§ 134.412 What must a net worth exhibit contain?

(a) A net worth exhibit may be in any format, but it must:

(1) List all assets and liabilities for you and each affiliate in detail sufficient to show your eligibility;

(2) Aggregate net worth for you and all affiliates; and

(3) Describe any transfers of assets or obligations incurred by you or your affiliates within one year of the initiation of the administrative proceeding which have reduced your total net worth below the eligibility ceiling, or state that no such transfers occurred.

(b) The net worth exhibit must be filed with your petition, but will not be part of the public record of the proceeding. Further, in accordance with the provisions of § 134.204(g), you do not have to serve your net worth exhibit on other parties.

§ 134.413 What documentation do I need for fees and expenses?

You must submit a separate itemized statement or invoice for the services of each provider for which you seek reimbursement. All expenses claimed must be verifiable. Each separate statement or invoice must contain:

(a) The hours worked in connection with the proceeding by each individual providing a billable service;

(b) A description of the specific services performed by these individuals;

(c) The rate at which fees were computed for each individual working on your case;

(d) Where applicable, a description of any study, analysis, report, test, project, or other similar matter prepared in connection with your case;

(e) The total charged by the provider on that statement or invoice; and

(f) The provider's verification that the statement or invoice is true to the best of his or her knowledge and that he or she understands that a false statement is punishable by fine and imprisonment under 18 U.S.C. 1001.

§ 134.414 What deadlines apply to my petition for an award and where do I send it?

After you have prevailed in an administrative proceeding or in a discrete unit thereof, you must serve, and file with OHA, your written petition for an award, and its attachments, no later than 30 days after the decision in the administrative proceeding becomes final under § 134.227 of this part. The deadline for filing a petition for an award may not be modified. If SBA or another party requests review of the decision in the underlying administrative proceeding, your request for an award for fees and expenses may still be filed, but it will not be considered by the ALJ until a final decision is rendered.

§ 134.415 How will proceedings relating to my application for fees and expenses be conducted?

Proceedings will be conducted in accordance with the provisions in subpart B of this part.

§ 134.416 How will I know if I receive an award?

The ALJ will issue an initial decision on the merits of your request for an award which will become final in 30 days unless a request for review is filed under § 134.228 of this part. The decision will include findings on your eligibility, on whether SBA's position was substantially justified, and on the reasonableness of the amount you requested. Where applicable, there will also be findings on whether you have unduly protracted the proceedings or whether other circumstances make an award unjust, and an explanation of the reason for the difference, if any, between the amount requested and the amount awarded. If you have sought an award against more than one federal agency in the administrative proceeding, the decision will allocate responsibility for payment among the agencies with appropriate explanation.

§ 134.417 May I seek review of the ALJ's decision on my award?

You may request review of the ALJ's decision on your award by filing a request for review in accordance with § 134.228. A request for review must be filed within 30 days of service of the ALJ's initial decision. You may also seek judicial review of the decision of the ALJ as provided in 5 U.S.C. 504(c)(2). For purposes of judicial review, the initial decision of the ALJ is not an appealable ''determination'' under that statute until it becomes a final decision as provided in § 134.227. Judicial review of the ALJ's decision on your award must be requested within 30 days of the final decision.

§ 134.418 How are awards paid?

If you are seeking payment of an award, you must submit a copy of the ALJ's final award to SBA along with your certification that you are not seeking review of the ALJ's decision in the award proceeding. The request must be sent to the Chief Financial Officer, Office of Financial Operations, SBA, P.O. Box 205, Denver, CO 80201–0205. SBA will pay you the amount awarded within 60 days of receipt of your request unless it is notified that you or another party has sought judicial review of the ALJ's decision on the award or of the decision in the underlying administrative proceeding.

PART 132—[REMOVED]

2. Part 132 is hereby removed.

Dated: November 13, 1995.

Philip Lader,

Administrator.

[FR Doc. 95–28508 Filed 11–24–95; 8:45 am]

BILLING CODE 8025–01–P

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13 CFR Part 142

Program Fraud Civil Remedies Act Regulations

AGENCY: Small Business Administration.

ACTION: Proposed rule.

SUMMARY: In response to President Clinton's government-wide regulatory reform initiative, the Small Business Administration (SBA) has completed a page-by-page, line-by-line review of all of its existing regulations to determine which might be revised or eliminated. This proposed rule would renumber, reorganize, condense and rewrite in plain language the existing regulation implementing the program ''Fraud Civil Remedies Act of 1986''. The goal of the plain language style is to eliminate cumbersome wording, redundancies and ambiguities. The goal of the reorganization and revision is to make this part consistent in practice and procedure with other parts of this title and to clarify requirements under this regulation and applicable statutes of the United States.

DATES: Comments must be submitted on or before December 27, 1995.

ADDRESSES: Written comments should be addressed to David R. Kohler, Regulatory Reform Team Leader, (142) Small Business Administration, 409 3rd Street, S.W., Suite 13, Washington, D.C. 20416.

FOR FURTHER INFORMATION CONTACT: Cheri Wolff, Chief Counsel for General Litigation; Office of General Counsel, at (202) 205–6643.

SUPPLEMENTARY INFORMATION: On March 4, 1995, President Clinton issued a Memorandum to each federal agency, directing them to simplify their regulations. In response to this directive, SBA has completed a page-by-page, line-by-line review of all of its existing regulations to determine which might be revised or eliminated. This proposed rule reorganizes and partially redrafts former provisions for clarity and user-friendliness. Extensive renumbering was necessary for

reorganization, simplification and clarification of existing provisions. No substantive changes to existing provisions are proposed.

Section By Section Analysis

As background, the following section by section analysis discusses each provision of Part 142 that would be affected by this proposed rule:

Proposed section 142.1, ''Overview of Regulations,'' corresponds to section 142.1 of the existing part. The proposed section is revised to reflect the intent of the revisions to this Part. Modifications to the text are intended to eliminate confusion as to the purpose of the part and the proposed revision as a whole, and do not represent substantive change.

Proposed sections 142.2–142.6 correspond to the definitions found in existing sections 142.2 and 142.3. The proposed rules would renumber and rewrite in plain language the definitions and explanations applicable to this Part. Duplication is avoided in this section, and practice and procedure under this Part are made more consistent with practice and procedure under other Parts of this title.

Proposed sections 142.7–142.8 and 142.40, correspond to existing sections 142.4 and 142.5. The proposed rule would be renumbered and revised. The section is condensed and rewritten in plain language.

Proposed sections 142.90 and 142.11, correspond to existing section 142.7. The proposed rule would be renumbered and revised. The sections are condensed and rewritten in plain language.

Proposed section 142.10, corresponds to existing section 142.6. The proposed rule would be renumbered and revised. The section is condensed and rewritten in plain language.

Proposed section 142.12, corresponds to existing section 142.9. The proposed rule would be renumbered and revised. The section is moved, condensed and rewritten in plain language.

Proposed section 142.13, corresponds to existing section 142.10. The proposed rule would be renumbered and revised. The section is moved, condensed and rewritten in plain language.

Proposed section 142.14, corresponds to existing section 142.12. The proposed rule would be renumbered and revised. The section is moved, condensed and rewritten in plain language.

Proposed section 142.15, corresponds to existing section 142.13. The proposed rule would be renumbered and revised. The section is moved, condensed and rewritten in plain language.

Proposed section 142.16, corresponds to existing section 142.17. The proposed rule would be renumbered and revised. The section is moved, condensed and rewritten in plain language.

Proposed section 142.17, corresponds to existing section 142.18. The proposed rule would be renumbered and revised. The section is moved, condensed and rewritten in plain language.

Proposed section 142.18, corresponds to existing section 142.16. The proposed rule would be renumbered, moved, condensed and rewritten in plain language.

Proposed section 142.19, corresponds to existing section 142.28. The proposed rule would be renumbered and revised. The section would be moved, condensed and rewritten in plain language.

Proposed section 142.20, corresponds to existing sections 142.8 and 142.26. The proposed rule would be renumbered, moved, condensed and rewritten in plain language.

Proposed section 142.21, corresponds to existing sections 142.30 and 142.35. The proposed rule would be renumbered and revised, condensed and rewritten in plain language.

Proposed section 142.22, corresponds to existing sections 142.33 and 142.34. The proposed rule would be renumbered and revised. The sections would be moved, condensed and rewritten in plain language.

Proposed section 142.23, corresponds to existing sections 142.20 and 142.21. The proposed rule would be renumbered, moved, condensed and rewritten in plain language.

Proposed section 142.24, corresponds to existing sections 142.23 and 142.25. The proposed rule would be partially renumbered and revised. The sections are condensed and rewritten in plain language.

Proposed section 142.25, corresponds to existing section 142.24. The proposed rule would be revised, condensed and rewritten in plain language.

Proposed section 142.26, corresponds to existing section 142.15. The proposed rule would be renumbered, moved, condensed and rewritten in plain language.

Proposed section 142.27, corresponds to existing section 142.29. The proposed rule would be renumbered and revised. The section is moved, condensed and rewritten in plain language.

Proposed section 142.28, corresponds to existing section 142.32. The proposed rule would be renumbered and revised. The section is moved, condensed and rewritten in plain language.

Proposed section 142.29, corresponds to existing section 142.22. The proposed rule would be renumbered and revised. The section is moved, condensed and rewritten in plain language.

Proposed section 142.30, corresponds to existing section 142.37. The proposed rule would be renumbered and revised. The section is moved, condensed and rewritten in plain language.

Proposed section 142.31, corresponds to existing section 142.38. The proposed rule would be renumbered and revised. The section is moved, condensed and rewritten in plain language.

Proposed sections 142.32 through 142.36, correspond to existing subsections of section 142.39. The proposed rule would be renumbered and revised. The old section is broken into separate subgroups and then rewritten in plain language.

Proposed section 142.37, corresponds to existing section 142.42. The proposed rule would be renumbered and revised. The section is moved, condensed and rewritten in plain language.

Proposed section 142.38, corresponds to existing section 142.46. The proposed rule would be renumbered and revised. The section is moved, condensed and rewritten in plain language.

Proposed section 142.39, corresponds to existing sections 142.43 and 142.44. The proposed rule would be renumbered and revised. The sections are moved, condensed and rewritten in plain language.

Proposed section 142.40, corresponds to existing sections 142.4 and 142.5. The proposed rule would be renumbered and revised. The sections are moved, condensed and rewritten in plain language.

Proposed section 142.41, corresponds to existing section 142.14. The proposed rule would be renumbered and revised. The section is moved, condensed and rewritten in plain language.

Existing sections 142.2, 142.11, 142.19, 142.31, 142.36, 142.40, 142.45 and 142.47 are deleted in their current form as duplicative and confusing.

Compliance With Executive Orders 12612, 12778, and 12866, the Regulatory Flexibility Act (5 U.S.C. 601, et seq.), and the Paperwork Reduction Act (44 U.S.C. Ch. 35)

SBA certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities within the meaning of Executive Order 12866 or the Regulatory Flexibility Act, 5 U.S.C. 601, et seq. This rule would renumber, reorganize and rewrite the existing regulation for clarity and ease of use. Contracting opportunities and financial assistance for small business would not be affected by this proposed rule. Therefore, it is

not likely to have an annual economic effect of $100 million or more, result in a major increase in costs or prices, or have a significant adverse effect on competition or the United States economy.

For purposes of the Paperwork Reduction Act, 44 U.S.C. Ch. 35, SBA certifies that this proposed rule, if adopted in final form, would contain no new reporting or record keeping requirements.

For purposes of Executive Order 12612, SBA certifies that this rule would not have any federalism implications warranting the preparation of a Federalism Assessment.

For purposes of Executive Order 12778, SBA certifies that this rule is drafted, to the extent practicable, in accordance with the standards set forth in Section 2 of that Order.

List of Subjects in 13 CFR Part 142

Administrative practice and procedure; Claims; Fraud; Penalties.

For the above reasons, SBA proposes to revise Part 142 of Title 13 of the Code of Federal Regulations as follows:

PART 142—PROGRAM FRAUD CIVIL REMEDIES ACT REGULATIONS

Overview and Definitions

142.1 Overview of regulations.
142.2 What kind of conduct will result in program fraud enforcement?
142.3 What is a claim?
142.4 What is a statement?
142.5 What is a false claim or statement?
142.6 What does the phrase ''know or have reason to know'' mean?

Procedures Leading to Issuance of a Complaint

142.7 Who investigates program fraud?
142.8 What happens if program fraud is suspected?
142.9 When will SBA issue a complaint?
142.10 What is contained in a complaint?
142.11 How will the complaint be served?

Procedures Following Service of a Complaint

142.12 How does a defendant respond to a complaint?
142.13 What happens if the defendant fails to file an answer?
142.14 What happens once an answer is filed?

Hearing Provisions

142.15 What kind of hearing is contemplated?
142.16 At the hearing, what rights do the parties have?
142.17 What is the responsibility and authority of the ALJ?
142.18 Can the reviewing official or the ALJ be disqualified?
142.19 How are issues brought to the attention of the ALJ?
142.20 How are papers served?
142.21 How will the hearing be conducted and who has the burden of proof?
142.22 How is evidence presented at the hearing?
142.23 Are there limits on disclosure of documents or discovery?
142.24 Can witnesses be subpoenaed?
142.25 Can a party or witness object to discovery?
142.26 Can a party informally discuss the case with the ALJ?
142.27 Are there sanctions for misconduct?
142.28 Where is the hearing held?
142.29 Are witness lists exchanged before the hearing?

Decisions and Appeals

142.30 How is the case decided?
142.31 Can a party request reconsideration of the initial decision?
142.32 When does the initial decision of the ALJ become final?
142.33 What are the procedures for appealing the ALJ decision?
142.34 Are there any limitations on the right to appeal to the Administrator?
142.35 How does the Administrator dispose of an appeal?
142.36 Can I obtain judicial review?
142.37 What judicial review is available?
142.38 Can the administrative complaint be settled voluntarily?
142.39 How are civil penalties and assessments collected?
142.40 What if the investigation indicates criminal misconduct?
142.41 How does SBA protect the rights of defendants?

Authority: 15 U.S.C. 634(b), 31 U.S.C. 3803(g)(2).

Overview amd Definitions

§ 142.1 Overview of regulations.

(a) *Statutory basis.* This Part implements the Program Fraud Civil Remedies Act of 1986, 31 U.S.C. 3801–3812 (''the Act''). The Act provides SBA and other federal agencies with an administrative remedy to impose civil penalties and assessments against persons making false claims and statements. The Act also provides due process protections to all persons who are subject to administrative proceedings under this Part.

(b) *Possible remedies for program fraud.* In addition to any other penalty which may be prescribed by law, a person who submits, or causes to be submitted, a false claim or a false statement to SBA is subject to a civil penalty of not more than $5,000 for each statement or claim, regardless of whether property, services, or money is actually delivered or paid by SBA. If SBA has made any payment, transferred property, or provided services in reliance on a false claim, the person submitting it is also subject to an assessment of not more than twice the amount of the false claim. This assessment is in lieu of damages sustained by SBA because of the false claim.

§ 142.2 What kind of conduct will result in program fraud enforcement?

(a) Any person who makes, or causes to be made, a false, fictitious, or fraudulent claim or written statement to SBA is subject to program fraud enforcement. A person means any individual, partnership, corporation, association, or other legal entity.

(b) If more than one person makes a false claim or statement, each person is liable for a civil penalty. If more than one person makes a false claim which has induced SBA to make payment, an assessment is imposed against each person. The liability of each such person to pay the assessment is joint and several.

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

§ 142.3 What is a claim?

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

(1) Made to SBA for property, services, or money;

(2) Made to a recipient of property, services, or money from SBA or to a party to a contract with SBA for property or services, or for the payment of money. This provision applies only when the claim is related to the property, services or money from SBA or to the contract with SBA; or

(3) Made to SBA which decreases an obligation to pay or account for property, services, or money.

(b) A claim can relate to grants, loans, insurance, or other benefits, and includes SBA guaranteed loans made by participating lenders. A claim is made when it is received by SBA, an agent, fiscal intermediary, or other entity acting for SBA, or when it is received by the recipient of property, services, or money, or the party to the contract.

(c) Each voucher, invoice, claim form, or individual request or demand for property, services, or money constitutes a separate claim.

§ 142.4 What is a statement?

Statement means any written representation, certification, affirmation, document, record, or accounting or bookkeeping entry made with respect to a claim or with respect to a contract, bid or proposal for a contract, grant, loan or other benefit from SBA. SBA must provide some portion of the money or property in connection with the contract, bid, grant, loan, or benefit, or be potentially liable to another party for any portion of the money or property under such contract, loan, grant, or

benefit. A statement is made, presented, or submitted to SBA when it is received by SBA or an agent, fiscal intermediary, or other entity acting for SBA.

§ 142.5 What is a false claim or statement?

(a) A claim submitted to SBA is a false claim if the person making the claim, or causing the claim to be made, knows or has reason to know that the claim

(1) Is false, fictitious or fraudulent;

(2) Includes or is supported by a written statement which asserts or contains a material fact which is false, fictitious, or fraudulent;

(3) Includes or is supported by a written statement which is false, fictitious or fraudulent because it omits a material fact that the person making the statement has a duty to include in the statement; or

(4) Is for payment for the provision of property or services which the person has not provided as claimed.

(b) A statement submitted to SBA is a false statement if the person making the statement, or causing the statement to be made, knows or has reason to know that the statement

(1) Asserts a material fact which is false, fictitious, or fraudulent; or

(2) Is false, fictitious, or fraudulent because it omits a material fact that the person making the statement has a duty to include in the statement. In addition, the statement must contain or be accompanied by an express certification or affirmation of the truthfulness and accuracy of the contents of the statement.

§ 142.6 What does the phrase ''know or have reason to know'' mean?

A person knows or has reason to know (that a claim or statement is false) if the person:

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

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

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

Procedures Leading to Issuance of a Complaint

§ 142.7 Who investigates program fraud?

Allegations that a false claim or statement has been made are investigated by the Inspector General, or his designee. As the investigating official, the Inspector General, or his designee, has authority under the Program Fraud Civil Remedies Act and the Inspector General Act of 1978, as amended, to issue administrative subpoenas for the production of records and documents. The methods for serving a subpoena are set forth in Part 101 of this title.

§ 142.8 What happens if program fraud is suspected?

If the investigating official concludes that an action under this Part is warranted, the investigating official submits a report containing the findings and conclusions of the investigation to a reviewing official. The reviewing official is the General Counsel or his designee. If, based on the report of the investigating official, the reviewing official determines there is adequate evidence to believe that a person submitted a false claim or statement under this Part, the reviewing official transmits to the Attorney General a written notice of the reviewing official's intention to refer the matter for adjudication. This notice will include the reviewing official's statements concerning:

(a) The reasons for the referral;

(b) The claims or statements upon which liability would be based;

(c) The evidence that supports liability;

(d) An estimate of the amount of money or the value of property, services, or other benefits requested or demanded in the false claim or statement;

(e) Any exculpatory or mitigating circumstances that may relate to the claims or statements known by the reviewing official or the investigating official; and

(f) The likelihood of collecting the proposed penalties and assessments.

§ 142.9 When will SBA issue a complaint?

SBA will issue a complaint:

(a) If the Attorney General or his designee approves the referral of the allegations for adjudication and,

(b) In a case of submission of false claims, the amount of money or the value of property or services demanded or requested in a false claim, or a group of related claims submitted at the same time, does not exceed $150,000. A group of related claims submitted at the same time includes only those claims arising from the same transaction (such as a grant, loan, application, or contract) which are submitted simultaneously as part of a single request, demand, or submission.

§ 142.10 What is contained in a complaint?

(a) A complaint is notice to the person alleged to be liable under 31 U.S.C. 3802 of the specific allegations being referred for adjudication and the person's right to request a hearing with respect to those allegations. The person alleged to have made false statements or to have submitted false claims to SBA is referred to as the defendant.

(b) The reviewing official may join in a single complaint false claims or statements that are unrelated or were not submitted simultaneously, regardless of the amount of money or the value of property or services demanded or requested.

(c) The complaint will state that SBA is seeking to impose civil penalties, assessments, or both, against the persons named in the complaint and will also include:

(1) The allegations of liability against the defendant, including the statutory basis for liability, identification of the claims or statements that are the basis for the alleged liability, and the reasons liability allegedly arises from such claims or statements;

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

(3) A statement of a defendant's rights to request a hearing by filing an answer and to be represented by an attorney;

(4) Instructions for filing an answer to request a hearing;

(5) A statement that failure of a defendant to file an answer within 30 days of service of the complaint will result in the imposition of the maximum amount of penalties and assessments.

(d) The reviewing official will serve a complaint on the defendant and provide a copy to the Office of Hearings and Appeals (OHA). If a hearing is requested, an Administrative Law Judge (ALJ) from OHA will serve as the Presiding Officer.

§ 142.11 How will the complaint be served?

(a) The complaint must be served on a person alleged to be liable, or to a general partner of a partnership alleged to be liable, or to an executive officer or a director of a corporation or unincorporated association alleged to be liable, or to a person authorized by appointment or by law to receive process for the person named in the complaint.

(b) Service of a complaint may be effected by either of the following means:

(1) By mail. The complaint must be addressed to the Defendant at his or her residence or usual dwelling place, principal office or place of business, and must be sent by registered or certified mail (return receipt requested).

(2) By personal delivery.

(c) The complaint may be served by anyone 18 years of age or older.

(d) Service is complete when made in accordance with the preceding provisions.

(e) The date of service is the date of personal delivery or, in the case of service by registered or certified mail, the date of postmark.

(f) Proof of service—

(1) When service is by registered or certified mail, the return postal receipt will serve as proof of service.

(2) When service is by personal delivery, an affidavit of the individual serving the complaint or written acknowledgment of receipt by the individual actually served or the defendant or a representative will serve as proof of service.

(g) At the same time the reviewing official serves the complaint, the defendant will be served with a copy of this Part and 31 U.S.C. §§ 3801–3812.

Procedures Following Service of a Complaint

§ 142.12 How does a defendant respond to the complaint?

(a) A defendant may request a hearing by filing an answer with the reviewing official and the Office of Hearings and Appeals within 30 days of service of the complaint. An answer will be considered a request for a hearing.

(b) In the answer, a defendant—

(1) Must admit or deny each of the allegations of liability contained in the complaint. A failure to deny an allegation is considered an admission;

(2) Must state any defense on which the defendant intends to rely;

(3) May state any reasons why the defendant contends that the penalties, assessments, or both should be less than the statutory maximum; and

(4) Must state the name, address, and telephone number of the person authorized by the defendant to act as defendant's representative, if any.

(c) If the defendant is unable to file an answer which meets the requirements set forth in paragraph (b) of this section, the defendant may file with the reviewing official a general answer denying liability and requesting a hearing. In addition, the general answer may include a request for an extension of time in which to file a complete answer. A general answer must be filed within 30 days of service of the complaint.

(d) If the defendant files a general answer requesting an extension of time, the reviewing official must promptly file with the ALJ the complaint, the general answer, and the request for an extension of time.

(e) For good cause shown, the ALJ may grant the defendant up to 30 additional days within which to file an answer meeting the requirements of paragraph (b) of this section. Such answer must be filed with OHA and a copy must be served on the reviewing official.

§ 142.13 What happens if a defendant fails to file an answer?

(a) If a defendant does not file an answer within 30 days after service of the complaint, the reviewing official may refer the complaint to the ALJ.

(b) Once the complaint is referred, the ALJ will promptly serve on the defendant a notice that an initial decision will be issued.

(c) The ALJ will assume the facts alleged in the complaint to be true and, if such facts establish liability under the statute, the ALJ will issue an initial decision imposing the maximum amount of penalties and assessments allowed under the statute.

(d) Except as otherwise provided in this section, when a defendant fails to file a timely answer, the defendant waives any right to further review of the penalties and assessments imposed in the initial decision.

(e) The initial decision becomes final 30 days after it is issued.

(f) If, at any time before an initial decision becomes final, a defendant files a motion with the ALJ asking that the case be reopened and stating that extraordinary circumstances prevented the defendant from filing an answer, the initial decision is stayed until the ALJ makes a decision on the motion. The reviewing official may respond to the motion.

(g) If, in his motion to reopen, a defendant demonstrates extraordinary circumstances excusing his failure to file a timely answer, the ALJ will withdraw the initial decision, and grant the defendant an opportunity to answer the complaint.

(h) A decision by the ALJ to deny a defendant's motion to reopen a case is not subject to review or reconsideration.

§ 142.14 What happens once an answer is filed?

(a) When the reviewing official receives an answer, he must file the complaint and the answer with the ALJ, along with a designation of a representative.

(b) When the ALJ receives the complaint and the answer, the ALJ will promptly serve a notice of hearing upon the defendant and the representative for SBA. The notice of hearing is served in the same manner as the complaint, service of which is described in § 142.11.

(c) The notice shall include:

(1) The tentative time, place and nature of the hearing;

(2) The legal authority and jurisdiction under which the hearing is to be held;

(3) The matters of fact and law to be asserted;

(4) A description of the procedures for the conduct of the hearing;

(5) The name, address, and telephone number of the defendant's representative and the representative for SBA; and

(6) Such other matters as the ALJ deems appropriate.

Hearing Provisions

§ 142.15 What kind of hearing is contemplated?

The hearing is a formal proceeding conducted by the ALJ during which a defendant will have the opportunity to cross-examine witnesses, present testimony, and argue that he is not liable for the imposition of civil penalties, assessments, or both.

§ 142.16 At the hearing, what rights do the parties have?

(a) The parties to the hearing shall be the defendant and SBA. Pursuant to 31 U.S.C. 3730(c)(5), a private plaintiff in an action under the False Claims Act may participate in the hearing to the extent authorized by the provisions of that Act.

(b) Each party has the right to:

(1) Be represented by a representative;

(2) Request a pre-hearing conference and participate in any conference held by the ALJ;

(3) Conduct discovery;

(4) Agree to stipulations of fact or law which will be made a part of the record;

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

(6) Present and cross-examine witnesses;

(7) Present arguments at the hearing as permitted by the ALJ; and

(8) Submit written briefs and proposed findings of fact and conclusions of law after the hearing, as permitted by the ALJ.

§ 142.17 What is the responsibility and authority of the ALJ?

The Presiding Officer at the hearings described herein and in 31 U.S.C. § 3803(d)(2)(B), is an Administrative Law Judge (ALJ). The ALJ has the authority set forth in § 134.218(b) of this Title.

§ 142.18 Can the reviewing official or ALJ be disqualified?

(a) A reviewing official or an ALJ may disqualify himself or herself at any time.

(b) Upon motion of any party, the reviewing official or ALJ in a particular case may be disqualified provided that:

(1) The motion is supported by an affidavit containing specific facts that support the party's belief that personal bias or other reason for disqualification exists, including the time and circumstances of the party's discovery of such facts;

(2) The motion and affidavit are promptly filed when the party discovers grounds for disqualification, or such objection will be deemed waived; and

(3) The party, or representative of record, certifies in writing that the motion is made in good faith.

(c) Once such a motion has been filed to disqualify the reviewing official, the ALJ will halt the proceedings until the matter of disqualification is resolved. If the ALJ determines that the reviewing official is disqualified, the ALJ will dismiss the complaint without prejudice. If the ALJ disqualifies himself or herself, the case will be promptly reassigned to another ALJ.

§ 142.19 How are issues brought to the attention of the ALJ?

Any application to the ALJ for an order or ruling is by motion. Motions must state the relief sought, the authority relied upon, and the facts alleged. Procedures for filing motions under this section are governed by section 134.211 of this Title.

§ 142.20 How are papers served?

Except for service of a complaint or a notice of hearing under section 142.11 and section 142.14(b) respectively, service of all papers is made by the manner prescribed by section 134.204 of this Title.

§ 142.21 How will the hearing be conducted and who has the burden of proof?

(a) The ALJ conducts a hearing in order to determine whether a defendant is liable for a civil penalty, assessment, or both and, if so, the appropriate amount of the civil penalty or assessment. The hearing will be recorded and transcribed, and the transcript of testimony, exhibits admitted at the hearing, and all papers and requests filed in the proceeding constitute the record for a decision by the ALJ.

(b) SBA must prove a defendant's liability and any aggravating factors by a preponderance of the evidence.

(c) A defendant must prove any affirmative defenses and any mitigating factors by a preponderance of the evidence.

(d) The hearing will be open to the public unless otherwise ordered by the ALJ for good cause shown.

§ 142.22 How is evidence presented at the hearing?

(a) Witnesses at the hearing must testify orally under oath or affirmation unless otherwise ordered by the ALJ. At the discretion of the ALJ, testimony may be admitted in the form of a written statement or deposition, a copy of which must be provided to all other parties, along with the last known address of the witness, in a manner which allows sufficient time for other parties to subpoena the witness for cross-examination at the hearing.

(b) The ALJ determines the admissibility of evidence in accordance with § 134.223 (a) and (b).

§ 142.23 Are there limits on disclosure of documents or discovery?

(a) Upon written request to the reviewing official, the defendant may review all non-privileged, relevant and material documents, records and other material related to the allegations contained in the complaint. After paying SBA a reasonable fee for duplication, the defendant may obtain a copy of the records described.

(b) Upon written request to the reviewing official, the defendant 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. If the document would otherwise be privileged, only the portion of the document containing exculpatory information must be disclosed. As used in this section, the term ''information'' does not include legal materials such as statutes or case law obtained through legal research.

(c) The notice sent to the Attorney General from the reviewing official is not discoverable under any circumstances.

(d) Other discovery is available only as ordered by the ALJ and includes only those methods of discovery allowed by section 134.213(c) of this Title.

§ 142.24 Can witnesses be subpoenaed?

A party wishing to procure the appearance and testimony of any individual and/or documents and records at the hearing may request that the ALJ issue a subpoena. A written request for a subpoena must be filed with the ALJ not less than 15 days before the scheduled hearing date unless otherwise allowed by the ALJ for good cause. A subpoena shall be issued by the Presiding Officer, in the manner specified by section 134.214 of this Title.

§ 142.25 Can a party or witness object to discovery?

A party or prospective witness may file a motion to quash a subpoena or to limit discovery or the disclosure of evidence. Motions to limit discovery or to object to the disclosure of evidence are governed by § 134.213 (d) and (e) of this title. Motions to limit or quash subpoenas are governed by § 134.214(d) of this Title.

§ 142.26 Can a party informally discuss the case with the ALJ?

No. The proscription against and rules concerning ex parte communications with the ALJ are set forth in section 134.220 of this Title. This provision does not prohibit a party from communicating with any other employee of OHA solely for the purpose of inquiring about the status of a case or asking routine questions concerning administrative functions and procedures.

§ 142.27 Are there sanctions for misconduct?

The ALJ may sanction a person, including any party or representative, pursuant to the rules set forth at section 134.219 of this Title.

§ 142.28 Where is the hearing held?

The hearing is held in any judicial district of the United States:

(a) In which the defendant resides or transacts business; or

(b) In which the claim or statement on which liability is based was made, presented or submitted to SBA; or

(c) As agreed upon by the defendant and the ALJ.

§ 142.29 Are witness lists exchanged before the hearing?

(a) At least 15 days before the hearing or at such other time as ordered by the ALJ, the parties must exchange witness lists and copies of proposed hearing exhibits, including copies of any written statements or transcripts of deposition testimony that the party intends to offer in lieu of live testimony.

(b) If a party objects, the ALJ will not admit into evidence the testimony of any witness whose name does not appear on the witness list or any exhibit not provided to an opposing party unless the ALJ finds good cause for the omission or that there is no prejudice to the objecting party.

(c) Unless a party objects within the time set by the ALJ, documents exchanged in accordance with this section are deemed to be authentic for the purpose of admissibility at the hearing.

Decisions and Appeals

§ 142.30 How is the case decided?

(a) The ALJ issues 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 ALJ serves the initial decision on all parties within 90 days after close of the hearing or after the time for submission of any post-hearing briefs, if permitted has expired. If the ALJ fails to meet this deadline, he or she shall promptly notify the parties of the reason for the delay set a new deadline.

(c) The findings of fact must include a finding on each of the following issues:

(1) Whether any one or more of the claims or statements identified in the complaint violate this Part; and

(2) If the defendant is liable for penalties or assessments, the appropriate amount of any such penalties or assessments, considering any mitigating or aggravating factors.

(d) The initial decision will include a description of the right of a defendant found liable for a civil penalty or assessment to file a motion for reconsideration with the ALJ or a notice of appeal with the Administrator.

§ 142.31 Can a party request reconsideration of the initial decision?

(a) Any party may file a motion for reconsideration of the initial decision with the ALJ within 20 days of receipt of the Initial decision. If the initial decision was served by mail, there is a rebuttable presumption that the initial decision was received by the party 5 days from the date of mailing.

(b) A motion for reconsideration must set forth each matter claimed to have been erroneously decided and the nature of the alleged errors. The motion must be accompanied by a supporting brief.

(c) Any response to a motion for reconsideration must be filed within 20 days of receipt of the motion for reconsideration.

(d) The ALJ disposes of a motion for reconsideration by denying it or by issuing a revised initial decision.

(e) If the ALJ issues a revised initial decision upon motion of a party, that party may not file another motion for reconsideration.

§ 142.32 When does the initial decision of the ALJ become final?

(a) The initial decision of the ALJ becomes the final decision of SBA, and shall be binding on all parties 30 days after it is issued, unless any party timely files a motion for reconsideration or any defendant adjudged to have submitted a false claim or statement timely appeals to the SBA Administrator, as set forth in § 142.33.

(b) If the ALJ disposes of a motion for reconsideration by denying it or by issuing a revised initial decision, the ALJ's order on the motion for reconsideration becomes the final decision of SBA 30 days after the order is issued, unless a defendant adjudged to have submitted a false claim or statement timely appeals to the Administrator, as set forth in § 142.33, within 30 days of the ALJ's order.

§ 142.33 What are the procedures for appealing the ALJ decision?

(a) Any defendant who submits a timely answer and is found liable for a civil penalty or assessment in an initial decision may appeal the decision.

(b) The defendant may file a notice of appeal with the Administrator, at any time within the 30 day period following the issuance of an initial decision. At the same time, a copy of the notice of appeal must be served on all parties and the ALJ.

(c) If another party files a timely motion for reconsideration with the ALJ, the defendant's appeal will not be considered until the motion for reconsideration has been resolved.

(d) If a motion for reconsideration is timely filed, a notice of appeal may be filed at any time within the 30-day period following the ALJ's denial of the motion for reconsideration or issuance of a revised initial decision, whichever applies.

(e) A notice of appeal must be supported by a written brief specifying the reasons why the defendant believes the initial decision should be reversed or modified.

(f) SBA's representative may file a brief in opposition to the notice of appeal within 30 days of receiving the defendant's notice of appeal and supporting brief.

(g) The Administrator may extend the initial 30-day period for not more than an additional 30 days if the defendant files a request for an extension within the initial 30-day period and shows good cause.

(h) If a defendant timely files a notice of appeal, and the time for filing motions for reconsideration has expired, the ALJ forwards the record of the proceeding to the Administrator.

§ 142.34 Are there any limitations on the right to appeal to the Administrator?

(a) A defendant has no right to appear personally, or through a representative, before the Administrator.

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

(c) The Administrator will not consider any objection or evidence that was not raised before the ALJ unless the defendant demonstrates that the failure to object was caused by extraordinary circumstances. If the appealing defendant demonstrates to the satisfaction of the Administrator that extraordinary circumstances prevented the presentation of evidence at the hearing, and that the additional evidence is material, the Administrator will remand the matter to the ALJ for consideration of the additional evidence.

§ 142.35 How does the Administrator dispose of an appeal?

(a) The Administrator may affirm, reduce, reverse, compromise, remand, or settle any penalty or assessment imposed by the ALJ in the initial decision or reconsideration decision.

(b) The Administrator will promptly serve each party to the appeal and the ALJ with a copy of his or her decision. This decision must contain a statement describing the right of any person, against whom a penalty or assessment has been made, to seek judicial review.

§ 142.36 Can I obtain judicial review?

If the initial decision is appealed, the decision of the Administrator is the final decision of SBA and is not subject to judicial review unless the defendant files a petition for judicial review within 60 days after the date on which the Administrator serves the defendant with a copy of the final decision.

§ 142.37 What judicial review is available?

31 U.S.C. § 3805 authorizes judicial review of the final SBA decision imposing penalties or assessments hereunder, by the appropriate United States District Court and specifies the procedures for such review. If a defendant fails to file a judicial petition for review in a timely fashion, the final SBA decision is no longer subject to judicial review.

§ 142.38 Can the administrative complaint be settled voluntarily?

(a) Parties may make offers of compromise or settlement at any time. Any compromise or settlement must be in writing.

(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.

(c) The Administrator has exclusive authority to compromise or settle a case under this Part at any time after the date on which the ALJ issues an initial

decision and before the initiation of any judicial review or any action to collect the penalties and assessments.

(d) The Attorney General has exclusive authority to compromise a case under this Part while any judicial review or any action to recover penalties and assessments are pending.

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

§ 142.39 How are civil penalties and assessments collected?

31 U.S.C. 3806 and 3808(b) authorize the Attorney General to bring actions for collection of civil penalties and assessments imposed under this Part and specify the procedures for such actions. Actions to collect civil penalties and assessments may include administrative offset under 31 U.S.C. 3716. The penalties and assessments may not, however, be administratively offset against an overpayment of federal taxes (then or later owed) to the defendant by the United States.

§ 142.40 What if the investigation indicates criminal misconduct?

(a) This Part does not preclude or limit an investigating official's discretion to:

(1) Refer allegations of criminal misconduct directly to the Department of Justice for prosecution or for suit under the False Claims Act or other civil proceeding;

(2) Defer or postpone a report or referral to the reviewing official to avoid interference with a criminal investigation or prosecution; or

(3) Issue subpoenas under other statutory authority.

(b) Nothing in this Part limits the requirement that SBA employees report suspected violations of criminal law to the SBA Office of Inspector General or to the Attorney General.

§ 142.41 How does SBA protect the rights of defendants?

The procedures implemented in this Part completely separate the functions of the investigating official, reviewing official, and the ALJ. In accordance with 31 U.S.C. § 3801, each of these officials fall under a separate organizational authority. Moreover, except for the purposes of settlement, the investigating official, reviewing official, and any employee or agent of SBA who takes part in investigating, preparing, or presenting a particular case may not in such case, or a factually related case, participate or advise in the initial decision or the review of the initial decision by the Administrator, except as a witness or a representative in public proceedings. This separation of functions and organization is designed to assure the independence and impartiality of each government official during every stage of the proceeding. The representative for SBA may be employed in the offices of either the investigating official or the reviewing official.

Dated: November 11, 1995.

Philip Lader,

Administrator.

[FR Doc. 95–28516 Filed 11–24–95; 8:45 am]

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 35

[Docket Nos. RM95–8–000 and RM94–7–001]

Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities

November 17, 1995.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Proposed rule; availability of draft environment impact statement.

SUMMARY: The staff of the Federal Energy Regulatory Commission has prepared a draft environmental impact statement for the proposed rulemaking in this proceeding to satisfy the requirements of the National Environmental Policy Act.

DATES: Comments are due on or before January 8, 1996.

ADDRESSES: 888 First Street NE., Washington, D.C. 20426.

FOR FURTHER INFORMATION CONTACT: Mr. William Meroney, DEIS Project Manager, Office of Economic Policy, Federal Energy Regulatory Commission, 888 First Street NE., Washington, D.C. 20426.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the Federal Register, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in the Public Reference Room at 888 First Street NE., Washington, D.C. 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the text of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 208–1397 or (800) 856–3920. To access CIPS, set your communications software to 19200, 14400, 12000, 9600, 7200, 4800, 2400, or 1200 bps, full duplex, no parity, 8 data bits and 1 stop bit. The full text of this document will be available on CIPS in ASCII and WordPerfect 5.1 format. The complete text on diskette in WordPerfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, also located in the Public Reference Room at 888 First Street, N.E., Washington, D.C. 20426.

The staff of the Federal Energy Regulatory Commission has prepared a draft environmental impact statement (DEIS) for the proposed rulemaking referenced above to satisfy the requirements of the National Environmental Policy Act.

On July 12, 1995, the Commission issued a Notice of Intent to Prepare an Environmental Impact Statement for the Notice of Proposed Rulemaking and Request for Comments on Environmental Issues (NOI) (60 FR 36752, July 18, 1995).[1] The NOI described proposed cases for examination and established a procedure for public comments. Thirty-six comments were received in response to the NOI. A public meeting was held on September 8, 1995, in Washington, D.C. The most frequently raised issue involves air quality impacts, particularly the possible transport of nitrogen oxides (NOx) emissions by Midwestern generating plants to airsheds in the Northeast and the resulting impacts on ozone non-attainment areas in the Northeast.

Based on the comments and a careful analysis of the major issues, the staff developed a study that addresses the key potential environmental impacts of the rulemaking. The staff used a modeling approach that includes a detailed representation of the transmission grid. The model results and other analyses allow the staff to examine a series of other issues, including visibility; impacts on land, water and waste; and some potential mitigation options.

The DEIS has been placed in the public files of the FERC and is available for public inspection at:

[1] The proposed rule in this proceeding was published April 7, 1995 (60 FR 17662).