

§ 221.2 Railroad Retirement Board jurisdiction.

(a) *Life cases.* The Board has jurisdiction to pay monthly benefits to each living employee who has completed at least ten years (120 months) of creditable service under the Railroad Retirement Act (or five years (60 months) of service, all of which accrues after December 31, 1995), and to his or her eligible spouse or divorced spouse. Creditable service is described in part 220 of this chapter.

(b) *Death cases.* The Board has jurisdiction to pay monthly benefits or lump-sum death benefits to eligible survivors of a deceased employee, when the deceased employee has at least ten years (120 months) of service that is creditable under the Railroad Retirement Act (or five years (60 months) of service, all of which accrues after December 31, 1995) and a current connection as described in part 216 of this chapter. Lump-sum death benefits are described in part 234 of this chapter. The Board also has jurisdiction to pay any residual benefits that may become payable at the death of an employee. Residual benefits are described in part 234 of this chapter. The Board retains jurisdiction to pay any residual benefit that may be payable even after jurisdiction has been transferred to the Social Security Administration as described in § 221.3.

■ 4. Revise § 221.3 to read as follows:

§ 221.3 Social Security Administration jurisdiction.

The Board transfers jurisdiction for benefits payable on any employee's earnings record (including railroad service and compensation credits earned by the employee, which the Social Security Administration considers in determining benefits payable as directed by section 18 of the Railroad Retirement Act) to the Social Security Administration when—

(a) *Life and death cases.* A living or deceased employee has less than ten years (120 months) of service and less than five years (60 months) of service after December 31, 1995 that is creditable under the Railroad Retirement Act; or

(b) *Death cases.* A deceased employee has at least ten years (120 months) of service or at least five years (60 months) of service after December 31, 1995 that is creditable under the Railroad Retirement Act (see part 220 of this chapter) but does not have a current connection with the railroad industry as described in part 216 of this chapter.

Dated: August 6, 2026.

By Authority of the Board.

Stephanie Hillyard,

Secretary to the Board.

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DEPARTMENT OF STATE**22 CFR Part 35**

[PN: 13097]

RIN 1400–AG08

Implementation of the Administrative False Claims Act

AGENCY: Department of State.

ACTION: Final rule.

SUMMARY: This rule would establish updated, procedural regulations implementing the Administrative False Claims Act (AFCA) at the Department of State.

DATES: This rule is effective on August 10, 2026.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION: Congress originally enacted the Program Fraud Civil Remedies Act (PFCRA) in 1986. The purpose of the PFCRA was twofold: to provide agencies that were the victims of false claims and statements an administrative remedy and to provide due process for all parties subject to that remedy. Public Law 99–509 6102 (October 21, 1986) (findings and purposes at 31 U.S.C. 3801 note).

Section 5203 of the Servicemember Quality of Life Improvement and National Defense Authorization Act for Fiscal Year 2025 (Pub. L. 118–59), which was enacted on December 23, 2024, amended the PFCRA. Among other things, the amendments changed the PFCRA's name to the Administrative False Claims Act. In that legislation, Congress also required agencies to make conforming changes to their regulations.

This rule includes the conforming changes required by that provision. The intent of this rule is to cite the controlling statute when possible, repeating statutory provisions in the regulation only where necessary for the convenience of the regulated public. This rule also restates the existing Department PFCRA regulations in Part 35 to consolidate Department regulations into a streamlined AFCA section. The revised structure of this regulation replaces forty-seven separate sections with six sections to minimize the regulatory footprint of the AFCA at the Department.

Regulatory Analysis*Administrative Procedure Act*

The Department has issued this final rule without prior notice and opportunity for comment because this is a rule of agency organization, procedure, or practice (“procedural rule”). See 5 U.S.C. 553(b)(A). The Department further finds good cause under the APA to issue this rule without prior notice and comment and for immediate effect because comments would be unnecessary under 5 U.S.C. 553(b)(B).

The procedural-rule exception “covers agency actions that do not themselves alter the rights or interests of parties, although it may alter the manner in which the parties present themselves or their viewpoints to the agency.” *JEM Broad. Co., Inc. v. FCC*, 22 F.3d 320, 326 (D.C. Cir. 1994) (quoting *Batterton v. Marshall*, 648 F.2d 694, 707 (D.C. Cir. 1980)); see also *Mendoza v. Perez*, 754 F.3d 1002, 1023–24 (D.C. Cir. 2014); *Am. Hosp. Ass’n v. Bowen*, 834 F.2d 1037, 1047 (D.C. Cir. 1987) (holding that procedural rules are those that do not “encode a substantive value judgment or put a stamp of approval or disapproval on a given type of behavior”).

This final rule merely updates the Department's existing regulations to reflect the statutory changes made by the FY 2025 NDAA and to make other minor hearing procedure changes. The Department has no discretion in the statutory changes and does not make substantive policy choices or impose obligations beyond those required by statute. Accordingly, notice and comment is unnecessary and delaying the rule's effective date would not meaningfully enhance public participation or implementation.

Regulatory Flexibility Analysis

The RFA's regulatory flexibility analysis requirements apply only to those rules for which an agency is required to publish a general notice of proposed rulemaking pursuant to 5 U.S.C. 553 or any other law. See 5 U.S.C. 604(a). State did not issue a notice of proposed rulemaking for this action. Therefore, a regulatory flexibility analysis is not required for this rule. Nonetheless, DHS has determined that this rule will not have a significant economic impact on a substantial number of small entities. This rule is procedural.

Unfunded Mandates Reform Act (UMRA)

This final rule does not contain a federal mandate as the term is defined under the UMRA.

Congressional Review Act (CRA)

This final rule is not a “rule” as defined by the CRA. See 5 U.S.C. 804(3)(C) (defining the term “rule” to exclude “any rule of agency organization, procedure, or practice that does not substantially affect the rights or obligations of non-agency parties”). The Department will nonetheless submit this final rule to both houses of Congress and the Comptroller General before the rule takes effect.

Executive Order 13121 (Federalism)

This rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

Executive Order 12988 (Civil Justice Reform)

The Department has determined that this rule meets the applicable standards provided in section 3 of E.O. 12988.

Executive Orders 12866 (Regulatory Planning and Review) and 13563 (Improving Regulation and Regulatory Review)

The Office of Management and Budget (OMB) has not designated this rule a “significant regulatory action,” under section 3(f) of Executive Order 12866.

Executive Order 14192 (Unleashing Prosperity Through Deregulation)

This rule is not a regulatory action because this rule is not significant under Executive Order 12866.

Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments)

This final rule does not have Tribal implications under Executive Order 13175 because it would not have a substantial direct effect on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes.

Paperwork Reduction Act (PRA)

This final rule does not create or modify a collection of information subject to the Paperwork Reduction Act, 44 U.S.C. 3501–3520.

List of Subjects in 22 CFR Part 35

Administrative practice and procedure.

■ For the reasons stated in the preamble, the Department amends 22 CFR by revising Part 35 to read as follows:

PART 35—THE ADMINISTRATIVE FALSE CLAIMS ACT

Sec.

- 35.10 Background.
- 35.11 Computation of time.
- 35.20 Definitions.
- 35.30 Pre-complaint procedures.
- 35.40 Complaint and pre-hearing procedures.
- 35.50 Hearing.
- 35.60 Post hearing procedures.

Authority: 22 U.S.C. 2651a; 31 U.S.C. 3803(g), 3809; and Pub. L. 118–159.

§ 35.10 Background.

This subpart implements the Administrative False Claims Act, codified at 31 U.S.C. 3801 through 3812. Section 3809 of that Act requires each authority head to promulgate regulations necessary to implement the provisions of the statute. Administrative False Claims Act liability is identified at 31 U.S.C. 3802. Liability for claims can include an assessment of up to twice the amount of the false claim and a civil penalty. Liability for a false statement is a civil penalty. The civil penalty for a false claim or false statement actionable under that section is \$14,308.

§ 35.11 Computation of time.

(a) A notice to a person alleged to be liable under this part must be mailed or delivered by the later of:

- (i) Six years after the date on which the violation of is committed; or
- (ii) Three years after the date on which facts material to the action are known or reasonably should have been known by the Under Secretary of State for Management, but in no event more than 10 years after the date on which the violation is committed.

(b) A civil action to recover a penalty or assessment must be commenced within the three-year timeframe noted in 31 U.S.C. 3808(b).

(c) In computing any period of time under this part or in an order issued thereunder:

(1) The time begins with the day following the act, event, or default, and includes the last day of the period, unless it is a Saturday, Sunday, or legal holiday observed by the Federal Government, in which event it includes the next business day.

(2) When the period of time allowed is less than 7 days, intermediate Saturdays, Sundays, and legal holidays observed by the Federal Government shall be excluded from the computation.

(3) Where a document has been served or issued by placing it in the

mail, an additional 5 days will be added to the time permitted for any response.

(d) If, at any time, the Attorney General or an Assistant Attorney General designated by the Attorney General transmits to the Under Secretary for Management a written finding that continuation of the administrative process described in this part with respect to a claim or statement may adversely affect any pending or potential criminal or civil action related to such claim or statement, the Under Secretary shall stay the process immediately. The Under Secretary may order the process resumed only upon receipt of the written authorization of the Attorney General, the Assistant Attorney General who ordered the stay, or other appropriate Department of Justice official.

(e) Federal agencies that receive or discover any specific information regarding bribery, gratuities, conflict of interest, or other corruption or similar activity in relation to a false claim or statement, must immediately report that information consistent with the requirements of 31 U.S.C. 3808(c) to the Attorney General and Inspector General as appropriate.

(f) If the Department uses a presiding officer who is a member of a board of contract appeals for a matter, the procedural rules implemented by that board of contract appeals will control the litigation of that matter to the extent there is an inconsistency between the board’s procedural rules and the procedural rules of this part.

(g) In cases where a party, witness or material evidence in a proceeding under these regulations is located abroad, the investigating official, reviewing official or presiding officer, as the case may be, may adjust the provisions of this part for service, filing of documents, time limitations, and related matters to meet special problems arising out of that location.

§ 35.20 Definitions.

(a) The definitions of “authority,” “authority head,” “claim,” “investigating official,” “knows or has reason to know,” “person,” “presiding officer,” “reviewing official,” “statement,” “material,” and “obligation” are the same as those found in 31 U.S.C. 3801. The authority head for the Department is the Under Secretary for Management. In addition, the investigating official is the Inspector General of the Department of State or designee, and the Assistant Legal Adviser for Buildings and Acquisitions is the reviewing official.

(b) *Complaint* means the administrative complaint served by the

reviewing official on the defendant under § 35.40(c).

(c) *Defendant* means any person alleged in a complaint under § 35.40(a) to be liable for a civil penalty or assessment under § 35.10.

§ 35.30 Pre-complaint Procedures.

(a) *Investigating official.* (1) An investigating official may elect to investigate matters potentially resulting in an Administrative False Claims Act action using the subpoena authority at 31 U.S.C. 3804, or any other authority granted to the investigating official, such as the authority of the Inspector General Act at 5 United States Code, Chapter 4.

(2) If the investigating official concludes that an action under the Administrative False Claims Act may be warranted, the investigating official shall submit a report containing the findings and conclusions of such investigation to the reviewing official.

(3) Nothing in this section shall preclude or limit an investigating official's discretion to refer allegations directly to the Department of Justice for suit under the False Claims Act or other civil relief, or to defer or postpone a report or referral to the reviewing official to avoid interference with a criminal investigation or prosecution.

(4) Nothing in this section modifies any responsibility of an investigating official to report violations of criminal law to the Attorney General.

(b) *Reviewing official.* (1) If, based on the report of the investigating official under this section, the reviewing official determines that there is adequate evidence to believe that a person is liable under the Administrative False Claims Act, and there is a reasonable prospect of collecting, from a person with respect to whom the reviewing official is referring allegations of liability in such notice, the amount for which such person may be liable, the reviewing official shall transmit to the Attorney General a written notice of the reviewing official's intention to have a complaint issued under § 35.40(a).

(2) A written notice of the reviewing official's intention to have a complaint issued under § 35.40(a) shall include:

(i) A statement of the reviewing official's reasons for issuing a complaint;

(ii) A statement specifying the evidence that supports the allegations of liability;

(iii) A description of the claims or statements upon which the allegations of liability are based;

(iv) An estimate of the amount of money, or the value of property, services, or other benefits, requested or

demand in violation of the Administrative False Claims Act;

(v) A statement of any exculpatory or mitigating circumstances that may relate to the claims or statements known by the reviewing official or the investigating official; and

(vi) A statement that there is a reasonable prospect of collecting an appropriate amount of penalties and assessments.

(c) *Request for authorization from the Department of Justice.* (1) The reviewing official may issue a complaint under § 35.40(a) only if:

(i) The Department of Justice approves the issuance of a complaint in a written statement described in 31 U.S.C. 3803(b)(1), and

(ii) In the case of allegations of liability under 31 U.S.C. 3802(a)(1) with respect to a claim, the reviewing official determines that, with respect to such claim or a group of related claims submitted at the same time such claim is submitted, the amount of money, or the value of property or services, demanded or requested in violation of § 3802(a)(1) does not exceed \$1,000,000.

(iii) For the purposes of this section, a related group of claims submitted at the same time shall include only those claims arising from the same transaction (e.g., grant, loan, application, or contract) that are submitted simultaneously as part of a single request, demand, or submission.

(2) Nothing in this section shall be construed to limit the reviewing official's authority to join in a single complaint against a person, claims that are unrelated or were not submitted simultaneously, regardless of the amount of money, or the value of property or services, demanded or requested.

(d) A reviewing official shall make all appropriate written notifications required by section 3803(j)(2) of title 31 of the United States Code.

§ 35.40 Complaint and pre-hearing procedures.

(a) *Complaint.* The reviewing official will identify the allegations of liability in a complaint. The complaint must identify the following:

(1) The allegations of liability against the defendant, including the statutory basis for liability, an identification of the claims or statements that are the basis for the alleged liability, and the reasons why liability allegedly arises from such claims or statements;

(2) The maximum amount of penalties and assessments for which the defendant may be held liable;

(3) Instructions for filing an answer, including a specific statement of the

defendant's right to request a hearing and to be represented by a representative;

(4) Identification and contact information for the governmental employee representing the Department in the matter; and

(5) The fact that failure to file an answer within 30 days of service of the complaint will result in the imposition of the maximum amount of penalties and assessments without right to appeal, as provided in § 35.40(e).

(b) *Notice of regulations.* At the same time the reviewing official serves the complaint, he or she shall serve the defendant with a copy of these regulations or identify a free online resource where the defendant can access these regulations.

(c) *Service of the complaint.* The Department must mail or deliver the complaint to the person alleged to be liable in accordance with 31 U.S.C. 3803(d)(1) within the time limitations identified at 31 U.S.C. 3808(a).

(d) *Answer.* (1) The defendant may request a hearing in the answer filed with the reviewing official within 30 days of service of the complaint. In the answer, the defendant:

(i) Shall admit or deny each of the allegations of liability made in the complaint;

(ii) Shall state any defense on which the defendant intends to rely;

(iii) May state any reasons why the defendant contends that the penalties and assessments should be less than the statutory maximum; and

(iv) Shall state the name, postal address, electronic mail address, and telephone number of the person authorized by the defendant to act as defendant's representative, if any.

(2) Upon receipt of an answer, the reviewing official shall file the complaint and answer with the presiding officer.

(3) If the defendant is unable to file an answer meeting the requirements of paragraph (d)(1) of this section within the time provided, the defendant may, before the expiration of 30 days from service of the complaint, file with the reviewing official a general answer denying liability and requesting a hearing, and a request for an extension of time within which to file an answer meeting the requirements of paragraph (d)(1) of this section. The reviewing official shall file promptly with the presiding officer the complaint, the general answer denying liability, and the request for an extension of time as provided in § 35.40(e). For good cause shown, the presiding officer may grant the defendant up to 30 additional days within which to file an answer meeting

the requirements of paragraph (d)(1) of this section. The presiding officer shall decide expeditiously whether the defendant shall be granted an additional period of time to file such answer.

(e) *Default upon failure to file an answer.* (1) If the defendant does not file an answer within the time prescribed in § 35.40, the reviewing official must refer the complaint to the presiding officer within a reasonable time.

(2) Upon the referral of the complaint, the presiding officer shall promptly serve on the defendant in the manner prescribed in § 35.40(c), a notice that an initial decision will be issued under this section.

(3) The presiding officer shall assume the facts alleged in the complaint to be true and, if such facts establish liability under 31 U.S.C. 3802, the presiding officer shall issue an initial decision imposing the maximum amount of penalties and assessments allowed under the statute.

(4) Except as otherwise provided in this section, by failing to file a timely answer the defendant waives any right to further review of the penalties and assessments imposed under paragraph (e)(3) of this section and the initial decision shall become final and binding upon the parties 30 days after it is issued.

(5) If, before such an initial decision becomes final, the defendant files a motion with the presiding officer seeking to reopen on the grounds that extraordinary circumstances prevented the defendant from filing an answer, the initial decision shall be stayed pending the presiding officer's decision on the motion.

(6) If, on such motion, the defendant can demonstrate extraordinary circumstances excusing the failure to file a timely answer, the presiding officer shall withdraw the initial decision in paragraph (e)(3) of this section, if such a decision has been issued, and shall grant the defendant an opportunity to answer the complaint.

(7) A decision of the presiding officer denying a defendant's motion under paragraph (e)(5) of this section is not subject to reconsideration under § 35.60(d).

(8) The defendant may appeal to the authority head the decision denying a motion to reopen by filing a notice of appeal with the authority head within 15 days after the presiding officer denies the motion. The timely filing of a notice of appeal shall stay the initial decision until the authority head decides the issue.

(9) If the defendant files a timely notice of appeal with the authority head, the presiding officer shall forward

the record of the proceeding to the authority head.

(10) The authority head shall decide expeditiously whether extraordinary circumstances excuse the defendant's failure to file a timely answer based solely on the record before the presiding officer.

(11) If the authority head decides that extraordinary circumstances excused the defendant's failure to file a timely answer, the authority head shall remand the case to the presiding officer with instructions to grant the defendant an opportunity to answer.

(12) If the authority head decides that the defendant's failure to file a timely answer is not excused, the authority head shall reinstate the initial decision of the presiding officer, which shall become final and binding upon the parties 30 days after the authority head issues such decision.

(f) *Presiding officer disqualification and authorities.* (1) A presiding officer may be removed from a case:

(i) On the presiding officer's own initiative; or

(ii) On motion by the parties for disqualification of the presiding officer.

(A) Such motion shall be accompanied by an affidavit alleging personal bias or other reason for disqualification.

(B) Such motion and affidavit shall be filed promptly upon the party's discovery of reasons requiring disqualification, or such objections shall be deemed waived.

(C) Such affidavit shall state specific facts that support the party's belief that personal bias or other reason for disqualification exists and the time and circumstances of the party's discovery of such facts. It shall be accompanied by a certificate of the representative of record that it is made in good faith.

(D) Upon the filing of such a motion and affidavit, the presiding officer shall proceed no further in the case until he or she resolves the matter of disqualification in accordance with this section.

(2) The presiding officer shall conduct a fair and impartial hearing, avoid delay, maintain order, and assure that a record of the proceeding is made. The presiding officer has the authority to:

(i) Set and change the date, time, and place of the hearing upon reasonable notice to the parties;

(ii) Continue or recess the hearing in whole or in part for a reasonable period of time;

(iii) Hold conferences to identify or simplify the issues, or to consider other matters that may aid in the expeditious disposition of the proceeding;

(iv) Administer oaths and affirmations;

(v) For the purpose of conducting a hearing, the presiding officer may issue subpoenas requiring the attendance and testimony of witnesses as well as the production of information as set forth in 31 U.S.C. 3804(b)(2). The party requesting a subpoena shall pay the cost of the fees and mileage of any witness subpoenaed in the amounts that would be payable to a witness in a proceeding in United States District Court. A check for witness fees and mileage shall accompany the subpoena when served, except that when a subpoena is issued on behalf of the Department, a check for witness fees and mileage need not accompany the subpoena;

(vi) Rule on motions and other procedural matters;

(vii) Regulate the requirements regarding motions including requiring any oral motion to be reduced to writing and establishing the time within which a response to any written motion will be due if the motion is not due within 15 days after the written motion is served;

(viii) Regulate the scope and timing of discovery;

(ix) Regulate the course of the hearing and the conduct of representatives and parties to include imposing sanctions, such as drawing adverse inferences, striking pleadings, deeming items admitted, restricting use of evidence, dismissing an action, or issuing an initial decision that reasonably relate to the severity and nature of the failure or misconduct;

(x) Examine witnesses;

(xi) Receive, rule on, exclude, or limit evidence;

(xii) Upon motion of a party, take official notice of facts;

(xiii) Upon motion of a party, decide cases, in whole or in part, by summary judgment where there is no disputed issue of material fact;

(xiv) Conduct any conference, argument, or hearing on motions in person or by telephone; and

(xv) Exercise such other authority as is necessary to carry out the responsibilities of the presiding officer under this part.

(xvi) Irrespective of any implications of the above, the presiding officer does not have the authority to find Federal statutes or regulations invalid.

(xvii) Additionally, the presiding officer shall not, except to the extent required for the disposition of ex parte matters as authorized by law:

(A) Consult a person or party on a fact in issue, unless on notice and opportunity for all parties to the hearing to participate; or

(B) Be responsible to or subject to the supervision or direction of the investigating official or the reviewing official.

(g) *Prehearing*—(1) *Entitlement to review and obtain information.* Defendants receiving notice of the hearing from the presiding officer under 31 U.S.C. 3803(d)(2)(B) are entitled to information identified in 31 U.S.C. 3803(e), including a copy of all relevant and material documents, transcripts, records, and other materials, which relate to the allegations and upon which the findings and conclusions of the investigating official are based. Defendants should request any such information from the government's point of contact identified in the complaint. The government's point of contact will provide all requested information expeditiously. Information subject to payment of a fee will be expeditiously provided upon payment of any applicable reasonable duplication fee.

(2) *Discovery.* (i) Unless mutually agreed to by the parties, discovery is available only as ordered by the presiding officer. The presiding officer may order the following types of discovery:

(A) Requests for production of documents for inspection and copying;

(B) Requests for admissions of the authenticity of any relevant document or of the truth of any relevant fact;

(C) Written interrogatories; and

(D) Depositions.

(ii) A party seeking discovery must file a motion with the presiding officer. Such a motion shall be accompanied by a copy of the requested discovery, or in the case of depositions, a summary of the scope of the proposed deposition. Within 10 days of service, a party may file an opposition to the motion and/or a motion for protective order as provided in § 35.40(g)(3). The presiding officer may grant a motion for discovery only if he or she finds that the discovery sought:

(A) Is necessary for the expeditious, fair, and reasonable consideration of the issues;

(B) Is not unduly costly or burdensome;

(C) Will not unduly delay the proceeding; and

(D) Does not seek privileged information.

(iii) The burden of showing that discovery should be allowed is on the party seeking discovery.

(iv) The presiding officer shall regulate the timing of discovery.

(3) *Protective orders.* A party or a prospective witness or deponent may file a motion for a protective order with

respect to discovery sought by an opposing party or with respect to the hearing, seeking to limit the availability or disclosure of evidence. In issuing a protective order, the presiding officer may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following:

(i) That the discovery not be had;

(ii) That the discovery may be had only on specified terms and conditions, including a designation of the time or place;

(iii) That the discovery may be had only through a method of discovery other than that requested;

(iv) That certain matters not be the subject of inquiry, or that the scope of discovery be limited to certain matters;

(v) That discovery be conducted with no one present except persons designated by the presiding officer;

(vi) That the contents of discovery or evidence be sealed;

(vii) That a sealed deposition be opened only by order of the presiding officer;

(viii) That a trade secret or other confidential research, development, commercial information, or facts pertaining to any criminal investigation, proceeding, or other administrative investigation not be disclosed or be disclosed only in a designated way; or

(ix) That the parties simultaneously file specified documents.

(4) *Prehearing orders.* The presiding officer shall issue scheduling orders the presiding officer deems appropriate to ensure a fair and impartial hearing, avoid delay, maintain order, and assure that a record of the proceeding is made. At a minimum, the presiding officer must issue an order that:

(i) Sets the hearing in a location permissible under 31 U.S.C. 3803(g)(4);

(ii) Provides the written notice required by 31 U.S.C. 3803(g)(2)(A);

(iii) Governs the exchange of witness lists, statements, and exhibits; and

(iv) Ensures the defendant has an opportunity to present their case, to submit rebuttal evidence, and to conduct such cross-examination as may be required for a full and true disclosure of the facts.

(v) Includes in any written notice of a hearing to a defendant a description of the procedures for the conduct of the hearing.

§ 35.50 Hearing.

(a) The presiding officer will conduct the hearing consistent with that officer's authority to make the determinations identified in 31 U.S.C. 3803(f) by a preponderance of the evidence.

(b) In determining an appropriate amount of civil penalties and assessments, the presiding officer and the authority head, upon appeal, should evaluate any circumstances that mitigate or aggravate the violation and should articulate in their opinions the reasons that support the penalties and assessments they impose. Because of the intangible costs of fraud, the expense of investigating such conduct, and the need to deter others who might be similarly tempted, double damages and a significant civil penalty ordinarily should be imposed. Although not exhaustive, the following factors are among those that may influence the presiding officer and the authority head in determining the amount of penalties and assessments to impose with respect to the misconduct (*i.e.*, the false, fictitious, or fraudulent claims or statements) charged in the complaint:

(1) The number of false, fictitious or fraudulent claims or statements;

(2) The time period over which such claims or statements were made;

(3) The degree of the defendant's culpability with respect to the misconduct;

(4) The amount of money or the value of the property, services, or benefit falsely claimed;

(5) The cost of the Government's actual loss as a result of the misconduct, including foreseeable consequential damages and the costs of investigation;

(6) The relationship of the amount imposed as civil penalties to the amount of the Government's loss;

(7) The potential or actual impact of the misconduct upon public confidence in the management of Government programs and operations;

(8) Whether the defendant has engaged in a pattern of the same or similar misconduct;

(9) Whether the defendant attempted to conceal the misconduct;

(10) The degree to which the defendant has involved others in the misconduct or in concealing it;

(11) Where the misconduct of employees or agents is imputed to the defendant, the extent to which the defendant's practices fostered or attempted to preclude such misconduct;

(12) Whether the defendant cooperated in or obstructed an investigation of the misconduct;

(13) Whether the defendant assisted in identifying and prosecuting other wrongdoers;

(14) The complexity of the program or transaction, and the degree of the defendant's sophistication with respect to it, including the extent of the defendant's prior participation in the program or in similar transactions;

(15) Whether the defendant has been found, in any criminal, civil, or administrative proceeding to have engaged in similar misconduct or to have dealt dishonestly with the Government of the United States or of a state, directly or indirectly;

(16) The need to deter the defendant and others from engaging in the same or similar misconduct; and

(17) The potential impact of the misconduct on the rights of others.

(c) Nothing in this section shall be construed to limit the presiding officer or the authority head from considering any other factors that in any given case may mitigate or aggravate the offense for which penalties and assessments are imposed.

(d) In assembling the record:

(1) The hearing shall be recorded and transcribed;

(2) Transcripts shall be available following the hearing at a cost not to exceed the actual cost of duplication and any court reporter's reasonable fee;

(3) The transcript of testimony, exhibits and other evidence admitted at the hearing, and all documents filed in the proceeding constitute the record for the decision by the presiding officer and the authority head; and

(4) The record may be inspected and copied by anyone upon payment of a reasonable fee, unless otherwise ordered by the presiding officer.

§ 35.60 Post-hearing procedures.

(a) *Post-hearing motions.* The presiding officer may decide on any post-hearing motions.

(b) *Post-hearing briefs.* Any party may file a post-hearing brief. The presiding officer shall fix the time for filing such briefs, not to exceed 60 days from the date the parties receive the transcript of the hearing or, if applicable, the stipulated record. Such briefs may be accompanied by proposed findings of fact and conclusions of law. The presiding officer may permit the parties to file reply briefs.

(c) *Initial decision.* Except for good cause, the presiding officer shall issue a written decision required by 31 U.S.C. 3803(h) within 90 days after the time for submission of post-hearing briefs and reply briefs, if permitted, has expired.

(d) *Reconsideration of the initial decision.* (1) Any party may file a motion for reconsideration of the initial decision within 20 days of receipt of the initial decision. If service was made by mail, receipt will be presumed to be 5 days from the date of mailing in the absence of contrary proof. Every such motion must set forth the matters claimed to have been erroneously decided and the nature of the alleged

errors. Such motion shall be accompanied by a supporting brief. Responses to such motions shall be allowed only upon request of the presiding officer.

(2) The presiding officer may dispose of a motion for reconsideration by denying it or by issuing a revised initial decision. If the presiding officer denies a motion for reconsideration, the initial decision shall constitute the final decision of the authority head and shall be final and binding on all parties 30 days after the presiding officer denies the motion, unless the initial decision is timely appealed to the authority head in accordance with paragraph (e) of this section.

(3) If the presiding officer issues a revised initial decision, that decision shall constitute the final decision of the authority head and shall be final and binding on the parties 30 days after it is issued, unless it is timely appealed to the authority head in accordance with paragraph (e) of this section.

(e) *Appeal to the authority head.* (1) Parties may not appeal interlocutory rulings by the presiding officer to the authority head.

(2) Except in case of default, if the defendant is determined in an initial decision to be liable for a civil penalty or assessment, the defendant may appeal such decision to the authority head by filing a notice of appeal with the Government's representative identified in the complaint for review by the authority head. A notice of appeal shall be accompanied by a written brief specifying exceptions to the initial decision and reasons supporting the exceptions.

(i) A notice of appeal may be filed at any time within 30 days after the presiding officer issues an initial decision. However, if another party files a motion for reconsideration, consideration of the appeal shall be stayed automatically pending resolution of the motion for reconsideration.

(ii) If a motion for reconsideration is timely filed, a notice of appeal must be filed within 30 days after the presiding officer denies the motion or issues a revised initial decision, whichever applies.

(iii) If no motion for reconsideration is timely filed, a notice of appeal must be filed within 30 days after the presiding officer issues the initial decision.

(iv) The authority head may extend the initial 30-day period for an additional 30 days if the defendant files with the authority head a request for an extension within the initial 30-day period and shows good cause.

(3) The Department's representative may file a brief in opposition to the notice of appeal within 30 days of receiving the notice of appeal and accompanying brief.

(4) The authority head's review will occur within the limitations noted in 31 U.S.C. 3803(i)(2)(B) and (C). There is no right to appear personally before the authority head.

(f) *Judicial review.* Section 3805 of title 31, United States Code, authorizes judicial review by an appropriate United States District Court of a final decision of the authority head imposing penalties and/or assessments under this part and specifies the procedures for such review.

(g) *Collection.* Sections 3806 and 3808(b) of title 31, United States Code, authorize actions for collection of civil penalties and assessments imposed under this part and specify the procedures for such actions.

Under Secretary for Management Jason Evans approved this rule on August 4, 2026, and delegated signature authority to the undersigned.

Alice M. Kottmyer,

Attorney-Adviser, Office of the Legal Adviser,
U.S. Department of State.

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 31

[TD 10053]

RIN 1545-BR80

Backup Withholding on Third Party Network Transactions

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations governing backup withholding on reportable payments with respect to third party network transactions. The final regulations reflect recent changes to the statutory law that affect the backup withholding requirements for third party settlement organizations who make payments in settlement of third party network transactions.

DATES:

Effective date: These regulations are effective on August 10, 2026.

Applicability dates: For dates of applicability, see §§ 31.3406(a)-1(e) and 31.3406(b)(3)-5(e).