written statements of witnesses proposed to testify at the hearing and deposition transcripts shall be exchanged as provided in § 22(a).

(c) The ALJ shall exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence

so as to (1) make the interrogation and presentation effective for the ascertainment of the truth, (2) avoid needless consumption of time, and (3) protect witnesses from harassment or undue embarrassment.

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

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

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

(1) A party who is an individual;

(2) In the case of a party that is not an individual, an officer or employee of the party designated by the party's representative; or

(3) An individual whose presence is shown by a party

to be essential to the presentation of its case, including an individual employed by the Government engaged in assisting the representative for the Government.

34. Evidence.

(a) The ALJ shall determine the admissibility of evidence.

(b) Except as provided herein, the ALJ shall not be bound by the Federal Rules of Evidence. However, the ALJ may apply the Federal Rules of Evidence where appropriate, e.g., to exclude unreliable evidence.

(c) The ALJ shall exclude irrelevant and immaterial evidence.

(d) Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or by considerations of undue delay or needless presentation of cumulative evidence.

(e) Although relevant, evidence may be excluded if it is privileged under Federal law.

(f) Evidence concerning offers of compromise or settlement shall be inadmissible to the extent provided in Rule 408 of the Federal Rules of Evidence.

(g) The ALJ shall permit the parties to introduce rebuttal witnesses and evidence.

(h) All documents and other evidence offered or taken for the record shall be open to examination by all parties, unless otherwise ordered by the ALJ pursuant to § 24.

35. The record.

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

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

(c) The record may be inspected and copied (upon payment of a reasonable fee) by anyone, unless otherwise ordered by the ALJ pursuant to § 24.

36. Post-hearing briefs.

The ALJ may require the parties to file post-hearing briefs. In any event, any party may file a post-hearing brief. The ALJ shall fix the time for filing such briefs, not to exceed 60 days from the date the parties receive the transcript of the hearing or, if applicable, the stipulated record. Such briefs may be accompanied by proposed findings of fact and conclusions of law. The ALJ may permit the parties to file reply briefs.

37. Initial decision.

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

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

(1) Whether the claims or statements identified in the complaint, or any portions thereof, violate § 3;

(2) If the person is liable for penalties or assessments, the appropriate amount of any such penalties or assessments considering any mitigating or aggravating factors that he or she finds in the case, such as those described in § 31.

(c) The ALJ shall promptly serve the initial decision on all parties within 90 days after the time for submission of post-hearing briefs and reply briefs (if permitted) has expired. The ALJ shall at the same time serve all defendants with a statement describing the right of any defendant determined to be liable for a civil penalty or assessment to file a motion for reconsideration with the ALJ or a notice of appeal with the authority head. If the ALJ fails to meet the deadline contained in this paragraph, he or she shall notify the parties of the reason for the delay and shall set a new deadline.

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

38. Reconsideration of initial decision.

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

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

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

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

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

(f) When a motion for reconsideration is made, the time periods for appeal to the authority head contained in § 38, and for finality of the initial decision in § 36(d), shall begin on the date the ALJ issues the denial of the motion for reconsideration or a revised initial decision, as appropriate.

39. Appeal to authority head.

(a) Any defendant who has filed a timely answer and who is determined in an initial decision to be liable for a civil penalty or assessment may appeal such decision to the

authority head by filing a notice of appeal with the authority head in accordance with this section.

(b) (1) No notice of appeal may be filed until the time period for filing a motion for reconsideration under § 38 has expired.

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

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

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

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

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

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

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

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

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

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

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

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

(l) Unless a petition for review is filed as provided in 31 U.S.C. § 3805 after a defendant has exhausted all administrative remedies under this part and within 60 days after the date on which the authority head serves the defendant with a copy of the authority head's decision, a determination that a defendant is liable under § 3 is final and is not subject to judicial review.

40. 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.

41. 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.

42. Judicial review.

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

43. 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.

44. Right to administrative offset.

The amount of any penalty or assessment which has become final, or for which a judgment has been entered under § 42 or § 43, or any amount agreed upon in a compromise or settlement under § 46, may be collected by administrative offset under 31 U.S.C. § 3716, except that an administrative

offset may not be made under this subsection against a refund of an overpayment of Federal taxes, then or later owing by the United States to the defendant.

45. Deposit in Treasury of United States.

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

46. Compromise or settlement.

(a) Parties may make offer 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 § 42 or during the pendency of any action to collect penalties and assessments under § 43.

(d) The Attorney General has exclusive authority to compromise or settle a case under this part during the pendency of any review under § 42 or of any action to recover penalties and assessments under 31 U.S.C. § 3806.

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

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

47. Limitations.

(a) The notice of hearing with respect to a claim or statement must be served in the manner specified in § 8 within 6 years after the date on which such claim or statement is made.

(b) If the defendant fails to file a timely answer, service of a notice under § 10(b) shall be deemed a notice of hearing for purposes of this section.

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

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HHS Copy of Amendments to

Model Regulations Implementing

Program Fraud Civil Remedies Act

(8)

AD7171
FOR

(b) an official or employee of your authority designated, in regulations promulgated by the head of the authority, to act on behalf of the head of the authority;

[For HHS:]

the Secretary or the Under Secretary of the Department of Health and Human Services.

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

Claim means any request, demand, or submission--

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

(b) made to a recipient of property, services, or money from the authority or to a party to a contract with the authority--

(1) for property or services if the United States--

(i) provided such property or services;

Knows or has reason to know, means that a person, with respect to a claim or statement--

(a) has actual knowledge that the claim or statement is false, fictitious, or fraudulent;

(b) acts in deliberate ignorance of the truth or falsity of the claim or statement; or

(c) acts in reckless disregard of the truth or falsity of the claim or statement.

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.

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

(Presiding officer means (if the authority is not subject to the provisions of subchapter II of chapter 5 of title 5, U.S.C.) an officer or employee of the authority who--

by the Merit Systems Protection Board on the record after opportunity for hearing by such Board.]

Representative means an attorney [and if your agency elects to permit non-attorney representatives to appear in proceedings under this part, you may add: "or other representative meeting the qualifications of a non-attorney representative found at (and here list your agency's regulations, not internal guidelines, for allowing non-attorney representatives to appear before your agency in administrative hearings) and designated by a party in writing."]

Reviewing official means

[Designate an officer or employee of your authority who meets the following criteria or define the reviewing official as follows:]

An officer or employee of the authority--
(a) who is designated by the authority head to make the determination required under § 5 of this part;

(b) who, if a member of the Armed Forces of the United States on active duty, is serving in grade O-7 or above or, if a civilian employee, 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; and

(c) who is--

(1) not subject to supervision by, or required to report to, the investigating official; and

(2) not employed in the organizational unit of the authority in which the investigating official is employed.

[For HHS:]

the General Counsel of the Department or his designee who is--

(1) not subject to supervision by, or required to report to, the investigating official; and

(2) not employed in the organizational unit of the authority in which the investigating official is employed.

Statement means any representation, certification, affirmation, document, record, or accounting or bookkeeping entry made--

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

(b) with respect to (including relating to eligibility for)--

(1) a contract with, or a bid or proposal for a contract with; or

(2) 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[.][,]

[Applicable to the Department of the Treasury:]

[except that such term does not include any statement made in any return of tax imposed by the Internal Revenue Code of 1954.]

3. Basis for civil penalties and assessments.

(a) Claims.

(1) Except as provided in (c) below, any person who makes a claim that the person knows or has reason to know--

(i) is false, fictitious, or fraudulent;

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

(iii) includes or is supported by any written statement that--

(A) omits a material fact;

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

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

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

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

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

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

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

(5) If the Government has made any payment (including transferred property or provided services) on a claim, a person subject to a civil penalty under paragraph (1) 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 of paragraph (1). Such assessment shall be in lieu of damages sustained by the Government because of such claim.

(b) Statements.

(1) Except as provided in (c) below, any person who makes a written statement that--

(i) the person knows or has reason to know--

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

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

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

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

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

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

[NOTE: Subsection (c) should be included in your agency's regulations only if your agency administers one of the benefit programs listed in paragraph (c)(2) below.]

(c)(1) In the case of any claim or statement made by any individual relating to any of the benefits listed in paragraph (2) received by such individual, such individual may be held liable for penalties and assessments under this section only if such claim or statement is made by such individual in making application for such benefits with respect to such individual's eligibility to receive such benefits.

(2) For purposes of this paragraph, the term "benefits" means--

[List those among the following, any benefits that are administered by your authority:]

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

4. Investigation.

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

(1) The subpoena so issued shall notify the person to whom it is addressed of the authority under which the subpoena is issued and shall identify the records or documents sought;

(2) He or she may designate a person to act on his behalf to receive the documents sought; and

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

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

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

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

5. Review by the reviewing official.

(a) If, based on the report of the investigating official under § 4(b), the reviewing official determines that there is adequate evidence to believe that a person is liable under § 3 of this part, the reviewing official shall transmit to the Attorney General a written notice of the reviewing official's intention to issue a complaint under § 7.

(b) Such notice shall include--

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

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

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

(4) An estimate of the amount of money or the value of property, services, or other benefits requested or demanded in violation of § 3 of this part;

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

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

6. Prerequisites for issuing a complaint.

(a) The reviewing official may issue a complaint under § 7 only if--

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

(2) In the case of allegations of liability under § 3(a) with respect to a claim, the reviewing official determines that, with respect to such claim or a group of related claims submitted at the same time such claim is submitted (as defined in (b)), the amount of money or the value of property or services demanded or requested in violation of § 3(a) does not exceed $150,000.

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

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

7. Complaint.

(a) On or after the date the Department of Justice approves the issuance of a complaint in accordance with 31 U.S.C.

§ 3803(b)(1), the reviewing official may serve a complaint on the defendant, as provided in § 8.

(b) The complaint shall state--

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

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

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

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

(c) At the same time the reviewing official serves the complaint, he or she shall serve the defendant with a copy of these regulations.

8. Service of complaint.

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

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

(1) Affidavit of the individual making service;

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

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

9. Answer.

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

(b) In the answer, the defendant--

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

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

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

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

10. Default upon failure to file an answer.

(a) If the defendant does not file an answer within the time prescribed in § 9(a), the reviewing official may refer the complaint to the ALJ.

(b) Upon the referral of the complaint, the ALJ shall promptly serve on defendant in the manner prescribed in § 8, a notice that an initial decision will be issued under this section.

(c) If the defendant fails to answer, the ALJ shall assume the facts alleged in the complaint to be true and, if such facts establish liability under § 3, the ALJ shall issue an initial decision imposing the maximum amount of penalties and assessments allowed under the statute.

(d) Except as otherwise provided in this section, by failing to file a timely answer, the defendant waives any right to further review of the penalties and assessments imposed under (c), and the initial decision shall become

final and binding upon the parties 30 days after it is issued.

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

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

(g) A decision of the ALJ denying a defendant's motion under paragraph (e) is not subject to reconsideration under § 38.

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

14. Separation of functions.

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

(1) Participate in the hearing as the ALJ;

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

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

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

(c) Except as provided in (a), the representative for the Government may be employed anywhere in the authority, including in the offices of either the investigating official or the reviewing official.

15. Ex parte contacts.

No party or person (except employees of the ALJ's office) shall communicate in any way with the ALJ on any matter at issue in a case, unless on notice and opportunity for all parties to participate. This provision does not prohibit a

resolves the matter of disqualification in accordance with paragraph (f).

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

(2) If the ALJ disqualifies himself or herself, the case shall be reassigned promptly to another ALJ.

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

17. Rights of parties.

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

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

(b) Participate in any conference held by the ALJ;

(c) Conduct discovery;

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

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

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

(9) Examine witnesses;

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

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

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

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

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

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

19. Prehearing conferences.

(a) The ALJ may schedule prehearing conferences as appropriate.

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

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

(1) Simplification of the issues;

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

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

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

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

(6) Limitation of the number of witnesses;

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

(8) Discovery;

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

(10) Such other matters as may tend to expedite the fair and just disposition of the proceedings.

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

20. 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 § 4(b) are based unless such documents are subject to a privilege under Federal law. Upon payment of fees 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 § 5 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.

the opposing party as provided above unless the ALJ finds good cause for the failure or that there is no prejudice to the objecting party.

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

23. Subpoenas for attendance at hearing.

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

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

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

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

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

27. Computation of time.

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

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

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

28. Motions.

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

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

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

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

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

29. Sanctions.

(a) The ALJ may sanction a person, including any party or representative for--

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

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

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

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

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

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

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

(3) Prohibit the party failing to comply with such order from introducing evidence concerning, or

otherwise relying upon testimony relating to the information sought; and

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

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

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

30. The hearing and burden of proof.

(a) The ALJ shall conduct a hearing on the record in order to determine whether the defendant is liable for a civil penalty or assessment under § 3 and, if so, the appropriate amount of any such civil penalty or assessment considering any aggravating or mitigating factors.

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

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

which the claim or statement in issue was made; or

(3) In such other place as may be agreed upon by the defendant and the ALJ.

(b) Each party shall have the opportunity to present argument with respect to the location of the hearing.

(c) The hearing shall be held at the place and at the time ordered by the ALJ.

33. Witnesses.

(a) Except as provided in paragraph (b), testimony at the hearing shall be given orally by witnesses under oath or affirmation.

(b) At the discretion of the ALJ, testimony may be admitted in the form of a written statement or deposition. Any such written statement must be provided to all other parties along with the last known address of such witness, in a manner which allows sufficient time for other parties to subpoena such witness for cross-examination at the hearing. Prior written statements of witnesses proposed to testify at the hearing and deposition transcripts shall be exchanged as provided in § 22(a).

(c) The ALJ shall exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence

so as to (1) make the interrogation and presentation effective for the ascertainment of the truth, (2) avoid needless consumption of time, and (3) protect witnesses from harassment or undue embarrassment.

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

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

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

(1) A party who is an individual;

(2) In the case of a party that is not an individual, an officer or employee of the party designated by the party's representative; or

(3) An individual whose presence is shown by a party

to be essential to the presentation of its case, including an individual employed by the Government engaged in assisting the representative for the Government.

34. Evidence.

(a) The ALJ shall determine the admissibility of evidence.

(b) Except as provided herein, the ALJ shall not be bound by the Federal Rules of Evidence. However, the ALJ may apply the Federal Rules of Evidence where appropriate, e.g., to exclude unreliable evidence.

(c) The ALJ shall exclude irrelevant and immaterial evidence.

(d) Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or by considerations of undue delay or needless presentation of cumulative evidence.

(e) Although relevant, evidence may be excluded if it is privileged under Federal law.

(c) The ALJ shall promptly serve the initial decision on all parties within 90 days after the time for submission of post-hearing briefs and reply briefs (if permitted) has expired. The ALJ shall at the same time serve all defendants with a statement describing the right of any defendant determined to be liable for a civil penalty or assessment to file a motion for reconsideration with the ALJ or a notice of appeal with the authority head. If the ALJ fails to meet the deadline contained in this paragraph, he or she shall notify the parties of the reason for the delay and shall set a new deadline.

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

38. Reconsideration of initial decision.

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

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

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

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

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

(f) When a motion for reconsideration is made, the time periods for appeal to the authority head contained in § 38, and for finality of the initial decision in § 36(d), shall begin on the date the ALJ issues the denial of the motion for reconsideration or a revised initial decision, as appropriate.

39. Appeal to authority head.

(a) Any defendant who has filed a timely answer and who is determined in an initial decision to be liable for a civil penalty or assessment may appeal such decision to the

authority head by filing a notice of appeal with the authority head in accordance with this section.

(b) (1) No notice of appeal may be filed until the time period for filing a motion for reconsideration under § 38 has expired.

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

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

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

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

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

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

(l) Unless a petition for review is filed as provided in 31 U.S.C. § 3805 after a defendant has exhausted all administrative remedies under this part and within 60 days after the date on which the authority head serves the defendant with a copy of the authority head's decision, a determination that a defendant is liable under § 3 is final and is not subject to judicial review.

40. 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.

AMERICAN BAR ASSOCIATION **Section of Public Contract Law**
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May 29, 1987

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Re: Implementation of the Program Fraud Civil Remedies Act of 1986

This letter is written on behalf of the Section of Public Contract Law of the American Bar Association pursuant to special authority extended by the Association's Board of Governors for comments on acquisition-related regulations. The views expressed are those of the Section and have not been considered by the Association's Board of Governors or its House of Delegates.

The principal purpose of the Program Fraud Civil Remedies Act of 1986 was to provide a simplified, expedited and less expensive method of adjudicating allegations of false claims against the Government in cases involving smaller dollar amounts. Throughout the consideration of legislation, Congress contended with the tension between protecting the rights to due process of law of persons accused of fraud, and the costs and complexity which would arise from creating excessive, formalistic procedural rules.

Congress resolved this conflict by mandating that proceedings under the Act conducted by agencies such as GSA which are covered by the Administrative Procedure Act shall be conducted in accordance with that statute. 31 U.S.C. § 3803(g)(1)(A)(i). Only those agencies which may not be governed by the APA were directed to promulgate regulations establishing comparable procedures.

The proposed GSA regulations disregard this distinction. Rather than simply incorporating the APA, the regulations would create an extensive and detailed list of

procedural technicalities. Many of these requirements are unnecessary, and will lead only to delay and additional expense for both the Government and the defendants. One example is the provision in § 105-70.036 for post-hearing briefs and proposed findings of fact and conclusions of law. The Section of Public Contract Law has recently completed an extensive Report on Ways of Expediting Appeals Before the Boards of Contract Appeals. 16 Public Contract L.J. 161 (August 1986). One of the recommendations of that Report was the elimination of post-trial briefs as a "wasteful and unnecessary" process in a large percentage of cases before the Boards. Such excessive filings would be similarly wasteful in hearings under the Act. The recommendations in the Report provide excellent guidance in other respects as well for simplifying the procedures in Program Fraud cases.

The formalistic procedural rules included in the proposed regulations ignore the broad range of cases which may be pursued under the Act. While formal processes and multiple written submissions may be acceptable or necessary in large cases against major corporations, they are inappropriate in the many small cases which will be brought against individuals and small businesses. Many of these defendants will proceed pro se, and should not be denied their right to a fair hearing before an impartial administrative law judge by reason of the inability to understand, or the excessive expense of complying with, a lengthy list of procedural technicalities.

We recommend that the procedures set forth in the regulations be substantially rewritten to address this problem and propose two alternate approaches. The first approach would be to establish two sets of procedures -- a formal procedure based upon the Federal Rules of Civil Procedure and providing for formal pleadings, pretrial procedures, discovery, and briefs; and a simplified, expedited procedure which would dispense with most written submissions but would provide the defendant the "day in court" to which he is entitled under the Act. The election between these procedures should rest solely with the defendant, based upon the person's own assessment of the defense which he considers necessary or can afford.

The second approach would be to replace many of the specific procedural rules included in the proposed regulations with more general guidelines, based upon the APA and the Act. This would leave to the parties and the administrative law judge the ability to tailor the proceedings to the facts and circumstances of the particular case.

In addition to these general comments, we believe that the proposed regulations exceed the bounds of the Act and are seriously flawed in many other respects. We set forth these objections by section below.

§ 105-70.002 Definitions.

Paragraph (d) attempts to define "benefit" to include "anything of value" including a license, permit, ruling, etc. As used in the Act, "benefit" is a subset of the term money and is plainly intended to include only monetary benefits. A request for a license, permit, decision, ruling etc. is not a "claim" and is not actionable under the Act. This attempt to expand the scope of the statute is not authorized and should be deleted.

Paragraph (n) defines a representative only as an attorney. The result is that any corporation or entity other than an individual must be represented by an attorney. In the Boards of Contract Appeals, many small businesses choose to be represented by an owner or officer. The regulations should be amended to provide the same opportunity in proceedings under the Act.

Paragraph (o) defines the "Reviewing Official" as the General Counsel of GSA "or his designee." This provision does not comply with § 3801(a)(8) of the Act which requires that the reviewing official be designated by the authority head. The Act does not permit the person so designated to redelegate that responsibility. Moreover, the Act requires that the reviewing official be serving in a position for which the rate of basic pay is not less than grade GS-16. This requirement is omitted from the proposed regulations.

Paragraph (p)(2)(ii) suggests that GSA could initiate a proceeding under the Act on the basis of a false statement to a state or intermediary in a program administered by any agency of the United States. This provision should be clarified to state that the jurisdiction of GSA extends only to programs administered by GSA.

§ 105-70.003 Basis for civil penalties and assessments.

The Act and proposed regulations provide that to be actionable a false statement must contain or be accompanied by an express certification or affirmation of the truthfulness and accuracy of the statement. However, paragraph (b)(2) suggests

that both the statement and accompanying certification would be separate violations for which the government could collect damages and assess penalties. This provision is contrary to the intent of the Act and should be clarified to provide that each written representation accompanied by a certification or affirmation constitutes a single statement.

Paragraph (b)(3)(d) provides that each individual who is responsible for a false claim or statement may separately be assessed a civil penalty. There is no statutory basis for this provision, which is plainly contrary to the remedial nature of the Act and to over one hundred years of practice under the False Claims Act. Rather, as with assessments for false claims as set forth in paragraph (b)(3)(e), only a single penalty may be assessed for each false claim or statement, but such penalty may be imposed jointly and severally against all of the responsible persons.

§ 105-70.004 Investigation.

The regulations should reflect the limitations on the investigative subpoena authority set forth in § 3804(a) of the Act. Specifically, the regulations should state: (1) the subpoena may be issued only for materials "not otherwise reasonably available to GSA" and (2) may be issued only for the purpose of conducting an investigation under the Act.

Paragraph (a)(3) purports to require an individual who has received a subpoena to execute a certification of his compliance. This requirement is an attempt to compel testimony, but this power was specifically denied the Inspectors General in the consideration of the Act. A person's only responsibility is to produce all non-privileged material responsive to the subpoena. Paragraph (a)(3) is not authorized by any provision of law and should deleted.

Paragraphs (b) and (c) seek to vest in the Inspector General the discretion to determine whether a violation of the Act has occurred, or to delay his obligation of reporting the results of his investigation. These provisions are contrary to § 3803(a)(1) of the Act which mandates that the investigating official shall report the findings and conclusions of his investigation to the reviewing official. The right to delay proceeding because of interference with a criminal investigation rests solely with the Attorney General or Assistant Attorney General under § 3803(b)(3) -- not with the Inspector General. These provisions protect the defendant's

right to a prompt resolution of serious allegations of fraud and cannot be circumvented by this proposed regulation.

§ 105-70.005 Review by reviewing official.

Section 3809(2) of the Act requires that the regulations include a requirement that the reviewing official determine that there is a reasonable prospect of collecting from the defendant the amount for which the person may be liable. Paragraph (b)(6) does not satisfy this obligation. The proposed regulation would permit the reviewing official to avoid this responsibility by simply stating that no information is available without conducting any inquiry or investigation. It would also permit a commencement of a proceeding if the reviewing official indicated that a nominal or token amount could be collected if he considered such amount to be an "appropriate" recovery. Paragraph (b)(6) should be amended to conform to the Act.

§ 105-70.006 Prerequisites for issuing a complaint.

Section 3803(c)(1) of the Act requires that in applying the $150,000 ceiling, all related claims submitted at the same time must be aggregated. Paragraph (b) of the proposed regulations attempts to negate this limitation by defining "related" to mean only those claims arising "from the same transaction" which are submitted "simultaneously as part of a single request, demand, or submission." There are many circumstances in which separate but related claims arising from different transactions could be submitted at the same time and must be aggregated pursuant to the Act. For example, a contractor could submit a single monthly package of all invoices for office supplies ordered by the agency during the preceding month, or a shipper could submit all bills of lading to the agency on a weekly basis. Plainly, these claims must be aggregated under the Act although they arise from separate transactions and constitute multiple "requests, demands or submissions." As stated by the Senate Committee on Government Affairs in its Report on the Program Fraud Civil Remedies Act, S.Rep. 99-212, 99th Cong., 1st Sess., (1985) at 24-25:

> The Committee does not believe that a group of related false claims submitted together, possibly resulting in penalties of hundreds of thousands of dollars, should be adjudicated administratively. If these related claims in the aggregate, exceed

> $100,000, they should be prosecuted together in court under the False Claims Act; not separately in an administrative proceeding under the Program Fraud bill.

The regulations cannot circumvent this jurisdictional ceiling by attempting to limit the statutory requirement that related claims be aggregated. Paragraph (b) of § 105-70.006 should be deleted.

§§ 105-70.007 - 105-70.038 Hearing Procedures.

For the reasons stated above, these provisions should be substantially revised. However, the following provisions raise particular concern.

Section 105-70.008 purports to permit service of a notice of proposed liability (called a "complaint" in the regulations) in any manner permitted under F.R. Civ. P. 4(d). Section 3803(d)(1) of the Act permits service only by registered or certified mail or by delivery. Similarly, § 105-70.009 states that the defendant must request a hearing within 30 days of "service" of the complaint. The Act, however, provides in § 3803(d)(2) that the 30-day period does not begin to run until actual receipt by the defendant of the notice of proposed liability.

Section 105-70.009 and 70.010 purport to require a defendant to file an "answer" specifically admitting or denying each allegation of the "complaint" or forfeit his right to a hearing. This will present particular practical problems since in judicial proceedings defendants often need and obtain extensions of the time to answer, whereas the 30-day limit in this statute may well not be susceptable to extension. The defendant plainly has no obligation to file an "answer" under the Act, and is entitled by law under § 3803(d)(2) to a hearing if he simply requests one. He is further entitled to present his defense through oral or written evidence. The agency cannot deny this hearing on the basis of the defendant's failure or refusal to submit a formal pleading setting forth all of his responses and defenses to the allegations, and there is no statutory basis for assessing a "default." Sections 105-70.009 and 70.010 should be deleted.

Section 105-70.018(c) purports to limit the authority of the hearing examiner to decide questions involving the validity of statutes and regulations. The determination of such questions is an inherent part of the authority of an

administrative law judge, and there is no basis under the APA or the Act for this limitation.

Section 105-70.020(c) purports to exempt from disclosure the notice sent to the Attorney General from the reviewing official. This notice must state any exculpatory or mitigating circumstances, and to the extent exculpatory evidence is included, the notice must be disclosed to the defendant under § 3803(e)(2) of the Act.

Section 105-70.031 would create a presumption that the maximum penalties and assessments should be imposed. The statute was intended to vest broad discretion in the hearing examiner to determine the appropriate penalty under the circumstances. As stated in the Senate Report at 18:

> The $10,000 penalty is intended to serve as a ceiling; it is expected that the hearing examiner will adjust and determine the assessment based on the circumstances of the case.

The last sentence of § 105-70.031 is inappropriate and should be deleted.

Section 105-70.032 provides no guidance on selecting the location of the hearing. Particularly in cases involving individuals and small businesses, the regulations should create a presumption that the hearing will be held where the defendant resides.

While the Federal Rules of Evidence need not be strictly applied in administrative hearings, the seriousness of allegations of fraud and the extensive penalties which may be imposed in Program Fraud proceedings dictate that evidence should be limited to that generally admissible in court. In particular, we recommend that § 105-70.034 of the regulations require the exclusion of hearsay evidence or at a minimum create a presumption against the use of hearsay evidence. It would be wholly inappropriate, for example, for the agency to base its case on testimony by investigators of what they have been told by other persons without providing the defendant the right to confront those persons.

Section 105-70.038 would afford the agency the right to seek "reconsideration" of an adverse decision by the hearing examiner. This provision is contrary to § 3803(i)(1) of the Act which provides that unless appealed by the defendant, the

decision of the hearing examiner is final. Section 105-70.038 should be deleted.

§ 105-70.039 Appeal to authority head.

Section 3803(i)(2)(A) of the Act states that at any time within 30 days after the hearing examiner issues his decision, the defendant may appeal the decision to the agency head. Section 105-70.034 would eliminate this right of appeal for 25 days or more, and require the defendant to file a legal brief in support of his appeal. The regulations cannot postpone the appeal right established by law, and the defendant is entitled to a prompt review by the agency head of the decision of the hearing examiner whether or not the defendant chooses to file a lengthy set of exceptions and legal brief. In many small cases, a brief letter from the defendant requesting a reversal of the decision or a reduction of the penalty may be sufficient. These provisions of the proposed regulations conflict with the Act and should be deleted.

§§ 105-70.043 - 105-70.044 Collections and Offsets.

Section 3809 of the Act requires that the agency regulations provide that investigating and reviewing officials are not responsible for making collections. Section 105-70.043 should be amended to include these restrictions.

Section 3805(2) provides that the decision of the agency head is final unless a petition for judicial review is timely filed. Section 105-70.044 should clarify that a decision of the agency head which has been appealed in court, or for which the time for requesting judicial review has not expired, is not final and cannot form the basis for an administrative offset.

The proposed regulations require substantial revision to conform to the Act and to effectuate the purpose of the statute. We urge that a revised proposed regulation be issued for additional comment before a final regulation becomes effective.

Sincerely,

Paul G. Dembling /aod.

Paul G. Dembling
Chairman

11/30/90
To DDC 12/5/90

Date Received _____

SPECIAL HANDLING REQUIRED

By: (Circle one or more)

Coders

Availability of Mother = _____

Availability of Daughter = _____

Backfit: YES NO

Others: _____

Data Entry

Expedite: YES NO

Others: _____

DDC

Regulatory History Package

Change availability to PDR: YES NO

Other: Please return directly to Don Lanham after filming.

Micrographics

Film Entire Duplicate Document: YES NO
Accession Number _____
Change microfilm address: YES NO
Availability of Mother = _____
Availability of Daughters = _____
Oversize enclosure: YES NO
Availability = _____
Film for tub files only
Others: _____

If there are any questions, contact: Clarke