

American Act in contracts for the construction, alteration, or repair of public buildings or public works will be applied after determining the offeror's eligible for award on the basis of application of the provisions in this part.

### PART 31—PROGRAM FRAUD CIVIL REMEDIES

Sec.

- 31.1 Basis and purpose.
- 31.2 Definitions.
- 31.3 Basis for civil penalties and assessments.
- 31.4 Investigation.
- 31.5 Review by the reviewing official.
- 31.6 Prerequisites for issuing a complaint.
- 31.7 Complaint.
- 31.8 Service of complaint.
- 31.9 Answer.
- 31.10 Default upon failure to answer.
- 31.11 Referral of complaint and answer to the ALJ.
- 31.12 Notice of hearing.
- 31.13 Parties to the hearing.
- 31.14 Separation of functions.
- 31.15 Ex parte contacts.
- 31.16 Disqualification of reviewing official or ALJ.
- 31.17 Rights of parties.
- 31.18 Authority of the ALJ.
- 31.19 Prehearing conferences.
- 31.20 Disclosure of documents.
- 31.21 Discovery.
- 31.22 Exchange of witness lists, statements, and exhibits.
- 31.23 Subpoenas for attendance at hearing.
- 31.24 Protective order.
- 31.25 Fees.
- 31.26 Filing, form, and service of papers.
- 31.27 Computation of time.
- 31.28 Motions.
- 31.29 Sanctions.
- 31.30 The hearing and burden of proof.
- 31.31 Determining the amount of penalties and assessments.
- 31.32 Location of hearing.
- 31.33 Witnesses.
- 31.34 Evidence.
- 31.35 The record.
- 31.36 Post-hearing briefs.
- 31.37 Initial decision.
- 31.38 Reconsideration of initial decision.
- 31.39 Appeal to authority head.
- 31.40 Stays ordered by the Department of Justice.
- 31.41 Stay pending appeal.
- 31.42 Judicial review.
- 31.43 Collection of civil penalties and assessments.
- 31.44 Right to administrative offset.
- 31.45 Deposit in Treasury of United States.
- 31.46 Compromise or settlement.
- 31.47 Limitations.

AUTHORITY: 31 U.S.C. 3801-3812.

SOURCE: 53 FR 881, Jan. 14, 1988, unless otherwise noted.

#### § 31.1 Basis and purpose.

(a) *Basis*. This part implements the Program Fraud Civil Remedies Act of 1986, Public Law No. 99-509, sections 6101-6104, 100 Stat. 1874 (October 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 the authority or to certain others, and (2) specifies the hearing and appeal rights of persons subject to allegations of liability for such penalties and assessments.

#### § 31.2 Definitions.

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

*Authority* means the Department of Transportation.

*Authority head* means the Assistant Secretary or Deputy Assistant Secretary for Budget and Programs, Department of Transportation.

*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.

*Claim* means any request, demand, or submission—

(a) Made to the authority for property, services, or money (including money representing grants, loans, insurance, or benefits);

(b) Made to a recipient of property, services, or money from the authority or to a party to a contract with the authority—

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

(i) Provided such property or services;

### § 31.3

(ii) Provided any portion of the funds for the purchase of such property or services; or

(iii) Will reimburse such recipient or party for the purchase of such property or services; or

(2) For the payment of money (including money representing grants, loans, insurance, or benefits) if the United States—

(i) Provided any portion of the money requested or demanded; or

(ii) Will reimburse such recipient or party for any portion of the money paid on such request or demand; or

(c) Made to the authority which has the effect of decreasing an obligation to pay or account for property, services, or money.

*Complaint* means the administrative complaint served by the reviewing official on the defendant under § 31.7.

*Defendant* means any person alleged in a complaint under § 31.7 to be liable for a civil penalty or assessment under § 31.3.

*Government* means the United States Government.

*Individual* means a natural person.

*Initial decision* means the written decision of the ALJ required by §§ 31.10 or 31.37 and includes a revised initial decision issued following a remand or a motion for reconsideration.

*Investigating official* means the Inspector General of the Department of Transportation 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.

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

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

(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.

*Makes*, wherever it appears, shall include the terms presents, submits, and causes to be made, presented, or sub-

### 49 CFR Subtitle A (10-1-02 Edition)

mitted. As the context requires, *making* or *made*, shall likewise include the corresponding forms of such terms.

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

*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.

*Reviewing official* means the Deputy General Counsel of the Department of Transportation, or other officer or employee of the Department who is designated by the Deputy General Counsel and eligible under 31 U.S.C. 3801(a)(8).

*Statement* means any representation, certification, affirmation, document, record, or accounting or bookkeeping entry made—

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

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

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

(2) A grant, loan, or benefit from,

the authority, 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.

#### § 31.3 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;