

(b) Where the Department has taken remedial action as described in paragraph (a) of this section, it will notify the recipient organization orally of the remedial action within one business day of its imposition and in writing within seven business days of its imposition. The written notice will conform to that described in § 77.5(a).

(c) After receipt of the written notice, the recipient organization will have the same opportunity to respond as described in § 77.5(b)(1).

(d) The Department will issue a final decision in writing no later than twenty days following receipt of any response submitted by the recipient organization.

## PART 78—CONDITIONS FOR WAIVER OF DENIAL OF FEDERAL BENEFITS

Sec.

78.1 Applicability.

78.2 Definitions.

78.3 Benefits not denied to rehabilitated offenders.

AUTHORITY: Section 5301 of Pub. L. 100-690, the Anti-Drug Abuse Act of 1988, 102 Stat. 4310, 21 U.S.C. 853a.

SOURCE: 56 FR 29592, June 28, 1991, unless otherwise noted.

### § 78.1 Applicability.

This part is applicable to any decision to deny Federal benefits, under authority of 21 U.S.C. 853a, to an individual convicted of a Federal or State offense involving distribution or possession of a controlled substance as defined by the Controlled Substances Act, 21 U.S.C. 802.

### § 78.2 Definitions.

For the purposes of denying Federal benefits under 21 U.S.C. 853a:

(a) *Deemed to be rehabilitated* means that an individual has abstained from the illicit use of a controlled substance for the period of at least 180 days immediately prior to and including the date of sentencing provided that such abstinence is documented by the results of periodic urine drug testing conducted during that period; and provided further that such drug testing is conducted using an immunoassay test approved by the Food and Drug Adminis-

tration for commercial distribution or, in the case of a State offense, either using an immunoassay test approved by the Food and Drug Administration for commercial distribution or pursuant to standards approved by the State.

(b) *Long-term treatment program or long-term drug treatment program* means any drug abuse treatment program of 180 days or more where the provider has been accredited by the Joint Commission on Accreditation of Health Organizations, the Commission on Accreditation of Rehabilitation Facilities, or the Council on Accreditation of Services for Families and Children, or licensed or otherwise approved by the State to provide drug abuse treatment.

### § 78.3 Benefits not denied to rehabilitated offenders.

(a) No individual convicted of any Federal or State offense involving the distribution of controlled substances shall be denied Federal benefits relating to long-term drug treatment programs for addiction under 21 U.S.C. 853a(a)(2) if:

(1) The individual declares himself or herself to be an addict and submits to a long-term treatment program for addiction as defined by § 78.2(b), provided that in the determination of the sentencing court there is a reasonable body of evidence to substantiate the individual's declaration that such individual is an addict; or

(2) The individual is, in the determination of the sentencing court, deemed to be rehabilitated as defined by § 78.2(a).

(b) No individual convicted of any Federal or State offense involving the possession of controlled substances shall be denied any Federal benefit, or otherwise subject to penalties and conditions, under 21 U.S.C. 853a(b)(2) if:

(1) The individual declares himself or herself to be an addict and submits to a long-term treatment program for addiction as defined by § 78.2(b), provided that in the determination of the sentencing court there is a reasonable body of evidence to substantiate the individual's declaration that such individual is an addict; or

(2) The individual is, in the determination of the sentencing court,

deemed to be rehabilitated as defined by § 78.2(a).

**PART 79—PROGRAM FRAUD CIVIL REMEDIES**

Sec.

- 79.1 Basis and purpose.
- 79.2 Definitions.
- 79.3 Basis for civil penalties and assessments.
- 79.4 Investigation.
- 79.5 Review by the reviewing official.
- 79.6 Prerequisites for issuing a complaint.
- 79.7 Complaint.
- 79.8 Service of complaint.
- 79.9 Answer.
- 79.10 Default upon failure to file an answer.
- 79.11 Referral of complaint and answer to the ALJ.
- 79.12 Notice of hearing.
- 79.13 Parties to the hearing.
- 79.14 Separation of functions.
- 79.15 Ex parte contacts.
- 79.16 Disqualification of reviewing official or ALJ.
- 79.17 Rights of parties.
- 79.18 Authority of the ALJ.
- 79.19 Prehearing conferences.
- 79.20 Disclosure of documents.
- 79.21 Discovery.
- 79.22 Exchange of witness lists, statements and exhibits.
- 79.23 Subpoenas for attendance at hearing.
- 79.24 Protective order.
- 79.25 Fees.
- 79.26 Form, filing and service of papers.
- 79.27 Computation of time.
- 79.28 Motions.
- 79.29 Sanctions.
- 79.30 The hearing and burden of proof.
- 79.31 Determining the amount of penalties and assessments.
- 79.32 Location of hearing.
- 79.33 Witnesses.
- 79.34 Evidence.
- 79.35 The record.
- 79.36 Post-hearing briefs.
- 79.37 Initial decision.
- 79.38 Reconsideration of initial decision.
- 79.39 Appeal to authority head.
- 79.40 Stays ordered by the Department of Justice.
- 79.41 Stay pending appeal.
- 79.42 Judicial review.
- 79.43 Collection of civil penalties and assessments.
- 79.44 Right to administrative offset.
- 79.45 Deposit in Treasury of United States.
- 79.46 Compromise or settlement.
- 79.47 Limitations.

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

SOURCE: 53 FR 11659, Apr. 8, 1988, unless otherwise noted.

**§ 79.1 Basis and purpose.**

(a) *Basis.* This part implements the Program Fraud Civil Remedies Act of 1986, Pub. L. 99-509, §§ 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 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.

**§ 79.2 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 Health and Human Services.

*Authority head* means the Departmental Grant Appeals Board of the Department of Health and Human Services.

*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;

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