

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.

§ 13.38

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(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 will constitute the final decision of the Authority Head and will 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 will be accompanied by a supporting brief.

(c) Responses to such motions will 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 will constitute the final decision of the Authority Head and will 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 will constitute the final decision of the Authority Head and will 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 served 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 in accordance with this section and § 13.26.

(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 will be stayed automatically pending resolution of the motion for reconsideration.

(2) If a Defendant files a timely motion for reconsideration, 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 and the time for filing motions for reconsideration under § 13.38 has expired, the ALJ will forward two copies of the notice of appeal to the Authority Head, and will forward or Make available the record of the proceeding to the Authority Head.

(d) A notice of appeal will 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 will 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 will remand the matter to the ALJ for consideration of such additional evidence.

(j) The Authority Head may affirm, reduce, reverse, compromise, remand,