

**Pt. 35**

**43 CFR Subtitle A (10–1–21 Edition)**

(a) The issuance of a compliance order by the Federal Inspector pursuant to section 11 of ANGTA; or

(b) The commencement of a civil action for appropriate relief, including a permanent or temporary injunction, or a civil penalty not to exceed \$25,000 per day; or

(c) By any other means authorized by law.

**PART 35—ADMINISTRATIVE REMEDIES FOR FRAUDULENT CLAIMS AND STATEMENTS**

Sec.

- 35.1 Basis and purpose.
- 35.2 Definitions.
- 35.3 Basis for civil penalties and assessments.
- 35.4 Investigation.
- 35.5 Review by reviewing official.
- 35.6 Prerequisites for issuing a complaint.
- 35.7 Complaint.
- 35.8 Service of complaint.
- 35.9 Answer.
- 35.10 Default upon failure to file an answer.
- 35.11 Referral of complaint and answer to the ALJ.
- 35.12 Notice of hearing.
- 35.13 Parties to the hearing.
- 35.14 Separation of functions.
- 35.15 Ex parte contacts.
- 35.16 Disqualification of reviewing official or ALJ.
- 35.17 Rights of parties.
- 35.18 Authority of the ALJ.
- 35.19 Pre-hearing conferences.
- 35.20 Disclosure of documents.
- 35.21 Discovery.
- 35.22 Exchange of witness lists, statements and exhibits.
- 35.23 Subpoenas for attendance at hearing.
- 35.24 Protective order.
- 35.25 Fees.
- 35.26 Form, filing and service of papers.
- 35.27 Computation of time.
- 35.28 Motions.
- 35.29 Sanctions.
- 35.30 The hearing and burden of proof.
- 35.31 Determining the amount of penalties and assessments.
- 35.32 Location of hearing.
- 35.33 Witnesses.
- 35.34 Evidence.
- 35.35 The record.
- 35.36 Post-hearing briefs.
- 35.37 Initial decision.
- 35.38 Reconsideration of initial decision.
- 35.39 Appeal to the Secretary of the Interior.
- 35.40 Stays ordered by the Department of Justice.
- 35.41 Stay pending appeal.

- 35.42 Judicial review.
- 35.43 Collection of civil penalties and assessments.
- 35.44 Right to administrative offset.
- 35.45 Deposit in Treasury of United States.
- 35.46 Compromise or settlement.
- 35.47 Limitations.

AUTHORITY: 5 U.S.C. 301; 31 U.S.C. 3801–3812.

SOURCE: 53 FR 4160, Feb. 12, 1988, unless otherwise noted.

**§ 35.1 Basis and purpose.**

(a) *Basis.* This part implements the Program Fraud Civil Remedies Act of 1986, Public Law 99–509, sections 6101–6104, 100 Stat. 1874 (Oct. 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.

**§ 35.2 Definitions.**

As used in this part:

(a) *ALJ* means an administrative law judge in the Department of the Interior appointed pursuant to 5 U.S.C. 3105 or detailed to the Department of the Interior pursuant to 5 U.S.C. 3344.

(b) *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.

(c) *Claim* means any request, demand, or submission—

(1) Made to the Department of the Interior for property, services, or money (including money representing grants, loans, insurance, or benefits);

(2) Made to a recipient of property, services, or money from the Department of the Interior or to a party to a contract with the Department of the Interior—

## Office of the Secretary, Interior

## § 35.2

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

(A) Provided such property or services;

(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 the Department of the Interior which has the effect of decreasing an obligation to pay or account for property, services, or money.

(d) *Complaint* means the administrative complaint served by the reviewing official on the defendant under §35.7 of this part.

(e) *Defendant* means any person alleged in a complaint under §35.7 to be liable for a civil penalty or assessment under §35.3 of this part.

(f) *Department* means the Department of the Interior.

(g) *Director* means the Director of the Office of Hearings and Appeals, Office of the Secretary, who is the designee of the Secretary of the Interior authorized to consider and decide finally for the Department appeals under this part. The authority delegated to the Director includes the authority to redelegate appellate review authority to an *ad hoc* board of appeals appointed in accordance with 43 CFR 4.1(b)(4). Appeals to the Secretary under this part should be mailed or delivered to the Director, Office of Hearings and Appeals, U.S. Department of the Interior, 801 North Quincy Street, Arlington, Virginia 22203. Documents will be considered filed when received in the office of the Director.

(h) *Government* means the U.S. Government.

(i) *Individual* means a natural person.

(j) *Initial decision* means the written decision of the ALJ required by §35.10 or §35.37 of this part, and includes a re-

vised initial decision issued following a remand or a motion for reconsideration

(k) *Investigating official* means the Inspector General of the Department of the Interior 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.

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

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

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

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

(m) *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.

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

(o) *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, or other representative meeting the qualifications of a non-attorney representative found at 43 CFR 1.3 and designated in writing.

(p) *Reviewing official* means the Solicitor of the Department of the Interior or his designated representative, who is:

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

(2) 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.

(q) *Secretary* means the Secretary of the Interior or his designated representative.

**§ 35.3**

**43 CFR Subtitle A (10–1–21 Edition)**

(r) *Statement* means any representation, certification, affirmation, document, record, or accounting or book-keeping entry made—

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

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

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

(ii) A grant, loan, or benefit from, the Department of the Interior, 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.

[53 FR 4160, Feb. 12, 1988, as amended at 67 FR 4369, Jan. 30, 2002; 67 FR 12885, Mar. 20, 2002]

**§ 35.3 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 Department, a recipient, or party when such claim is actually made to an agent, fiscal intermediary, or other entity, including any State or Territory, or political subdivision thereof, acting for or on behalf of the Department, 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 Department when such statement is actually made to an agent, fiscal intermediary, or other entity, including any State or Territory, or political subdivision thereof, acting for or on behalf of the Department.

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