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part, to employees of his or her agency as follows:

(1) In the National office of the agency, to a level no lower than two levels below the agency head;

(2) In a field component of an agency, to a level no lower than the official who heads a state office.

(b) Notwithstanding paragraph (a) of this section, the Chief of the Forest Service may delegate his responsibilities under this subpart as follows:

(1) In the National office of the Forest Service, to a level no lower than a Deputy Chief of the Forest Service;

(2) In a field component of the Forest Service, to a level no lower than a Regional Forester or Station Director.

(c) Notwithstanding paragraph (a) of this section, the General Counsel may delegate his responsibilities under this subpart as follows:

(1) In the National office of the Office of the General Counsel, to a level no lower than an Assistant General Counsel;

(2) In the field component of the Office of the General Counsel, to Regional Attorneys who may redelegate their responsibilities to Associate Regional Attorneys and Assistant Regional Attorneys who report to them.

(d) The responsibilities assigned to heads of agencies and to Assistant and Under Secretaries in §1.214(b)(2) of this part may not be redelegated.

[58 FR 62495, Nov. 29, 1993; 58 FR 64353, Dec. 6, 1993]

### **Subpart L—Procedures Related to Administrative Hearings Under the Program Fraud Civil Remedies Act of 1986**

AUTHORITY: 31 U.S.C. 3801–3812.

SOURCE: 56 FR 9582, Mar. 7, 1991, unless otherwise noted. Correctly designated at 57 FR 3909, Feb. 3, 1992.

#### **§ 1.301 Basis, purpose and scope.**

(a) *Basis.* This subpart implements the Program Fraud Civil Remedies Act of 1986, Public Law No. 99–509, Sections 6101–6104, 100 Stat. 1874 (1986). This statute added 31 U.S.C. 3801–3812. Section 3809 of Title 31, United States Code, requires the Secretary to promulgate

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regulations necessary to implement the provisions of the statute.

(b) *Purpose.* This subpart—

(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.

(c) *Scope.* The procedures for imposing civil penalties and assessments established by this subpart are intended to enhance existing administrative enforcement efforts against fraud and to provide an additional remedy against false, fictitious, and fraudulent claims and statements in the programs administered by this Department.

#### **§ 1.302 Definitions.**

(a) *Agency* means a constituent organizational unit of the USDA.

(b) *Agency Fraud Claims Officer*—(AFCO) means an officer or employee of an agency who is designated by the head of that agency to receive the reports of the investigating official, evaluate evidence, and make a recommendation to the reviewing official with respect to the determination required under §1.305 of this part.

(c) *ALJ* means an Administrative Law Judge in USDA appointed pursuant to 5 U.S.C. 3105 or detailed to the USDA pursuant to 5 U.S.C. 3344.

(d) *Authority* means the USDA.

(e) *Benefits* means, except as otherwise defined in this subpart, anything of value, including but not limited to any advantage, preference, privilege, license, permit, favorable decision, ruling, status, or loan guarantee.

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

(1) Made to USDA for property, services, or money (including money representing grants, loans, insurance, or benefits);

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

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

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(A) Provided such property or services; or

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

(g) *Complaint* means the written notice served by the reviewing official on the respondent under §1.307 of this part.

(h) *Days* means business days for all periods referred to in these regulations of 10 days or less and calendar days for all periods referred to in these regulations in excess of 10 days.

(i) *Family* means the individual's parents, spouse, siblings, children, and grandchildren with respect to an individual making a claim or statement for benefits.

(j) *Government* means the United States Government.

(k) *Household* means a family or one or more individuals occupying a single residence.

(l) *Individual* means a natural person.

(m) *Investigating official* means the Inspector General of USDA 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.

(n) *Judicial officer* means an official of USDA delegated authority by the Secretary, pursuant to the Act of April 4, 1940 (7 U.S.C. 450c-450g) and Reorganization Plan No. 2 of 1953, 67 Stat. 633, as amended by Public Law No. 97-325 (7 U.S.C. 2201n.), to perform the adjudicating function for the Department under §2.35 of this title, or the Sec-

retary if he exercises the authority so delegated.

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

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

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

(iii) Acts in reckless disregard of the truth or falsity of the claim or statement; and

(2) No proof of specific intent to defraud is required.

(p) *Makes* means presents, submits, or causes to be made, presented, or submitted. As the context requires, "making" or "made" shall likewise include the corresponding forms of such terms.

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

(r) *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. This definition is not intended to foreclose *pro se* appearances. An individual may appear for himself or herself, and a corporation or other entity may appear by an owner, officer, or employee of the corporation or entity.

(s) *Respondent* means any person alleged in a complaint issued under §1.308 of this part to be liable for a civil penalty or assessment under §1.303 of this part.

(t) *Reviewing official* means an officer or employee of USDA—

(1) Who is designated by the Secretary to make the determination required under §1.305 of this part;

(2) Who is 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; and

(3) Who is—

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

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(ii) Not employed in the organizational unit of USDA in which the investigating official is employed.

(u) *Secretary* means the Secretary of Agriculture.

(v) *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, USDA, 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.

(w) *USDA* means the U.S. Department of Agriculture.

**§ 1.303 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, food coupons, or money constitutes a separate claim.

(3) A claim shall be considered made to the USDA, recipient, or party when such claim is actually made to an agent, fiscal intermediary, or other entity, including any State or political subdivision thereof, acting for or on behalf of the USDA, recipient, or party.

(4) Each claim for property, services, food coupons, or money is subject to a civil penalty regardless of whether such property, services, food coupons, or money is actually delivered or paid.

(5) If the Government has made 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 had 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.