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implement the provisions of the statute.

(b) Purpose. This subpart—

(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.

(c) Scope. The procedures for imposing civil penalties and assessments established by this subpart are intended to enhance existing administrative enforcement efforts against fraud and to provide an additional remedy against false, fictitious, and fraudulent claims and statements in the programs administered by this Department.

§ 1.302 Definitions.

(a) Agency means a constituent organizational unit of the USDA.

(b) Agency Fraud Claims Officer—(AFCO) means an officer or employee of an agency who is designated by the head of that agency to receive the reports of the investigating official, evaluate evidence, and make a recommendation to the reviewing official with respect to the determination required under § 1.305 of this part.

(c) AFLJ means an Administrative Law Judge in USDA appointed pursuant to 5 U.S.C. 3105 or detailed to the USDA pursuant to 5 U.S.C. 3344.

(d) Authority means the USDA.

(e) Benefits means, except as otherwise defined in this subpart, anything of value, including but not limited to any advantage, preference, privilege, license, permit, favorable decision, ruling, status, or loan guarantee.

(f) Claim means any request, demand, or submission—

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

(2) Made to a recipient of property, services, or money from USDA or to a party to a contract with USDA—
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(i) For property or services if the United States—
(a) Provided such property or services; or
(b) Provided any portion of the funds for the purchase of such property or services; or
(c) Will reimburse such recipient or party for the purchase of such property or services; or
(ii) For the payment of money (including money representing grants, loans, insurance, or benefits) if the United States—
(a) Provided any portion of the money requested or demanded; or
(b) Will reimburse such recipient or party for any portion of the money paid on such request or demand; or
(3) Made to USDA which has the effect of decreasing an obligation to pay or account for property, services, or money.

(g) Complaint means the written notice served by the reviewing official on the respondent under § 1.307 of this part.

(h) Days means business days for all periods referred to in these regulations of 10 days or less and calendar days for all periods referred to in these regulations in excess of 10 days.

(i) Family means the individual's parents, spouse, siblings, children, and grandchildren with respect to an individual making a claim or statement for benefits.

(j) Government means the United States Government.

(k) Household means a family or one or more individuals occupying a single residence.

(l) Individual means a natural person.

(m) Investigating official means the Inspector General of USDA or an officer or employee of the Office of 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.

(n) Judicial officer means an official of USDA delegated authority by the Secretary, pursuant to the Act of April 4, 1940 (7 U.S.C. 450c-450g) and Reorganization Plan No. 2 of 1953, 67 Stat. 633, as amended by Public Law No. 97-325 (7 U.S.C. 2201n.), to perform the adjudicating function for the Department under § 2.35 of this title, or the Secretary if he exercises the authority so delegated.

(o) Knows or has reason to know means that a person, with respect to a claim or statement—
(1)(i) Has actual knowledge that the claim or statement is false, fictitious, or fraudulent;
(1)(ii) Acts in deliberate ignorance of the truth or falsity of the claim or statement; or
(1)(iii) Acts in reckless disregard of the truth or falsity of the claim or statement; and
(2) No proof of specific intent to defraud is required.

(p) Makes means presents, submits, or causes to be made, presented, or submitted. As the context requires, "making" or "made" shall likewise include the corresponding forms of such terms.

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

(r) Representative means an attorney who is a member in good standing of the bar of any State, Territory, or possession of the United States or of the District of Columbia or the Commonwealth of Puerto Rico. This definition is not intended to foreclose pro se appearances. An individual may appear for himself or herself, and a corporation or other entity may appear by an owner, officer, or employee of the corporation or entity.

(s) Respondent means any person alleged in a complaint issued under § 1.308 of this part to be liable for a civil penalty or assessment under § 1.303 of this part.

(t) Reviewing official means an officer or employee of USDA—
(1) Who is designated by the Secretary to make the determination required under § 1.305 of this part;
(2) Who is serving in a position for which the rate of basic pay is not less than the minimum rate of basic pay for grade GS-16 under the General Schedule; and
(3) Who is—
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§ 1.303 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, food coupons, or money constitutes a separate claim.

(3) A claim shall be considered made to the USDA, 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 USDA, recipient, or party.

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

(5) If the Government has made 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 had 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 USDA when such state-
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(a) The investigating official may investigate allegations that a person is liable under § 1.303 of this part.

(b) If an investigating official concludes that a subpoena pursuant to the authority conferred by 31 U.S.C. 3804(a) is warranted, the investigating officer may issue a subpoena, which shall notify the person to whom it is addressed of the authority under which it is issued and shall identify the information, documents, reports, answers, records, accounts, papers, or data sought.

(c) The investigating official may designate a person to act on his behalf to receive the documents or other materials sought by a subpoena issued under paragraph (b) of this section.

(d) 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 or other materials sought have been produced, or that such documents or other materials are not available and the reasons therefore, or that such documents or other materials, suitably identified, have been withheld based upon the assertion of an identified privilege.

(e) Each agency shall develop criteria for determining which allegations that a person is liable under § 1.303 of this part are to be referred to the investigating official.

(f) 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 findings and conclusions of such investigation to the reviewing official.
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Review by the reviewing official.

(a) Upon receipt of the report of the investigating official, the reviewing official may refer the report to the appropriate agency fraud claims officer (AFCO) for a recommendation with respect to the determination required under this section.

(b) The AFCO shall evaluate the evidence and make a recommendation to the reviewing officer within 45 days of receipt of the report of the investigating official.

(c) The reviewing official is not bound by the recommendation of the AFCO, and may accept or reject it.

(d) If, based on the report of the investigating official under § 1.304(f) of this part, the reviewing official determines that there is adequate evidence to believe that a person is liable under § 1.303 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 § 1.307 of this part.

(e) Such notice shall include—

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

(2) A statement of 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 § 1.303 of this part;

(5) A statement of any exculpatory or mitigating circumstances that may relate to the claims or statements;

(6) A statement that there is a reasonable prospect of collecting the amount specified in § 1.307(b)(2) of this part and the reasons supporting such statement.

§ 1.306 Prerequisites for issuing a complaint.

The reviewing official may issue a complaint under § 1.307 of this part only if:

(a) The Attorney General or an Assistant Attorney General designated by the Attorney General approves the issuance of a complaint in a written statement as provided in 31 U.S.C. 3803(b)(1);

(b) In the case of allegations of liability under § 1.303(a) of this part with respect to a claim, the reviewing official determines with respect to such claim, or a group of related claims submitted at the same time, that the amount of money or the value of property or services demanded or requested in violation of § 1.303(a) of this part does not exceed $150,000; and

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

(d) 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.

§ 1.307 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 respondent, as provided in § 1.308 of this part.

(b) The complaint shall state—
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(1) The allegations of liability, including the statutory basis for liability, an identification of the claims or statements that are the basis for the alleged liability, and the reasons that liability allegedly arises from such claims or statements;

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

(3) Instructions for requesting a hearing, including a specific advice of the respondent's right to request a hearing and to be represented by a representative; and

(4) That failure to file an answer within 30 days of service of the complaint may result in the imposition of the penalty and assessment sought in the complaint without right to appeal.

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

§ 1.308 Service of complaint and notice of hearing.

(a) Service of a complaint or notice of hearing shall 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 notice was served, and the manner and date of service, shall be made by:

(1) Affidavit of the individual making service;

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

(3) Written acknowledgment by the respondent or his representative.

§ 1.309 Answer and request for hearing.

(a) Within 30 days of the date of receipt or refusal to accept service of the complaint, the respondent may file an answer with the reviewing official.

(b) In the answer, the respondent—

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

(2) Shall state any defense upon which the respondent intends to rely;

(3) Shall state the name, address, and telephone number of the person authorized to act as the respondent's representative, if any;

(4) May state any reasons why the respondent contends the penalty and assessment should be reduced or modified; and

(5) May request a hearing.

§ 1.310 Default upon failure to file an answer.

(a) If the respondent does not file an answer within the time prescribed in § 1.309(a) of this part, the reviewing official may refer the complaint together with proof of service to the ALJ and request that the ALJ issue an order of default imposing the penalties and assessments sought in the complaint. An answer must comply in all material respects with § 1.309(b) of this part in order to be considered filed within the time prescribed in § 1.310(a) of this part.

(b) Upon the referral of the complaint under paragraph (a) of this section, the ALJ shall promptly serve on the respondent, in the manner prescribed in § 1.308 of this part, a notice that a decision will be issued under this section.

(c) If the respondent fails to answer, the ALJ shall assume the facts alleged in the complaint to be true and, if such facts establish liability under § 1.303 of this part, the ALJ shall issue a decision imposing the penalties and assessments sought in the complaint, not to exceed the maximum amount allowed under the statute.

(d) A respondent who fails to file a timely answer waives any right to a review of the penalty and assessment, unless he can demonstrate extraordinary circumstances justifying the failure to file an answer.

§ 1.311 Referral of complaint and answer to the ALJ.

Upon receipt of an answer, the reviewing official shall send to the ALJ copies of the complaint, proof of service, and the answer.

§ 1.312 Procedure where respondent does not request a hearing.

(a) If the respondent files an answer with the reviewing official within the time period prescribed in § 1.309(a) of this part but does not request a hearing, the ALJ, upon receipt of the com-
§ 1.315 Separation of functions.

(a) Neither the investigating official, the reviewing official, nor any employee or agent of the USDA who takes part in investigating, preparing, or presenting a particular case may, in such case or in a factually related case—

(1) Conduct the hearing in such case;

(2) Participate in or advise the ALJ in the decision in such case, or participate in or advise in the review of the decision in such case by the judicial officer, except as a witness or representative in public proceedings; or

(3) Make the collection of penalties and assessments under § 1.341 of this part.

(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 to the extent limited by paragraph (a) of this section, the representative for USDA may be employed in any constituent agency of USDA, including the offices of either the investigating official or the reviewing official.

§ 1.316 Ex parte contacts.

Except to the extent required for the disposition of ex parte matters as authorized by law, the ALJ shall not consult or be consulted by any person or party (except employees of the ALJ’s office) on any matter in issue, unless on notice and opportunity for all parties to participate.

§ 1.317 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.
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(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.

§ 1.318 Rights of parties.

All parties may:

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

(b) Participate in any prehearing or post-hearing conference held by the ALJ;

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

(d) Conduct discovery;

(e) Make opening and closing statements at the hearing;

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

(g) Cross examine witnesses;

(h) Present oral arguments at the hearings; and

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

§ 1.319 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 proceedings is made.

(b) The ALJ may:

(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 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 attorneys 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 subpart.

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

§ 1.320 Prehearing conferences.

(a) The ALJ may schedule a prehearing conference at a reasonable time in advance of the hearing and may schedule additional prehearing conferences as appropriate.

(b) The ALJ may conduct any prehearing conference in person or by telephone.

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

(1) Simplification of the issues;

(2) The necessity or desirability of amendments to the pleadings, including the need for a more definite statement;
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(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 shall issue an order containing all matters agreed upon by the parties or ordered by the ALJ at a prehearing conference.

§ 1.322 Disclosure of documents.

(a) Upon written request to the reviewing official, the respondent 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 § 1.304(f) of this part are based unless such documents are privileged 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 respondent 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 § 1.305 of this part is not discoverable under any circumstances.
(d) The respondent may file a motion to compel disclosure of the documents subject to the provisions of this section. Such a motion may be filed with the ALJ following the filing of the answer pursuant to § 1.309 of this part.

§ 1.322 Discovery.

(a) The following types of discovery are authorized:
(1) Requests for production, inspection and photocopying of documents;
(2) Requests for admission of the authenticity of any relevant document or the truth of any relevant fact;
(3) Written interrogatories; and
(4) Depositions.
(b) The ALJ shall set the schedule for discovery.
(c) Requests for production of documents and requests for admission.
(1) A party may serve requests for production of documents or requests for admission on another party.
(2) If a party served with such requests fails to respond timely, the requesting party may file a motion to compel production or deem admissions, as appropriate.
(3) A party served with such a request may file a motion for a protective order before the date on which a response to the discovery request is due, stating reasons why discovery should be limited or should not be required.
(4) Within 15 days of service of a motion to compel or to deem matter admitted or a motion for a protective order, the opposing party may file a response.
(5) The ALJ may grant a motion to compel production or deem matter admitted or may deny a motion for a protective order only if he finds that—
(i) The discovery sought is necessary for the expeditious, fair, and reasonable consideration of the issues;
(ii) It is not unduly costly or burdensome;
(iii) It will not unduly delay the proceeding; and
(iv) The information sought is not privileged.
(d) Depositions and written interrogatories. Depositions and written interrogatories are permitted only on the order of the ALJ.
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1. A party seeking to use depositions or written interrogatories may file a motion with 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

2. A party and/or the potential deponent may file an opposition to the motion or a motion for a protective order within 10 days of service of the motion. (9) That the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the ALJ.

3. The ALJ may grant a motion allowing the taking of a deposition or the use of interrogatories or may deny a motion for a protective order only if he finds that the moving party has satisfied the standards set forth in paragraph (c)(6) of this section and has shown that the information sought cannot be obtained by any other means. (g) Exchange of witness lists, statements, and exhibits. Witness lists, copies of prior statements of proposed witnesses, and copies of proposed hearing exhibits, including copies of any written statements or depositions that a party intends to offer in lieu of live testimony in accordance with § 1.331(b) of this part, shall be exchanged at least 15 days in advance of the hearing, or at such other time as may be set by the ALJ. A witness whose name does not appear on the witness list shall not be permitted to testify and no exhibit not provided to the opposing party as provided above shall be admitted into evidence at the hearing absent a showing of good cause.

§ 1.323 Subpoenas for attendance at hearing.

1. That a party seeking discovery shall be borne by the party seeking discovery. (a) A party wishing to procure the appearance and testimony at the hearing of any individual may request that the ALJ issue a subpoena.

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

3. (1) That the discovery not be had; (c) A party who desires the issuance of a subpoena shall file with the ALJ a written request 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 whose attendance is sought to be required and describe their addresses and locations with sufficient particularity to permit such witnesses to be found. The subpoena shall specify the time and place at which the witness is to appear and any documents the witness is to produce. Such a request may be made ex parte.

4. That the discovery may be had only on specified terms and conditions, including a designation of the time or place; (d) That a party seeking discovery shall be borne by the party seeking discovery.

5. That the discovery may be had only through a method of discovery other than that requested; (e) Costs. The costs of discovery shall be borne by the party seeking discovery.

6. That certain matters not be inquired into, or that the scope of discovery be limited to certain matters; (f) 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:

7. That discovery be conducted with no one present except persons designated by the ALJ; (g) Exchange of witness lists, statements, and exhibits. Witness lists, copies of prior statements of proposed witnesses, and copies of proposed hearing exhibits, including copies of any written statements or depositions that a party intends to offer in lieu of live testimony in accordance with § 1.331(b) of this part, shall be exchanged at least 15 days in advance of the hearing, or at such other time as may be set by the ALJ. A witness whose name does not appear on the witness list shall not be permitted to testify and no exhibit not provided to the opposing party as provided above shall be admitted into evidence at the hearing absent a showing of good cause.

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.
(d) When the ALJ issues a subpoena under this section, the party who requested such subpoena shall serve all other parties with notice of the names and addresses of the individuals subpoenaed and specify any documents required to be produced.

(e) A subpoena shall be served by delivery, or by registered mail or by certified mail in the manner prescribed in §1.308 of this part. A subpoena upon 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 a motion to quash the subpoena within five days of service or on or before the time specified in the subpoena for compliance if it is less than five days after service.

§1.324 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 USDA, a check for witness fees and mileage need not accompany the subpoena.

§1.325 Form, filing and service of papers.

(a) Form. (1) The original and two copies of all papers in a proceeding conducted under this subpart shall be filed with the ALJ assigned to the case.

(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 representative for the party or the person on whose behalf the paper was filed.

(4) Papers are considered filed when they are mailed. Date of mailing may be established by a certificate from the party or his 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 person serving the document by personal delivery or by mail, setting forth the manner of service, shall be proof of service.

§1.326 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 ten or fewer calendar days, intermediate Saturdays, Sundays, and legal holidays observed by the Federal Government shall be excluded from the computation.

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

§1.327 Motions.

(a) 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) The ALJ may require written motions to be accompanied by supporting memorandums.

(d) Within 15 days after a written motion is served, or such other time as
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may be fixed by the ALJ, any party
may file a response to such motion.
(e) The ALJ may not grant a written
motion prior to expiration of the time
for filing responses thereto, except
upon consent of the parties or follow-
ing a hearing, but may overrule or
deny such motion without awaiting a
response.
(f) The ALJ shall make every rea-
sonable effort to dispose of all out-
standing motions prior to the begin-
ing of the hearing.

§ 1.328 Sanctions.

(a) The ALJ may sanction a person,
including any party or representative
for:
(1) Failing to comply with a lawful
order, subpoena, or procedure;
(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 para-
grahs (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 a subpoena or an order, including
an order for taking a deposition, the
production of evidence within the
party's control, or a request for admis-
sion, the ALJ may:
(1) Draw an inference in favor of the
requesting party with regard to the infor-
mation sought;
(2) In the case of requests for admis-
sion, deem admitted each item as to
which an admission is requested;
(3) Prohibit the party failing to
comply with such order from introduc-
ing evidence concerning, or otherwise
relying upon testimony relating to the
information sought;
(4) Strike any part of the pleadings
or other submissions of the party fail-
ing to comply with such request; or
(5) Request that the Attorney Gen-
eral petition an appropriate district
court for an order to enforce a subpo-
eas.
(d) If a party fails to prosecute or
defend an action under this subpar-
t commenced by service of a complaint,
the ALJ may dismiss the action or
enter an initial decision imposing pen-
alties and assessments.
(e) The ALJ may refuse to consider
any motion or other action which is
not filed in a timely fashion.

§ 1.329 The hearing and burden of proof.

(a) The ALJ shall conduct a hearing
on the record in order to determine
whether the respondent is liable for a
civil penalty or assessment under
§ 1.303 of this part, and if so, the ap-
propriate amount of any such civil
penalty or assessment considering any
aggravating or mitigating factors.
(b) The USDA shall prove respond-
et's liability and any aggravating fac-
tors by a preponderance of the evi-
dence.
(c) The respondent shall prove any
affirmative defenses and any mitigating
factors by a preponderance of the evi-
dence.
(d) The hearing shall be open to the
public unless otherwise ordered by the
ALJ for good cause shown.

§ 1.330 Location of hearing.

(a) The hearing may be held—
(1) In any judicial district of the
United States in which the respondent
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 respondent and
the ALJ.
(b) Each party shall have the oppor-
tunity to present argument with re-
spect to the location of the hearing.
(c) The ALJ shall issue an order to
the parties designating the time and
the place of the hearing.

§ 1.331 Witnesses.

(a) Except as provided in paragraph
(b) of this section, testimony at the
hearing shall be given orally by wit-
nesses under oath or affirmation.
(b) At the discretion of the ALJ, testi-
mony 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 suf-
cient time for other parties to sub-
(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 § 1.322 of this part.

§ 1.333 The record.

(a) The hearing will be recorded and transcribed. Transcripts may be obtained from the reporter by anyone 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 judicial officer.

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

§ 1.334 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.

§ 1.335 Determining the amount of penalties and assessments.

(a) In determining an appropriate amount of civil penalties and assessments, the ALJ and the judicial officer, 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.
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(b) Although not exhaustive, the following factors are among those that may influence the ALJ and the judicial officer 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 respondent'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 respondent has engaged in a pattern of the same or similar misconduct;
9. Whether the respondent attempted to conceal the misconduct;
10. The degree to which the respondent has involved others in the misconduct or in concealing it;
11. Where the misconduct of employees or agents is imputed to the respondent, the extent to which the respondent's practices fostered or attempted to preclude such misconduct;
12. Whether the respondent cooperated in or obstructed an investigation of the misconduct;
13. Whether the respondent assisted in identifying and prosecuting other wrongdoers;
14. The complexity of the program or transaction, and the degree of the respondent's sophistication with respect to it, including the extent of the respondent's prior participation in the program or in similar transactions;
15. Whether the respondent has been found, in any criminal, civil, or administrative proceeding to have engaged in similar misconduct or to have dealtdishonestly with the government of the United States or of a State, directly or indirectly; and
16. The need to deter the respondent and others from any engaging in the same or similar misconduct.

§ 1.336 Initial decision of the ALJ.

(a) The ALJ shall issue an initial decision, 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 for every claim or statement with respect to which a penalty or assessment was proposed:

1. Whether any claim or statement identified in the complaint violates § 1.303 of this part;
2. If the respondent is liable for penalties or assessments, the appropriate amount of any such penalties or assessments considering any mitigating or aggravating factors described in § 1.335 of this part.
3. The ALJ shall 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 include with the initial decision a statement describing the right of any respondent determined to be liable for a civil penalty or assessment to file notice of appeal with the judicial officer. The ALJ may extend the time period for serving the initial decision on the parties.
4. Unless the initial decision of the ALJ is timely appealed to the judicial officer, or a motion for reconsideration of the initial decision is timely filed, the initial decision shall constitute the final decision of the Secretary and shall be final and binding on the
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§ 1.337 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 decision 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 judicial officer in accordance with § 1.338 of this part.
(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 judicial officer in accordance with § 1.338 of this part.

§ 1.338 Appeal to the judicial officer.
(a) Any respondent 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 Secretary by filing a notice of appeal with the judicial officer in accordance with this section. The judicial officer of USDA shall consider all appeals to the Secretary under this subpart and render a decision on behalf of the Secretary.

(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 § 1.337 of this part, 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.
(c) The judicial officer may extend the initial 30-day period during which a notice of appeal may be filed for an additional 30 days if the respondent files a request for an extension within the initial 30-day period and shows good cause.
(d) If the respondent timely files a notice of appeal with the judicial officer and the time for filing motions for reconsideration under § 1.337 of this part has expired, the ALJ will forward the record of the proceeding to the judicial officer.
(e) A notice of appeal shall be accompanied by a written brief specifying exceptions to the initial decision and reasons supporting the exceptions.
(f) The representative for USDA may file a brief in opposition to exceptions within 30 days of receiving the brief proposing exceptions.
(g) There is no right to appear personally before the judicial officer.
(h) There is no right to interlocutory appeal of rulings by the ALJ.
(i) The judicial officer, in reviewing the decision, shall not consider any objection that was not raised before the ALJ unless a demonstration is made that extraordinary circumstances caused the failure to raise the objection.
(j) If any party demonstrates to the satisfaction of the judicial officer that additional evidence not presented to the ALJ is material and that there were reasonable grounds for the failure to present such evidence to the ALJ, the judicial officer shall remand the matter to the ALJ for consideration of such additional evidence.
(k) The judicial officer may affirm, reduce, reverse, compromise, remand

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or settle any penalty or assessment determined by the ALJ.

(l) The judicial officer shall promptly serve each party to the appeal with a copy of the decision of the judicial officer and a statement describing the respondent's right to seek judicial review.

(m) Unless a petition for review is filed as provided in 31 U.S.C. 3805 after a respondent has exhausted all administrative remedies under this part and within 60 days after the date on which the judicial officer serves the respondent with a copy of the judicial officer's decision, a determination that a respondent is liable under § 1.303 of this part is final and is not subject to judicial review.

§ 1.339 Stays ordered by the Department of Justice.

(a) If at any time the Attorney General or an Assistant Attorney General designated by the Attorney General transmits to the Secretary a written finding that continuation of the administrative process described in this subpart 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 judicial officer shall stay the process immediately.

(b) If the judicial officer stays the administrative process in accordance with paragraph (a) of this section, the judicial officer may order the process resumed only upon receipt of the written authorization of the Attorney General.

§ 1.340 Stay pending appeal.

(a) A decision is stayed automatically pending disposition of a motion for reconsideration or of an appeal to the judicial officer.

(b) The respondent may file with the ALJ a request for stay of the effective date of a decision of the judicial officer pending judicial review. Such request shall state the grounds upon which respondent relies in requesting the stay, together with a copy of the notice(s) of appeal filed by respondent seeking review of a decision of the judicial officer. The filing of such a request shall automatically stay the effective date of the decision of the judicial officer until the ALJ rules upon the request.

(c) The representative for the USDA may file an opposition to respondent's request for a stay within 10 days of receipt of the request. If the representative for the USDA fails to file such an opposition within the allotted time, or indicates that the USDA has no objection to the request, the ALJ may grant the stay without requiring respondent to give a bond or other security.

(d) The ALJ may grant a contested request where justice so requires and to the extent necessary to prevent irreparable harm but only upon the respondent's giving of a bond or other adequate security. The ALJ shall rule promptly on a contested request for stay.

(e) A decision of the ALJ denying respondent's request for a stay shall constitute final agency action.

§ 1.341 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 judicial officer imposing penalties or assessments under this part and specifies the procedures for such review.

§ 1.342 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 subpart and specify the procedures for such actions.

§ 1.343 Right to administrative offset.

The amount of any penalty or assessment which has become final, or for which a judgment has been entered under § 1.341 or § 1.342 of this part, or any amount agreed upon in a settlement under § 1.345 of this part, 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 respondent.
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§ 1.344 Deposit to Treasury of the United States.

All amounts collected pursuant to this subpart shall be deposited as miscellaneous receipts in the Treasury of the United States.

§ 1.345 Settlement.

(a) A respondent may make offers of compromise of settlement at any time.

(b) The reviewing official has the exclusive authority to compromise or settle a case under this subpart 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 a decision.

(c) The judicial officer has exclusive authority to compromise or settle a case under this subpart at any time after the date on which the ALJ issues a decision, except during the pendency of any appeal under § 1.341 of this part or during the pendency of any action to collect penalties and assessments under § 1.342 of this part.

(d) The Attorney General has exclusive authority to compromise or settle a case under this subpart during the pendency of any appeal under § 1.341 of this part, or any action to recover penalties and assessments under § 1.342 of this part.

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

(f) Any settlement must be in writing.

§ 1.346 Limitation.

The complaint referred to in § 1.307 of this part with respect to a claim or statement must be served in the manner specified in § 1.308 of this part within 6 years after the date on which such claim or statement is made.