

U.S. Fish and Wildlife Serv., Interior

§ 11.11

PART 11—CIVIL PROCEDURES

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AUTHORITY: Lacey Act, 83 Stat. 279-281, 18 U.S.C. 42-44; Lacey Act Amendments of 1981, 95 Stat. 1073-1080, 16 U.S.C. 3371 *et seq.*; Bald Eagle Protection Act, sec. 2, 54 Stat. 251, 16 U.S.C. 668a; Endangered Species Act of 1973, sec. 11(f), 87 Stat. 884, 16 U.S.C. 1540(f); Marine Mammal Protection Act of 1972, sec. 112(a), 86 Stat. 1042, 16 U.S.C. 1382.

SOURCE: 39 FR 1159, Jan. 4, 1974, unless otherwise noted.

EDITORIAL NOTE: Nomenclature changes to part 11 appear at 67 FR 38208, June 3, 2002.

Subpart A—Introduction

§ 11.1 Purpose of regulations.

The regulations contained in this part provide uniform rules and procedures for the assessment of civil penalties in connection with violations of certain laws and regulations enforced by the Service.

§ 11.2 Scope of regulations.

The regulations contained in this part apply only to actions arising under the following laws and regulations issued thereunder:

- Lacey Act, 18 U.S.C. 43;
- Lacey Act Amendments of 1981, 16 U.S.C. 3371 *et seq.*;
- Bald Eagle Protection Act, 16 U.S.C. 668-668d;
- Endangered Species Act of 1973, 87 Stat. 884, 16 U.S.C. 1531 *et seq.*; and Marine Mammal

Protection Act of 1972, 16 U.S.C. 1361-1384 and 1401-1407.

[47 FR 56860, Dec. 21, 1982]

§ 11.3 Filing of documents.

(a) Whenever a document or other paper is required to be filed under this part within a certain time, such document or paper will be considered filed as of the date of the postmark if mailed, or the date actually delivered to the office where filing is required. The time periods set forth in this part shall begin to run as of the day following the date of the document or other paper.

(b) If an oral or written application is made to the Director up to 10 calendar days after the expiration of a time period established in this part for the required filing of documents or other papers, the Director may permit a late filing within a fixed period where reasonable grounds are found for an inability or failure to file within the time period required. All such extensions shall be in writing. Except as provided in this subsection, no other requests for an extension of time may be granted.

Subpart B—Assessment Procedure

§ 11.11 Notice of violation.

(a) A notice of violation (hereinafter "notice"), shall be issued by the Director and served personally or by registered or certified mail, return receipt requested, upon the person believed to be subject to a civil penalty (the respondent). The notice shall contain: (1) A concise statement of the facts believed to show a violation, (2) a specific reference to the provisions of the statute or regulation allegedly violated, and (3) the amount of penalty proposed to be assessed. The notice may also contain an initial proposal for compromise or settlement of the case. The notice shall also advise the respondent of his right to file a petition for relief pursuant to §11.12, or to await the Director's notice of assessment.

(b) The respondent shall have 45 days from the date of the notice of violation in which to respond. During this time he may:

- (1) Undertake informal discussions with the Director;

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(2) Accept the proposed penalty, or the compromise, if any, offered in the notice;

(3) File a petition for relief; or

(4) Take no action, and await the Director's decision, pursuant to §11.13.

(c) Acceptance of the proposed penalty or the compromise shall be deemed to be a waiver of the notice of assessment required by §11.14, and of the opportunity for a hearing. Any counter offer of settlement shall be deemed a rejection of the proposed offer of compromise.

§ 11.12 Petition for relief.

If the respondent so chooses he may ask that no penalty be assessed or that the amount be reduced, and he may admit or contest the legal sufficiency of the charge and the Director's allegations of facts, by filing a petition for relief (hereinafter "petition") with the Director at the address specified in the notice within 45 days of the date thereof. The petition shall be in writing and signed by the respondent. If the respondent is a corporation, the petition must be signed by an officer authorized to sign such documents. It must set forth in full the legal or other reasons for the relief.

§ 11.13 Decision by the Director.

Upon expiration of the period required or granted for filing of a petition for relief, the Director shall proceed to make an assessment of a civil penalty, taking into consideration information available to him and such showing as may have been made by the respondent, either pursuant to §11.11 or §11.12, or upon further request of the Director.

§ 11.14 Notice of assessment.

The Director shall notify the respondent by a written notice of assessment, by personal service or by registered or certified mail, return receipt requested, of his decision pursuant to §11.13. He shall set forth therein the facts and conclusions upon which he decided that the violation did occur and appropriateness of the penalty assessed.

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§ 11.15 Request for a hearing.

Except where a right to request a hearing is deemed to have been waived as provided in §11.11, the respondent may, within 45 calendar days from the date of the notice of assessment referred to in §11.14, file a dated, written request for a hearing with the Hearings Division, Office of Hearings and Appeals, U.S. Department of the Interior, 801 North Quincy Street, Arlington, Virginia 22203. The request should state the respondent's preference as to the place and date for a hearing. The request must enclose a copy of the notice of violation and notice of assessment. A copy of the request shall be served upon the Director personally or by registered or certified mail, return receipt requested, at the address specified in the notice.

§ 11.16 Final administrative decision.

(a) Where no request for a hearing is filed as provided in §11.15 the Director's assessment shall become effective and shall constitute the final administrative decision of the Secretary on the 45th calendar day from the date of the notice of assessment.

(b) If a request for a hearing is timely filed in accordance with §11.15, the date of the final administrative decision in the matter shall be as provided in subpart C of this part.

§ 11.17 Payment of final assessment.

When a final administrative decision becomes effective in accordance with this part 11, the respondent shall have 20 calendar days from the date of the final administrative decision within which to make full payment of the penalty assessed. Payment will be timely only if received in Office of the Director during normal business hours, on or before the 20th day. Upon a failure to pay the penalty, the Solicitor of the Department may request the Attorney General to institute a civil action in the U.S. District Court to collect the penalty.