

party, or a witness identified with an adverse party.

(f) Upon motion of any party, the ALJ will 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;
  - (i) Appearing for the entity pro se; or
  - (ii) 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 will determine the admissibility of evidence.
- (b) Except as provided in this part, the ALJ will 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 will 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 will be inadmissible to the extent provided in Rule 408 of the Federal Rules of Evidence.
- (g) The ALJ will permit the parties to introduce rebuttal witnesses and evidence.
- (h) All Documents and other evidence offered or taken for the record will 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 will fix the time for filing such briefs. 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 will issue an Initial Decision based only on the record, which will contain findings of fact, conclusions of law, and the amount of any penalties and assessments imposed.
- (b) The findings of fact will 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;
  - (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 will 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 will 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 will notify the parties of the reason for the delay and will set a new deadline.