

## § 76.4

## 28 CFR Ch. I (7-1-01 Edition)

individual shall be considered in determining the amount of a penalty under this part.

(c) A civil penalty may not be assessed under this part if the individual previously was convicted of a federal or state offense relating to a controlled substance as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802).

(d) A civil penalty may not be assessed on an individual under this part on more than two separate occasions.

(e) A civil penalty under this part may be assessed by the Attorney General only after an order has been issued on the record and after an opportunity for a hearing has been given in accordance with 5 U.S.C. 554. The Attorney General by and through the United States Attorney having jurisdiction over the matter shall provide written notice to the individual who is the subject of the proposed order informing the individual of the opportunity to receive such a hearing with respect to the proposed order. The hearing may be held only if the individual makes a request for the hearing before the expiration of the thirty (30) day period beginning on the date such notice is served.

[Order No. 1462-90, 56 FR 1089, Jan. 11, 1991, as amended by Order No. 2249-99, 64 FR 47103, Aug. 30, 1999]

### § 76.4 Enforcement procedures.

(a) *Commencement of proceedings.* If the United States Attorney's office having jurisdiction over the matter determines that a person has violated section 6486 of the Act, the proceeding to assess a civil penalty under section 6486 of the Act shall be commenced by the United States Attorney issuing a Notice of Intent to Assess Civil Penalty. Service of this Notice shall be accomplished pursuant to 28 CFR 76.6.

(b) *Notice of intent to assess a civil penalty.* The Notice of Intent to Assess Civil Penalty (Notice) will contain a concise statement of factual allegations informing the respondent of the act or conduct alleged to be in violation of law, the statutory and regulatory provisions alleged to have been violated, and the amount of penalty for which the respondent could be liable. The Notice will advise the respondent of the following, in addition to any

other specific information determined by the United States Attorney to be necessary:

(1) That the respondent has the right to representation by counsel, but not at government expense;

(2) That any statement given during the course of the proceeding may be used against the person in this or any other proceeding, including any criminal prosecution;

(3) That a respondent may be able to assert a privilege, such as the privilege against self-incrimination;

(4) That failure to file a response to the allegations listed in the Notice within thirty (30) days of the date of service may result in the entry of a non-appealable final order assessing a penalty in an amount to be determined by the Attorney General;

(5) That the respondent has the right to request an adjudicatory proceeding, including a hearing, before a Judge pursuant to 5 U.S.C. 554-557 and this part, and that such request, in accordance with paragraph (c) of this section, must be made within thirty (30) days from the date the notice is served;

(6) That a respondent may waive an adjudicatory proceeding at any time and agree to pay a penalty in an amount to be determined by the Attorney General; and

(7) That in determining the amount of the penalty the respondent's income and net assets must be considered.

(c) *Answer to notice.* To timely request an adjudicatory proceeding in response to a Notice, a respondent must serve upon the United States Attorney designated in the Notice a written answer responding to each allegation listed in the Notice and request a hearing, in accordance with 28 CFR 76.4(b), within thirty (30) days from the date the Notice was served upon the respondent. If the respondent does not serve an answer within thirty (30) days, the Attorney General or his designee may enter a final order, from which there is no appeal, ordering a payment of a civil penalty.

### § 76.5 Complaint.

(a) If the respondent requests an adjudicatory proceeding, the United States Attorney, within fifteen (15) days after receipt of the request, shall

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file a complaint against the respondent with a Judge who has been assigned to hear and decide the case and shall serve a copy of the complaint on the respondent as provided in 28 CFR 76.6(b).

(b) The complaint shall contain a concise statement of factual allegations informing the respondent of the act or conduct alleged to be in violation of law, the approximate date, place and location of the alleged violation including the federal district, the statutory provisions alleged to have been violated, the amount of penalty for which the respondent could be held liable, and the amount of the proposed penalty. It shall also indicate the date upon which the Notice of Intent to Assess Civil Penalty was served and shall be accompanied by a copy of that notice.

### § 76.6 Service and filing of documents.

(a) *Generally.* Unless ordered otherwise, an original and one copy of the complaint and all other pleadings shall be filed with the Judge who has been assigned to the case. Each party shall deliver or mail, in accordance with paragraph (b) of this section, a copy of all pleadings, including any attachments to the other party. Each pleading filed shall be clear and legible.

(b) *By and on parties.* The Notice of Intent to Assess Civil Penalty and the Complaint shall be served by personal delivery or by certified or registered mail, return receipt requested, to the respondent. When it is known that a party is represented by an attorney, service of any other pleading, paper or document subsequent to the Notice and Complaint shall be made upon the party's attorney. Service of such other pleadings, papers, or documents may be made by personal delivery or by mailing, by first class mail, a copy to the party or attorney at the party's or attorney's last known address. The party serving the document shall certify the manner and date of service.

(c) *By the judge.* Except as provided in paragraph (d) of this section, service of Notices, Orders and Decisions shall be made by first class mail to the last known address of a party or, if the party is known to be represented by an attorney, to the attorney.

(d) *Service of notice of hearing.* Service of Notice of the Date Set for Hearing shall be made by the Judge with whom the complaint has been filed either by delivering a copy to the individual party or, if known, to the attorney of record of a party; or by mailing, by certified or registered mail, return receipt requested, a copy to the last known address of a party or a party's attorney.

(e) Service is complete upon delivery to the addressee or, in the case of service by mail, upon mailing.

(f) Filing of pleadings, papers or other documents shall be deemed completed upon delivery to the Judge assigned to the case or the Judge's designee.

### § 76.7 Content of pleadings.

(a) Every pleading shall contain a caption setting forth the statutory provision under which the proceeding is instituted, the title of the proceeding, the docket number assigned by the Judge, the names of all parties, and a designation of the type of pleading or paper (e.g., complaint, motion to dismiss). The pleading shall be signed and shall contain the address and telephone number of the party or person representing the party. The pleadings should be typewritten when possible on standard-size (8½ x 11) paper. Legal size (8½ x 14) paper will not be accepted, except upon approval by the Judge.

(b) Illegible documents, whether handwritten, typewritten, photocopied, or otherwise, will not be accepted. Papers may be reproduced by any duplicating process, provided all copies are clear and legible.

(c) All documents presented by a party in a proceeding must be in English or, if in a foreign language, accompanied by a certified translation.

### § 76.8 Time computations.

(a) *Generally.* In computing any period of time under this part or in an order issued hereunder, the time begins with the day following the act, event, or default requiring service, and includes the last day of the period unless it is a Saturday, Sunday, or legal holiday observed by the federal government, in which case the time period includes the next business day. When the period of time prescribed is eleven (11)