§ 33.38

filed, the initial decision shall constitute the final decision of the Department head and shall be final and binding on the parties 30 days after it is issued by the ALJ.

(Authority: 31 U.S.C. 3803(h)(1))

§ 33.38 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 is presumed to be five days from the date of mailing in the absence of contrary proof.

(b) Every motion under paragraph (a) of this section must set forth the matters claimed to have been erroneously decided and the nature of the alleged errors. The motion must be accompanied by a supporting brief.

(c) Responses to the motion are allowed only upon request to 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 Department 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 Department head in accordance with §33.39.

(g) If the ALJ issues a revised initial decision, that decision shall constitute the final decision of the Department head and shall be final and binding on the parties 30 days after it is issued, unless it is timely appealed to the Department head in accordance with §33.39.

(Authority: 31 U.S.C. 3809)

§ 33.39 Appeal to Department 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 the decision to the Department head by filing a notice of appeal with the Department 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 a final decision. However, if another party files a motion for reconsideration under §33.38, 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 Department head may extend the initial 30-day period for an additional 30 days if the defendant files with the Department 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 Department head, and the time for filing motions for reconsideration under §33.38 has expired, the ALJ shall forward the record of the proceeding to the Department head.

(d) A notice of appeal must 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 Department head.

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

(h) In reviewing the initial decision, the Department head does 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 Department head that additional evidence not presented at such hearing is material and that there were reasonable grounds for the failure to present that evidence at the hearing, the Department head shall remand the matter to the ALJ for consideration of the additional evidence.

(j) The Department head affirms, reduces, reverses, compromises, remands,
or settles any penalty or assessment, determined by the ALJ in any initial decision.

(Authority: 31 U.S.C. 3803(1))

† 33.46 Compromise or settlement.

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

(Authority: 31 U.S.C. 3809)

(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.

(Authority: 31 U.S.C. 3803(j))

(c) The Department head has exclusive authority to compromise or settle

§ 33.43 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 those actions.

(Authority: 31 U.S.C. 3808(b))

§ 33.44 Right to administrative offset.

The amount of any penalty or assessment that has become final, or for which a judgment has been entered under §33.42 or §33.43, or any amount agreed upon in a compromise or settlement under §33.46, may be collected by administrative offset under 31 U.S.C. 3716, except that an administrative offset may not be under this section against a refund of an overpayment of Federal taxes, then or later owing by the United States to the defendant.

(Authority: 31 U.S.C. 3806)

§ 33.45 Deposit in Treasury of United States.

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

(Authority: 31 U.S.C. 3807(b))

§ 33.46 Compromise or settlement.

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

(Authority: 31 U.S.C. 3809)

(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.

(Authority: 31 U.S.C. 3803(j))