DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 169

[Docket ID BIA–2014–0001; DR.5B711.IA000814]

RIN 1076–AF20

Rights-of-Way on Indian Land

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Proposed rule; Extension of comment period.

SUMMARY: On June 17, 2014, we published a proposed rule to revise regulations governing rights-of-way on Indian land. We have since received several requests for extension of the comment period. This notice extends the comment deadline by 45 days and announces the addition of a public hearing on the proposed rule.

DATES: Comments on this rule must be received by October 2, 2014. The public hearing will be held on Wednesday, September 17, 2014, at 1 p.m. Eastern Time.

ADDRESSES: You may submit comments by any of the following methods:

- *Federal rulemaking portal: http://www.regulations.gov.* The rule is listed under the agency name ''Bureau of Indian Affairs.'' The rule has been assigned Docket ID: BIA–2014–0001.
- *Email: consultation@bia.gov.* Include the number 1076–AF20 in the subject line.
- *Mail* or *hand delivery:* Ms. Elizabeth Appel, Office of Regulatory Affairs & Collaborative Action, U.S. Department of the Interior, 1849 C Street NW., MS 3642, Washington, DC 20240. Include the number 1076–AF20 on the envelope.

Please note that none of the following will be considered or included in the docket for this rulemaking: comments received after the close of the comment period (see **DATES**) or comments sent to an address other than those listed above.

FOR FURTHER INFORMATION CONTACT: Ms. Elizabeth Appel, Director, Office of Regulatory Affairs & Collaborative Action, (202) 273–4680; *elizabeth.appel@bia.gov.*

SUPPLEMENTARY INFORMATION:

On June 17, 2014, we published a proposed rule to comprehensively update and streamline the process for obtaining BIA grants of rights-of-way on Indian land. *See* 79 FR 34455. Since publication of the proposed rule, we have received several requests for extension of the comment period and the opportunity for additional public input. This notice extends the comment deadline by 45 days and announces a public hearing on this proposed rule. The public hearing will be held by teleconference on Wednesday, September 17, from 1 p.m. to 4 p.m., Eastern Time, at (888) 790–2010, passcode 1863865.

The proposed rule, frequently asked questions, and other information are online at: *http://www.bia.gov/WhoWeAre/AS-IA/ORM/RightsofWay/index.htm.*

Dated: August 8, 2014.

Lawrence S. Roberts,

Principal Deputy Assistant Secretary—Indian Affairs.

[FR Doc. 2014–19165 Filed 8–12–14; 8:45 am]

BILLING CODE 4310–W7–P

NATIONAL ENDOWMENT FOR THE ARTS

45 CFR Part 1149

RIN 3135–AA28

Implementing the Program Fraud Civil Remedies Act

AGENCY: National Endowment for the Arts.

ACTION: Notice of proposed rulemaking.

SUMMARY: The National Endowment for the Arts (NEA) proposes rules to implement the Program Fraud Civil Remedies Act of 1986 (PFCRA). Any person who makes, submits, or presents a false, fictitious, or fraudulent claim or written statement to the agency causing such fraudulent actions to occur is subject to civil penalties and assessments. The proposed rules authorize the NEA to impose civil penalties and assessments through administrative adjudication. The regulations also establish the procedures the NEA will follow in implementing the provisions of the PFCRA and specifies the hearing and appeal rights of persons subject to penalties and assessments under the PFCRA.

DATES: Submit comments on or before September 12, 2014.

ADDRESSES: You may submit comments, identified by RIN 3135–AA28, by any of the following methods:

1. *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
2. *Email: generalcounsel@arts.gov.* Include RIN 3135–AA28 in the subject line of the message.
3. *Fax:* (202) 682–5572.
4. *Mail:* Office of the General Counsel, National Endowment for the Arts, 400 7th Street SW., Washington, DC 20506.
5. *Hand Delivery/Courier:* Office of the General Counsel, National Endowment for the Arts, 400 7th Street SW., Washington, DC 20506.

See the ''Public Participation'' heading of the **SUPPLEMENTARY INFORMATION** section of this document for addresses where you may submit comments.

Instructions: All submissions received must include the agency name and Regulatory Information Number (RIN) for this rulemaking. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments and additional information on the rulemaking process, including information on how to submit comments electronically, see the ''Public Participation'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Aswathi Zachariah, Office of the General Counsel, National Endowment for the Arts, 400 7th Street SW., Washington, DC 20506, Telephone: 202–682–5418.

SUPPLEMENTARY INFORMATION:

Background

In October 1986, Congress enacted the PFCRA, Public Law 99–509 (codified at 31 U.S.C. 3801–3812). The PFCRA established an administrative remedy against any person who makes a false claim or written statement to any of certain Federal agencies and against any person causing such fraudulent actions. In brief, it requires the affected Federal agencies to follow certain procedures in recovering penalties and assessments against people who file false claims or statements for which the liability is $150,000 or less. Initially, the PFCRA did not apply to the NEA. However, pursuant to section 10 of the Inspector General Reform Act of 2008 (Pub. L. 110–409), the scope of PFCRA's coverage has been expanded to include NEA.

The PFCRA requires each affected agency to promulgate rules and regulations necessary to implement its provisions. Following the PFCRA's enactment, at the request of the President's Council on Integrity and Efficiency (PCIE), an interagency task force was established under the leadership of the Department of Health and Human Services to develop model regulations for implementation of the PFCRA by all affected agencies. This

action was in keeping with the stated desire of the Senate Governmental Affairs Committee that ''the regulations would be substantially similar throughout the government.'' (S. Rep. No. 99–212, 99th Cong., 1st Sess. 12 (1985)). The PCIE recommended adoption of the model rules by all affected agencies. Anyone desiring further explanation of the PCIE's model regulations should see the more detailed discussion of the model rules found in the promulgations of several of the agencies that adopted them earlier, including those of the Departments of Justice (53 FR 4034; February 11, 1988 and 53 FR 11645; April 8, 1988); Health and Human Services (52 FR 27423; July 21, 1987 and 53 FR 11656, April 8, 1988); and Transportation (52 FR 36968; October 2, 1987 and 53 FR 880, January 14, 1988).

Statutory and Regulatory Analysis

Under the PFCRA, false claims and statements subject to its provisions are to be investigated by an agency's investigating official. The results of the investigation are then reviewed by an agency reviewing official who determines whether there is adequate evidence to believe that you are liable under the PFCRA. Upon an affirmative finding of adequate evidence, the reviewing official sends to the U.S. Attorney General a written notice of the official's intent to refer the matter to a presiding officer for an administrative hearing. The agency may institute administrative proceedings against you only if the Attorney General, or his/her designee, approves. Any penalty or assessment imposed under the PFCRA may be collected by the Attorney General through the filing of a civil action, or by offsetting amounts, other than tax refunds, you owe the Federal government.

The regulations designate the NEA's Inspector General or his or her designee as the agency's investigating official and the General Counsel or his or her designee as the agency's reviewing official. Any administrative adjudication under the PFCRA will be presided over by an Administrative Law Judge (ALJ) and any appeals from the ALJ's decision will be decided by the Chairman of the NEA or his/her designee.

E-Government Act of 2002 (44 U.S.C. 3504)

Section 206 of the E-Government Act requires agencies, to the extent practicable, to ensure that all information about that agency required to be published in the **Federal Register** is also published on a publicly accessible Web site. All information about the NEA required to be published in the **Federal Register** may be accessed at *http://www.regulations.gov.* This Act also requires agencies to accept public comments on their proposed rules ''by electronic means.'' See heading ''Public Participation'' for directions on electronic submission of public comments on this proposed rule.

Finally, the E-Government Act requires, to the extent practicable, that agencies ensure that a publicly accessible Federal Government Web site contains electronic dockets for rulemakings under the Administrative Procedure Act of 1946 (5 U.S.C. 551 *et seq.*). Under this Act, an electronic docket consists of all submissions under section 553(c) of title 5, United States Code; and all other materials that by agency rule or practice are included in the rulemaking docket under section 553(c) of title 5, United States Code, whether or not submitted electronically. The Web site *http://www.regulations.gov* contains electronic dockets for the NEA's rulemakings under the Administrative Procedure Act of 1946.

Executive Order 12866

Executive Order 12866 established a process for review of rules by the Office of Information and Regulatory Affairs, which is within the Office of Management and Budget. Only ''significant'' proposed and final rules are subject to review under this Executive Order. ''Significant,'' as used in E.O. 12866, means ''economically significant,'' and refers to rules with an impact on the economy of $100 million or that (1) were inconsistent or interfered with an action taken or planned by another agency; (2) materially altered the budgetary impact of entitlements, grants, user fees, or loan programs; or (3) raised novel legal or policy issues.

This rule is not a significant policy change and the Office of Management and Budget has not reviewed this rule under E.O. 12866. We have made the assessments required by E.O. 12866 and have determined that this departmental policy: (1) Will not have an effect of $100 million or more on the economy. It will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities. (2) Will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. (3) Does not alter the budgetary effects of entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients. (4) Does not raise novel legal or policy issues.

Federalism (Executive Order 13132)

This rule does not have Federalism implications, as set forth in E.O. 13132. As used in this order, Federalism implications mean ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' The NEA has determined that this rule will not have Federalism implications within the meaning of E.O. 13132.

Improving Regulations and Regulatory Review (Executive Order 13563)

The NEA has written this rule in compliance with E.O. 13563 by ensuring its accessibility, consistency, simplicity of language, and overall comprehensibility. In addition, the public participation goals of this order are also satisfied by the NEA's participation in a process in which its views and information are made public to the extent feasible, and before any decisions are actually made. This will allow the public the opportunity to react to the comments, arguments, and information of others during the rulemaking process. The NEA initiates its participation in an open exchange by posting the proposed regulation and its rulemaking docket on *http://www.regulations.gov.*

Finally, Section 2 directs agencies, where feasible and appropriate, to seek the views of those who are likely to be affected by rulemaking, even before issuing a notice of proposed rulemaking. This provision emphasizes the importance of prior consultation with ''those who are likely to benefit from and those who are potentially subject to such rulemaking.'' One goal is to solicit ideas about alternatives, relevant costs and benefits (both quantitative and qualitative), and potential flexibilities. The NEA reaches out to interested and affected parties by soliciting comments through its own Web site at *http://www.arts.gov/about/index.html,* where we invite comments via email to *generalcounsel@arts.gov.*

By modeling this rule on the PCIE's model rules and PFCRA regulations promulgated by other agencies, the NEA advances E.O. 13563's goals of simplifying and harmonizing regulations and promoting predictability, certainty, and innovation.

Paperwork Reduction Act of 1995 (44 U.S.C., Chapter 35)

This rule will not impose any ''information collection'' requirements under the Paperwork Reduction Act. Under the Act, information collection means the obtaining or disclosure of facts or opinions by or for an agency by 10 or more nonfederal persons.

Plain Writing Act of 2010 (5 U.S.C. Sec. 301)

Under this Act, the term ''plain writing'' means writing that is clear, concise, well-organized, and follows other best practices appropriate to the subject or field and intended audience. To ensure that this rule has been written in plain and clear language so that it can be used and understood by the public, the NEA has modeled the language of this rule on the Federal Plain Language Guidelines.

Regulatory Flexibility Act of 1980 (5 U.S.C. Sec. 605(b))

This rule will not have a significant adverse impact on a substantial number of small entities, including small businesses, small governmental jurisdictions, or certain small not-for-profit organizations.

Unfunded Mandates Act of 1995 (Section 202, Pub. L. 104–4)

This rule does not contain a Federal mandate that will result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector of $100 million or more in any one year.

Public Participation

If you submit comments via email to *generalcounselarts.gov,* submit comments as a Word document avoiding the use of special characters and any form of encryption. If you send your comments as a fax, please attach a cover sheet that includes the agency name, date, RIN, and the subject line ''Comments to proposed rule.''

List of Subjects in 45 CFR 1149

Administrative practice and procedure, Claims, Fraud, Investigations, Organization and function (government agencies), Penalties.

■ For the reasons stated in the preamble, the National Endowment for the Arts proposes to add a new part 1149 to Chapter XI of Title 45 of the Code of Federal Regulations to read as follows:

PART 1149—PROGRAM FRAUD CIVIL REMEDIES ACT REGULATIONS

Subpart A—Purpose and Definitions

Sec.

Subpart B—Claims and Statements

Sec.

Subpart C—Basis for Liability

Sec.

Subpart D—Procedures Leading to the Issuance of a Complaint

Sec.

Subpart E—Procedures Following Service of a Complaint

Sec.

Subpart F—Hearing Procedures

Sec.

Subpart G—Decisions and Appeals

Sec.

Authority: 31 U.S.C. 3801–3812; 5 U.S.C. App. 8G(a)(2).

Subpart A—Purpose and Definitions

§ 1149.1 Purpose.

This part implements the Program Fraud Civil Remedies Act of 1986, 31 U.S.C. §§ 3801–3812 (PFCRA). The PFCRA provides the NEA, and other Federal agencies, with an administrative remedy to impose civil penalties and assessments against you if you make or cause to be made false, fictitious, or fraudulent claims or written statements to the NEA. The PFCRA also provides due process protections to you if you are subject to administrative proceedings under this part.

§ 1149.2 Definitions.

For the purposes of this part—

Authority means the National Endowment for the Arts.

Authority Head means the Chairperson/head of the National Endowment for the Arts or the Chairperson/authority head/s designee.

Benefit means anything of value, including but not limited to, any advantage, preference, privilege, license, permit, favorable decision, ruling, status, or loan guarantee.

Defendant means any person alleged in a complaint to be liable for a civil penalty or assessment pursuant to the PFCRA.

Government means the United States Government.

''Group of related claims submitted at the same time'' means only those claims arising from the same transaction (such as a grant, loan, application, or contract) which are submitted together as part of a single request, demand, or submission.

Initial decision means the written decision of the Administrative Law Judge (ALJ), and includes a revised initial decision issued following a remand or a motion for reconsideration.

Investigating official means:

(a) The NEA Inspector General; or

(b) A designee of the NEA Inspector General.

Knows or *has reason to know* means that a person:

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

(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, whenever it appears, must include the terms *presents, submits,* and *causes to be made, presented, or submitted.* As the context requires, *making* or *made* must 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 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, or any other individual designated in writing by you.

Reviewing official means the General Counsel of the NEA or the General Counsel's designee.

Subpart B—Claims and Statements

§ 1149.3 What is a claim?

(a) Claim means any request, demand, or submission:

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

(2) Made to a recipient of property or services from the NEA, or to a party to a contract with the NEA 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 (iii) will reimburse such recipient or party for the purchase of such property or services;

(3) Made to the NEA 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

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

(b) A claim can relate to grants, loans, insurance, or other benefits, and includes the NEA guaranteed loans made by participating lenders.

(c) Each voucher, invoice, claim form, or individual request or demand for property, services, or money constitutes a separate claim.

§ 1149.4 When is a claim made?

A claim is made to the NEA, when such claim is actually made to an agent, fiscal intermediary, or other person or entity, including any State or political subdivision of a State, acting for or on behalf of the NEA; or

(b) a recipient of property, services, or money from the Government, or the party to a contract with the NEA.

§ 1149.5 What is a false claim?

(a) A claim submitted to the NEA is ''false'' if it:

(1) Is false, fictitious or fraudulent;

(2) Includes or is supported by a written statement which asserts or contains a material fact which is false, fictitious, or fraudulent;

(3) Includes or is supported by a written statement which is false, fictitious or fraudulent because it omits a material fact that you have a duty to include in the statement; or

(4) Is for payment for the provision of property or services which you have not provided as claimed.

§ 1149.6 What is a statement?

(a) A *statement* means any written representation, certification, affirmation, document, record, or accounting or bookkeeping entry made with respect to a claim (including relating to eligibility to make a claim) or to obtain the approval or payment of a claim (including relating to eligibility to make a claim); or with respect to (including relating to eligibility for) a contract, bid or proposal for a contract with the NEA, or a grant, loan or other benefit from the NEA, including applications and proposals for such grants, loans, or other benefits, 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 any party for any portion of the money or property under such contract or for such grant, loan, or benefit.

(b) A statement is made, presented, or submitted to the NEA when such statement is actually made to an agent, fiscal intermediary, or other person or entity acting for or on behalf of the NEA, including any State or political subdivision of a State, acting for or on behalf of the NEA; or the recipient of property, services, or money from the Government; or the party to a contract with the NEA.

§ 1149.7 What is a false statement?

(a) A statement submitted to the NEA is a *false statement* if you make the statement, or cause the statement to be made, while knowing or having reason to know that the statement:

(1) Asserts a material fact that is false, fictitious, or fraudulent; or

(2) Is false, fictitious, or fraudulent because it omits a material fact that you have a duty to include in the statement and contains or is accompanied by an express certification or affirmation of the truthfulness and accuracy of the contents of the statement.

(b) Each written representation, certification, or affirmation constitutes a separate statement.

Subpart C—Basis for Liability

§ 1149.8 What kind of conduct results in program fraud enforcement?

If you make false claims or false statements, you may be subject to civil penalties and assessments under the PFCRA.

§ 1149.9 What civil penalties and assessments may I be subjected to?

(a) In addition to any other penalties that may be prescribed by law, the PFCRA may subject you to the following:

(1) A civil penalty of not more than $5,000 for each false, fictitious or fraudulent statement or claim; and

(2) If the NEA has made any payment, transferred property, or provided services in reliance on a false claim, you are also subject to an assessment of not more than twice the amount of the false claim. This assessment is in lieu of damages sustained by the NEA because of the false claim.

(b) Each false, fictitious, or fraudulent claim for property, services, or money is subject to a civil penalty regardless of whether such property, services, or money is actually delivered or paid.

(c) No proof of specific intent to defraud is required to establish liability under this section for either false claims or false statements.

(d) In any case in which it is determined that more than one person is liable for making a false, fictitious, or fraudulent claim or statement under this section, each such person may be held liable for a civil penalty and assessment under this section.

(e) In any case in which it is determined that more than one person is liable for making a claim under this section on which the Government has made payment (including transferred property or provided services), an assessment may be imposed against any such person or jointly and severally against any combination of persons.

Subpart D—Procedures Leading to the Issuance of a Complaint

§ 1149.10 How is program fraud investigated?

The Inspector General, or his/her designee, is the investigating official responsible for investigating allegations that you have made a false claim or statement.

§ 1149.11 May the investigating official issue a subpoena?

(a) Yes. The Inspector General has authority to issue administrative subpoenas for the production of records and documents. If an investigating official concludes that a subpoena is warranted, he/she may issue a subpoena.

(1) The issued subpoena must notify you of the authority under which it is issued and must identify the records or documents sought;

(2) The investigating official may designate a person to act on his or her behalf to receive the documents sought; and

(3) You are required to tender to the investigating official, or the person designated to receive the documents, a certification that

(i) The documents sought have been produced;

(ii) Such documents are not available and the reasons therefore; or

(iii) Such documents, suitably identified, have been withheld based upon the assertion of an identified privilege.

(b) Nothing in this section precludes or limits an investigating official's discretion to refer allegations within 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.

(c) Nothing in this section modifies any responsibility of an investigating official to report violations of criminal law to the appropriate component of the Department of Justice.

§ 1149.12 What happens if program fraud is suspected?

(a) If the investigating official concludes that an action under this part is warranted, the investigating official submits a report containing the findings and conclusions of the investigation to the reviewing official.

(b) If the reviewing official determines that the report provides adequate evidence that you have made a false, fictitious or fraudulent claim or statement, the reviewing official shall transmit to the Attorney General written notice of an intention to refer the matter for adjudication, with a request for approval of such referral. This notice will include the reviewing official's statements concerning:

(1) The reasons for the referral;

(2) The claims or statements upon which liability would be based;

(3) The evidence that supports liability;

(4) An estimate of the amount of money or the value of property, services, or other benefits requested or demanded in the false claim or statement;

(5) Any exculpatory or mitigating circumstances that may relate to the claims or statements known by the reviewing official or the investigating official; and

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

(c) If, at any time, the Attorney General or his or her designee requests in writing that this administrative process be stayed, the authority head must stay the process immediately. The authority head may order the process resumed only upon receipt of the written authorization of the Attorney General.

§ 1149.13 When may the NEA issue a complaint?

The NEA may issue a complaint:

(a) If the Attorney General, or his/her designee, approves the referral of the allegations for adjudication in a written statement; and

(b) In a case of submission of false claims, if the amount of money or the value of property or services demanded or requested in a false claim, or a group of related claims submitted at the same time, does not exceed $150,000.

§ 1149.14 What is contained in a complaint?

(a) A *complaint* is a written statement giving you notice of the specific allegations being referred for adjudication and of your right to request a hearing regarding those allegations.

(b) The reviewing official may join in a single complaint, false claims or statements that are unrelated, or that were not submitted simultaneously, so long as each claim made does not exceed the amount provided in 31 U.S.C. § 3803(c).

(c) The complaint must state that the NEA seeks to impose civil penalties, assessments, or both, against you and will include:

(1) The allegations of liability against you, including the statutory basis for liability, identification of the claims or statements involved, and the reasons liability allegedly arises from such claims or statements;

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

(3) A statement that you may request a hearing by filing an answer and may be represented by a representative;

(4) Instructions for filing such an answer; and

(5) A warning that failure to file an answer within 30 days of service of the complaint will result in imposition of the maximum amount of penalties and assessments.

(d) The reviewing official must serve you with any complaint and, if you

request a hearing, provide a copy to the ALJ assigned to the case.

§ 1149.15 How will the complaint be served?

(a) The complaint must be served on you as an individual directly, on a partnership through a general partner, and on corporations or on unincorporated associations through an executive officer or a director. Service may also be made on any person authorized by appointment or by law to receive process for you or a legal entity.

(b) The complaint may be served either by:

(1) Registered or certified mail; or

(2) Personal delivery by anyone 18 years of age or older.

(c) The date of service is the date of personal delivery or, in the case of service by registered or certified mail, the date of postmark.

§ 1149.16 What constitutes proof of service?

(a) Proof of service is established by the following:

(1) When service is made by registered or certified mail, the return postal receipt will serve as proof of service.

(2) When service is made by personal delivery, an affidavit of the individual serving the complaint, or written acknowledgment of your receipt or of receipt by a representative, will serve as proof of service.

(b) When served with the complaint, the serving party must also serve you with a copy of this part 1149 and 31 U.S.C. 3801–3812.

Subpart E—Procedures Following Service of a Complaint

§ 1149.17 How do you respond to the complaint?

(a) You may respond to the complaint by filing an answer with the reviewing official within 30 days of service of the complaint. A timely answer will be considered a request for an oral hearing.

(b) In the answer, you—

(1) Must admit or deny each of the allegations of liability contained in the complaint (a failure to deny an allegation is considered an admission);

(2) Must state any defense on which you intend to rely;

(3) May state any reasons why you believe the penalties, assessments, or both should be less than the statutory maximum; and

(4) Must state the name, address, and telephone number of the person authorized by you to act as your representative, if any.

§ 1149.18 May I file a general answer?

(a) If you are unable to file a timely answer which meets the requirements set forth in section 1149.17(b), you may file with the reviewing official a general answer denying liability, requesting a hearing, and requesting an extension of time in which to file a complete answer. A general answer must be filed within 30 days of service of the complaint.

(b) If you file a general answer requesting an extension of time, the reviewing official must promptly file with the ALJ the complaint, the general answer, and the request for an extension of time.

(c) For good cause shown, the ALJ may grant you up to 30 additional days within which to file an answer meeting the requirements of paragraph (b) of this section. You must file the answer with the ALJ and serve a copy on the reviewing official.

§ 1149.19 What happens once an answer is filed?

(a) When the reviewing official receives an answer, he/she must simultaneously file the complaint, the answer, and a designation of the NEA's representative with the ALJ.

(b) When the ALJ receives the complaint and the answer, he/she will promptly serve a notice of hearing upon you and the NEA representative, in the same manner as the complaint. At the same time, the ALJ must send a copy of such notice to the reviewing official or his designee.

§ 1149.20 What must the notice of hearing include?

The notice must include:

(a) The tentative time, place, and nature of the hearing;

(b) The legal authority and jurisdiction under which the hearing is being held;

(c) The matters of fact and law to be asserted;

(d) A description of the procedures for the conduct of the hearing;

(e) The name, address, and telephone number of your representative and the NEA's representative; and

(f) Such other matters as the ALJ deems appropriate.

§ 1149.21 When must the ALJ serve the notice of oral hearing?

Unless the parties agree otherwise, the ALJ must serve the notice of oral hearing within six years of the date on which the claim or statement is made.

§ 1149.22 What happens if you fail to file an answer?

(a) If you do not file any answer within 30 days after service of the complaint, the reviewing official may refer the complaint to the ALJ.

(b) Once the complaint is referred, the ALJ will promptly serve on you a notice that he/she will issue an initial decision.

(c) The ALJ will assume the facts alleged in the complaint are true. If such facts establish liability under the statute, the ALJ will issue an initial decision imposing the maximum amount of penalties and assessments allowed under the PFCRA.

(d) Except as otherwise provided in this section, when you fail to file a timely answer, you waive any right to further review of the penalties and assessments imposed in the initial decision. This initial decision will become final and binding 30 days after it is issued.

§ 1149.23 May I file a motion to reopen my case?

(a) You may file a motion with the ALJ asking him/her to reopen the case at any time before an initial decision becomes final. The ALJ may only reopen a case if, in this motion, he/she determines that you set forth extraordinary circumstances that prevented you from filing a timely answer. The initial decision will be stayed until the ALJ makes a decision on your motion to reopen. The reviewing official may respond to the motion.

(b) If the ALJ determines that you have demonstrated extraordinary circumstances excusing your failure to file a timely answer, the ALJ will withdraw the initial decision and grant you an opportunity to answer the complaint.

(c) A decision by the ALJ to deny your motion to reopen a case is not subject to review or reconsideration.

§ 1149.24 What happens if my motion to reopen is denied?

(a) You may appeal the decision denying a motion to reopen to the authority head by filing a notice of appeal with the authority head within 15 days after the ALJ denies the motion. The timely filing of a notice of appeal must stay the initial decision until the authority head decides the issue.

(b) If you file a timely notice of appeal with the authority head, the ALJ must forward the record of the proceeding to the authority head.

(c) The authority head must decide promptly, based solely on the record previously before the ALJ, whether extraordinary circumstances excuse your failure to file a timely answer.

(d) If the authority head decides that extraordinary circumstances excused

your failure to file a timely answer, the authority head must remand the case to the ALJ with instructions to grant you an opportunity to answer.

(e) If the authority head decides that your failure to file a timely answer is not excused, the authority head must reinstate the initial decision of the ALJ, which becomes final and binding upon the parties 30 days after the authority head issues such a decision.

§ 1149.25 When, if ever, will time be tolled?

Time will be tolled in the following instances:

(a) If you are granted a 30 day extension to file your answer, the 30 days will be tolled to the six year oral hearing limitation thereby providing the ALJ six years and 30 days to serve the notice of oral hearing as discussed in § 1149.18(c);

(b) If a notice of appeal is filed as discussed in § 1149.24(a);

(c) If a motion is filed to disqualify a reviewing official or an ALJ disqualifies himself/herself as discussed in § 1149.31(c); or

(d) In any other instance in which time is suspended or delayed as a result of an appeal, request for reconsideration, untimely filing, or extensions.

Subpart F—Hearing Procedures

§ 1149.26 What kind of hearing is contemplated?

The hearing is a formal proceeding conducted by the ALJ during which you will have the opportunity to dispute liability, present testimony, and cross-examine witnesses.

§ 1149.27 What is the role of the ALJ?

(a) An ALJ, who will be retained by the NEA, serves as the presiding officer at all hearings. ALJs are selected by the Office of Personnel Management. The ALJ is assigned to cases in rotation so far as practicable, and may not perform duties inconsistent with their duties and responsibilities as administrative law judges.

(b) The ALJ must conduct a fair and impartial hearing, avoid delay, maintain order, and assure that a record of the proceeding is made.

§ 1149.28 What does the ALJ have the authority to do?

(a) The ALJ has the authority to—

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

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

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

(4) Administer oaths and affirmations;

(5) Issue subpoenas requiring the attendance of witnesses and the production of documents at depositions or at hearings;

(6) Rule on motions and other procedural matters;

(7) Regulate the scope and timing of discovery;

(8) Regulate the course of the hearing and the conduct of representatives and parties;

(9) Examine witnesses;

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

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

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

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

(14) Exercise such other authority as is necessary to carry out the responsibilities of the ALJ under this part.

(b) The ALJ does not have the authority to find Federal statutes or regulations invalid.

§ 1149.29 What rights do you have at the hearing?

Each party to the hearing has the right to:

(a) Be represented by a representative;

(b) Request a pre-hearing conference and participate in any conference held by the ALJ;

(c) Conduct discovery;

(d) Agree to stipulations of fact or law which will be made a part of the record;

(e) Present evidence relevant to the issues at the hearing;

(f) Present and cross-examine witnesses;

(g) Present arguments at the hearing as permitted by the ALJ; and

(h) Submit written briefs and proposed findings of fact and conclusions of law after the hearing, as permitted by the ALJ.

§ 1149.30 How are the functions of the ALJ separated from those of the investigating official and the reviewing official?

(a) The investigating official, the reviewing official, and any employee or agent of the authority who takes part in investigating, preparing, or presenting a particular case may not, in such case or a factually related case:

(1) Participate in the hearing as the ALJ;

(2) Participate or advise in the review of the initial decision by the authority head; or

(3) Make the collection of penalties and assessment.

(b) The ALJ must not be responsible to or subject to the supervision or direction of the investigating official or the reviewing official.

§ 1149.31 Can the reviewing official or ALJ be disqualified?

(a) A reviewing official or an ALJ may disqualify himself or herself at any time.

(b) Upon motion of any party, the reviewing official or ALJ may be disqualified as follows:

(1) The motion must be supported by an affidavit containing specific facts establishing that personal bias or other reason for disqualification exists, including the time and circumstances of the discovery of such facts;

(2) The motion must be filed promptly after discovery of the grounds for disqualification or the objection will be deemed waived; and

(3) The party, or representative of record, must certify in writing that the motion is made in good faith.

(c) Once a motion has been filed to disqualify the reviewing official or the ALJ, the ALJ will halt the proceedings until resolving the matter of disqualification. If the ALJ determines that the reviewing official is disqualified, the ALJ will dismiss the complaint without prejudice. If the ALJ disqualifies himself/herself, the case will be promptly reassigned to another ALJ. However, if the ALJ denies a motion to disqualify, the matter will be determined by the authority head only during his/her review of the initial decision on appeal.

§ 1149.32 Do you have a right to review documents?

(a) Yes. Once the ALJ issues a hearing notice, and upon written request to the reviewing official, you may:

(1) Review any relevant and material documents, transcripts, records, and other materials that relate to the allegations set out in the complaint and upon which the findings and conclusions of the investigating official are based, unless such documents are subject to a privilege under Federal law. Upon payment of fees for duplication, you may obtain copies of such documents; and

(2) Obtain a copy of all exculpatory information in the possession of the reviewing official or investigating official relating to the allegations in the complaint. You may obtain exculpatory information even if it is contained in a document that would otherwise be privileged. If the document would otherwise be privileged, only that portion containing exculpatory information must be disclosed.

(b) The notice sent to the Attorney General from the reviewing official is not discoverable under any circumstances.

(c) If the reviewing official does not respond to your request within 20 days, you may file a motion to compel disclosure of the documents with the ALJ subject to the provisions of this section. Such a motion may only be filed with the ALJ following the filing of an answer.

§ 1149.33 What type of discovery is authorized and how is it conducted?

(a) The following types of discovery are authorized:

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

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

(3) Written interrogatories; and

(4) Depositions.

(b) For the purpose of this section, the term *documents* includes information, documents, reports, answers, records, accounts, papers, electronic data and other data and documentary evidence. Nothing contained herein must be interpreted to require the creation of a document.

(c) Unless mutually agreed to by the parties, discovery is available only as ordered by the ALJ. The ALJ must regulate the timing of discovery.

§ 1149.34 How are motions for discovery handled?

Motions for discovery must be handled according to the following:

(a) A party seeking discovery may file a motion with the ALJ. Such a motion must be accompanied by a copy of the requested discovery, or in the case of depositions, a summary of the scope of the proposed deposition.

(b) Within 10 days of service, a party may file an opposition to the motion and/or a motion for protective order.

§ 1149.35 When may an ALJ grant a motion for discovery?

(a) The ALJ may grant a motion for discovery only if he/she finds that the discovery sought—

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

(2) Is not unduly costly or burdensome;

(3) Will not unduly delay the proceeding; and

(4) Does not seek privileged information.

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

(c) The ALJ may grant discovery subject to a protective order.

§ 1149.36 How are depositions handled?

(a) Depositions are to be handled in the following manner:

(1) If a motion for deposition is granted, the ALJ must issue a subpoena for the deponent, which may require the deponent to produce documents. The subpoena must specify the time and place at which the deposition will be held.

(2) The party seeking to depose must serve the subpoena in the manner prescribed by § 1149.12.

(3) The deponent may file with the ALJ a motion to quash the subpoena or a motion for a protective order within 10 days of service.

(4) The party seeking to depose must provide for the taking of a verbatim transcript of the deposition, which it must make available to all other parties for inspection and copying.

(b) Each party must bear its own costs of discovery.

§ 1149.37 Are witness lists and exhibits exchanged before the hearing?

(a) The parties must exchange witness lists and copies of proposed hearing exhibits at least 15 days before the hearing or at such other time as ordered by the ALJ. This includes copies of any written statements or transcripts of deposition testimony that each party intends to offer in lieu of live testimony.

(b) If a party objects, the ALJ will not admit into evidence the testimony of any witness whose name does not appear on the witness list or any exhibit not provided to an opposing party in advance unless the ALJ finds good cause for the omission or concludes that there is no prejudice to the objecting party.

(c) Documents exchanged in accordance with this section are deemed to be authentic for the purpose of admissibility at the hearing unless a party objects within the time set by the ALJ.

§ 1149.38 Can witnesses be subpoenaed?

(a) A party wishing to procure the appearance and testimony of any individual at the hearing may request that the ALJ issue a subpoena.

(b) A subpoena requiring the attendance and testimony of an individual may also require the individual to produce documents at the hearing.

(c) A party seeking a subpoena must file a written request not less than 15 days before the date of the hearing unless otherwise allowed by the ALJ upon a showing of good cause. Such request must specify any documents to be produced, must designate the witnesses, and describe the address and location of the desired witness with sufficient particularity to permit such witnesses to be found.

(d) The subpoena must specify the time and place at which the witness is to appear and any documents the witness is to produce.

(e) The party seeking the subpoena must serve it in the manner prescribed in § 1149.11. A subpoena on a party or upon an individual under the control of a party may be served by first class mail.

§ 1149.39 Who pays the costs for a subpoena?

The party requesting a subpoena must 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 must accompany the subpoena when served, except that when a subpoena is issued on behalf of the NEA, a check for witness fees and mileage need not accompany the subpoena.

§ 1149.40 When may I file a motion to quash a subpoena?

A party, entity or the person to whom the subpoena is directed, may file with the ALJ a motion to quash the subpoena:

(a) Within 10 days after service; or

(b) On or before the time specified in the subpoena for compliance if it is less than 10 days after service.

§ 1149.41 Are protective orders available?

A party or 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 of an individual or disclosure of evidence.

§ 1149.42 What does a protective order protect?

In issuing a protective order, the ALJ 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:

(a) That the discovery not be had;

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

(c) That the discovery may be had only through a different method of discovery than requested;

(d) That certain matters are not inquired into, or that the scope of discovery is limited to certain matters;

(e) That only those persons designated by the ALJ may be present during discovery;

(f) That the contents of the discovery or evidence are sealed;

(g) That a sealed deposition is opened only by order of the ALJ;

(h) 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

(i) That the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the ALJ.

§ 1149.43 How are documents filed and served with the ALJ?

(a) Documents are considered filed when they are mailed. The date of mailing may be established by a certificate from the party or his/her representative, or by proof that the document was sent by certified or registered mail.

(b) A party filing a document with the ALJ must, at the time of filing, serve a copy of such document on every other party. When a party is represented by a representative, the party's representative must be served in lieu of the party.

(c) A certificate of the individual serving the document by personal delivery or mail and setting forth the manner of service will be proof of service.

(d) Service upon any party of any document other than the complaint must be made by delivering a copy or by placing a copy in the United States mail, postage prepaid and addressed to the party's last known address.

(e) If a party consents in writing, documents may be sent electronically. In this instance, service is complete upon transmission unless the serving party receives electronic notification that transmission of the communication was not completed.

§ 1149.44 What must documents filed with the ALJ include?

(a) Documents filed with the ALJ must include:

(1) An original; and

(2) Two copies.

(b) Every document filed in the proceeding must contain:

(1) A title, for example, ''motion to quash subpoena'';

(2) A caption setting forth the title of the action; and

(3) The case number assigned by the ALJ.

(c) Every document must be signed by the filer, or his/her representative, and contain the address or telephone number of that person.

§ 1149.45 How is time computed?

(a) In computing any period of time under this part or in an order issued under it, 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.

—*Time Calculating Example:* If the ALJ denies your motion for an appeal on Wednesday, December 10th you have 15 days to file the notice of appeal. Since the 15th day falls on Christmas, a legal holiday observed by the Federal government, the deadline will be the next business day, Friday, December 26th.

(b) When the period of time allowed is less than seven days, intermediate Saturdays, Sundays, and legal holidays observed by the Federal government must be excluded from the computation.

(c) Where a document has been served or issued by placing it in the mail, an additional five days will be added to the time permitted for any response.

§ 1149.46 Where is the hearing held?

The ALJ may hold the hearing:

(a) In any judicial district of the United States:

(b) In which you reside or transact business; or

(c) In which the claim or statement on which liability is based was made to the NEA; or

(d) In such other place as agreed upon by you and the ALJ.

§ 1149.47 How will the hearing be conducted?

(a) The ALJ conducts a hearing on the record in order:

(1) To determine whether you are liable for a civil penalty, assessment, or both; and

(2) If so, to determine the appropriate amount of the penalty and/or assessment, considering any aggravating or mitigating factors.

(b) The hearing will be recorded and transcribed, and the transcript of testimony, exhibits admitted at the hearing, and all papers filed in the proceeding constitute the record for a decision by the ALJ.

(c) The hearing will be open to the public unless otherwise ordered by the ALJ for good cause shown.

§ 1149.48 Who has the burden of proof?

(a) The NEA must prove your liability and any aggravating factors by a preponderance of the evidence.

(b) You must prove any affirmative defenses and any mitigating factors by a preponderance of the evidence.

§ 1149.49 How is evidence presented at the hearing?

(a) The ALJ determines the admissibility of evidence.

(b) Except as provided in this part, the ALJ is not bound by the Federal Rules of Evidence. However, the ALJ may choose to apply the Federal Rules of Evidence where he/she deems appropriate, for example, to exclude unreliable evidence.

(c) The ALJ must exclude irrelevant and immaterial evidence.

(d) Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or by considerations of undue delay or needless presentation of cumulative evidence.

(e) Although relevant, evidence may be excluded if it is privileged under Federal law.

(f) The following evidence concerning offers of compromise or settlement is inadmissible when offered to prove liability for, invalidity of, or amount of a claim that was disputed as to validity or amount, or to impeach through a prior inconsistent statement or contradiction:

(1) Providing, offer, or promising to provide a valuable consideration in compromising or attempting to compromise the claim;

(2) Accepting, offering, or promising to accept a valuable consideration in compromising or attempting to compromise the claim; and

(3) Conduct or statements made in compromise negotiations regarding the claim, except when offered in a criminal case and the negotiations related to a claim by a public office or authority in the exercise of regulatory, investigative, or enforcement authority.

(g) The ALJ must permit the parties to introduce rebuttal witnesses and evidence.

(h) All documents and other evidence taken for the record must be open to examination by all parties unless otherwise ordered by the ALJ.

§ 1149.50 How is witness testimony presented?

(a) Except as provided in paragraph (b) of this section, testimony at the hearing must be given orally by witnesses under oath or affirmation.

(b) At the discretion of the ALJ, testimony may be admitted in the form of a written statement or deposition.

(1) Any such statement must be provided to all other parties along with the last known address of such witness, in a manner which allows sufficient time for other parties to subpoena the witness for cross-examination at the hearing.

(2) Prior written statements of witnesses proposed to testify at the hearing and deposition transcripts must be exchanged.

(c) The ALJ must exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence so as to:

(1) Make the interrogation and presentation effective for ascertaining the truth;

(2) Avoid needless consumption of time; and

(3) Protect witnesses from harassment and undue embarrassment.

(d) The ALJ must permit the parties to conduct such cross examination as may be required for a full and true disclosure of the facts.

(e) At the discretion of the ALJ, a witness may be cross examined on matters relevant to the proceeding without regard to the scope of his or her direct examination. To the extent permitted by the ALJ, cross-examination on matters outside the scope of direct examination must be conducted in the manner of direct examination. Leading questions may be used only if the witness is a hostile witness, an adverse party, or a witness identified with an adverse party.

§ 1149.51 How can I exclude a witness?

Upon motion of any party, the ALJ must order witnesses excluded from the hearing room so that they cannot hear the testimony of other witnesses. This rule does not authorize exclusion of—

(a) A party who is an individual;

(b) In the case of a party that is not an individual, an officer or employee of the party appearing for the entity pro se or designated by the party's representative; or

(c) An individual whose presence is shown by a party to be essential to the presentation of its case, including an individual employed by the Government engaged in assisting the representative for the Government.

§ 1149.52 Will the hearing proceedings be recorded?

(a) The hearing will be recorded and transcribed. Transcripts may be obtained after the conclusion of the hearing and at a cost no greater than the actual cost of duplication.

(b) The transcript of testimony, exhibits and other evidence admitted at the hearing, and all papers and requests filed in the proceeding constitute the record for the decision by the ALJ and the authority head.

(c) The hearings will be recorded either electronically or by a court reporter. If the authority does not intend to arrange for a court reporter, you can arrange for one. If you do, you have to pay the reporter's appearance fees.

(d) Upon payment of a reasonable fee, the record may be inspected and copied by anyone, unless otherwise ordered by the ALJ.

§ 1149.53 Are ex parte communications between a party and the ALJ permitted?

Ex parte communications between a party and the ALJ are not permitted unless the other party consents to such a communication taking place. This does not prohibit a party from inquiring about the status of a case or asking routine questions concerning administrative functions or procedures.

§ 1149.54 Are there sanctions for misconduct?

(a) The ALJ may sanction a person, including any party or representative, as outlined in § 1149.55, for the following:

(1) Failing to comply with an order, rule, or procedure governing the proceeding;

(2) Failing to prosecute or defend an action; or

(3) Engaging in other misconduct that interferes with the speedy, orderly, and fair conduct of a hearing.

(b) Any sanction issued under this section must reasonably relate to the severity and nature of the misconduct.

§ 1149.55 What happens if I fail to comply with an order?

(a) When a party fails to comply with an order, including an order for taking a deposition, the production of evidence within the party's control, or a request for admission, the ALJ may:

(1) Draw an inference in favor of the requesting party with regard to the information sought;

(2) In the case of requests for admission, deem each matter of which an admission is requested to be admitted;

(3) Prohibit the party failing to comply with such order from introducing evidence concerning, or otherwise relying upon testimony relating to the information sought; and

(4) Strike any part of the pleadings or other submissions of the party failing to comply with such a request.

(b) If a party fails to prosecute or defend an action under this part commenced by service of a notice of hearing, the ALJ may dismiss the action or may issue an initial decision imposing penalties and assessments.

(c) The ALJ may refuse to consider any motion, request, response, brief or other document which is not filed in a timely fashion.

§ 1149.56 Are post-hearing briefs required?

Any party may file a post-hearing brief; but, such briefs are not required, unless ordered by the ALJ. The ALJ must 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 ALJ may permit the parties to file reply briefs.

Subpart G—Decisions and Appeals

§ 1149.57 How is the case decided?

(a) The ALJ will issue an initial decision based only on the record. The record must contain findings of fact, conclusions of law, and the amount of any penalties and assessments imposed.

(b) The findings of fact must include a finding on each of the following issues:

(1) Whether any one or more of the claims or statements identified in the complaint, in whole or in part, violate this part; and

(2) If you are liable for penalties or assessments, the appropriate amount of any such penalties or assessments, considering any mitigating or aggravating factors that are proven by a preponderance of the evidence during the hearing.

§ 1149.58 When will the ALJ serve the initial decision?

(a) The ALJ will serve the initial decision on all parties within 90 days after the close of the hearing, or within 90 days after the final post-hearing brief was filed.

(b) At the same time as the initial decision, the ALJ must serve a statement describing your rights if you are found liable for a civil penalty or assessment to file a motion for reconsideration with the ALJ or a notice of appeal with the authority head.

(c) If the ALJ fails to meet the deadline contained in this section, he or she must notify the parties of the reason for the delay and must set a new deadline.

(d) Unless the initial decision of the ALJ is timely appealed to the authority head, or a motion for reconsideration of the initial decision is timely filed, the initial decision must constitute the final decision of the authority head and must be final and binding on the parties 30 days after it is issued by the ALJ.

§ 1149.59 How are penalty and assessment amounts determined?

In determining an appropriate amount of civil penalties and assessments, the ALJ 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.

§ 1149.60 What factors are considered in determining the amount of penalties and assessments to impose?

(a) Although not exhaustive, the following factors are among those that may influence the ALJ and the authority head in determining the amount of penalties and assessments to impose with respect to the misconduct 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 your culpability with respect to the misconduct;

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

(5) The value of the Government's actual loss as a result of the misconduct, including foreseeable consequential damages and the cost of the 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 national defense, public health or safety, or public confidence in the management of Government programs and operations, especially upon the public confidence of those intended to benefit from Government programs;

(8) Whether you have engaged in a pattern of the same or similar misconduct;

(9) Whether you attempted to conceal the misconduct;

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

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

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

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

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

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

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

(b) Nothing in this section must be construed to limit the ALJ 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.

§ 1149.61 Can a party request reconsideration of the initial decision?

(a) Any party may file a motion for reconsideration of the initial decision with the ALJ within 20 days of receipt of the initial decision. If the initial decision was served by mail, there is a rebuttable presumption that the initial decision was received by the party 5 days from the date of mailing.

(b) A motion for reconsideration shall be accompanied by a supporting brief and must specifically describe the issue and nature of each allegedly erroneous decision.

(c) Responses to a motion for reconsideration will only be allowed if it is requested by the ALJ.

(d) The ALJ will dispose of a motion for reconsideration by denying it or by issuing a revised initial decision.

(e) If the ALJ issues a revised initial decision upon motion of a party, no further motions for reconsideration may be filed by any party.

(f) If the ALJ 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.

§ 1149.62 When does the initial decision of the ALJ become final?

(a) The initial decision of the ALJ becomes the final decision of the NEA and binds all parties 30 days after it is issued, unless a party timely files a motion for reconsideration or timely appeals to the authority head of NEA, as set forth in § 1149.64.

(b) If the ALJ disposes of a motion for reconsideration by denying it or by issuing a revised initial decision, the ALJ's order on the motion for reconsideration becomes the final decision of NEA 30 days after the order is issued.

§ 1149.63 What are the procedures for appealing the ALJ decision?

(a) Any defendant who submits a timely answer and is found liable for a civil penalty or assessment in an initial decision may appeal the decision to the authority head by filing a notice of appeal with the authority head in accordance with this section.

(b) You may file a notice of appeal with the authority head within 30 days following issuance of the initial decision, serving a copy of the notice of appeal on all parties and the ALJ. The authority head may extend this deadline for up to an additional 30 days if an extension request is filed within the initial 30-day period and shows good cause.

(c) Your appeal will not be considered until all timely motions for reconsideration have been resolved.

(d) If a timely motion for reconsideration is denied, a notice of appeal may be filed within 30 days following such denial or issuance of a revised initial decision, whichever applies.

(e) A notice of appeal must be supported by a written brief specifying why the initial decision should be reversed or modified.

(f) The NEA representative may file a brief in opposition to the notice of appeal within 30 days of receiving your appeal and supporting brief.

(g) If you timely file a notice of appeal, and the time for filing reconsideration motions has expired, the ALJ will forward the record of the proceeding to the authority head.

§ 1149.64 What happens if an initial decision is appealed?

(a) An initial decision is stayed automatically pending disposition of a motion for reconsideration or of an appeal to the authority head.

(b) No administrative stay is available following a final decision of the authority head.

§ 1149.65 Are there any limitations on the right to appeal to the authority head?

(a) You have no right to appear personally, or through a representative, before the authority head.

(b) There is no right to appeal any interlocutory ruling.

(c) The authority head will not consider any objection or evidence that was not raised before the ALJ, unless you demonstrate that the failure to object was caused by extraordinary circumstances. If you demonstrate to the satisfaction of the authority head that extraordinary circumstances prevented the presentation of evidence at the hearing, and that the additional evidence is material, the authority head may remand the matter to the ALJ for consideration of the additional evidence.

§ 1149.66 How does the authority head dispose of an appeal?

(a) The authority head may affirm, reduce, reverse, compromise, remand, or settle any penalty or assessment imposed by the ALJ in the initial decision or reconsideration decision.

(b) The authority head will promptly serve each party to the appeal and the ALJ with a copy of his or her decision. This decision must contain a statement describing the right of any person, against whom a penalty or assessment has been made, to seek judicial review.

§ 1149.67 Who represents the NEA on an appeal?

The authority head will designate the NEA's representative in the event of an appeal.

§ 1149.68 What judicial review is available?

Section 3805 of title 31, United States Code, authorizes Judicial review by the appropriate United States District Court of any final NEA decision by the authority head imposing penalties or assessments under this part. To obtain judicial review, you must file a petition with the appropriate court in a timely manner. (See paragraphs (a) through (e) of 31 U.S.C. 3805 for a description of how judicial review is authorized.)

§ 1149.69 Can the administrative complaint be settled voluntarily?

(a) Parties may make offers of compromise or settlement at any time. Any compromise or settlement must be in writing.

(b) The reviewing official has the exclusive authority to compromise or settle the case anytime after the date on which the reviewing official is permitted to issue a complaint and before the ALJ issues an initial decision.

(c) The authority head has exclusive authority to compromise or settle the case anytime after the date of the ALJ's initial decision until the initiation of any judicial review or any action to collect the penalties and assessments.

(d) The Attorney General has exclusive authority to compromise or settle a case once any judicial review or any action to recover penalties and assessments is initiated.

(e) The investigating official may recommend settlement terms to the reviewing official, the authority head, or the Attorney General, as appropriate.

§ 1149.70 How are civil penalties and assessments collected?

(a) Civil actions to recover penalties or assessments must commence within 3 years after the date of a final decision determining your liability.

(b) The Attorney General is responsible for judicial enforcement of civil penalties or assessments imposed. He/she has exclusive authority to compromise or settle any penalty or assessment during the pendency of any action to collect penalties or assessments under 31 U.S.C. 3806.

(c) Penalties or assessments imposed by a final decision may be recovered in a civil action brought by the Attorney General.

(1) The district courts of the United States have jurisdiction of such civil actions.

(2) The United States Court of Federal Claims has jurisdiction of any civil action to recover any penalty or assessment if the cause of action is asserted by the government as a counterclaim in a matter pending in such court.

(3) Civil actions may be joined and consolidated with or asserted as a counterclaim, cross-claim, or set off by the government in any other civil action which includes you and the government as parties.

(4) Defenses raised at the hearing, or that could have been raised, may not be raised as a defense in the civil action. Determination of liability and of the amounts of penalties and assessments must not be subject to review.

§ 1149.71 Is there a right to administrative offset?

The amount of any penalty or assessment which has become final, or for which a judgment has been entered, or any amount agreed upon in a compromise or settlement, may be collected by administrative offset, except that an administrative offset may not be made under this subsection against a refund of an overpayment of Federal taxes, then or later owing by the United States to you.

§ 1149.72 What happens to collections?

All amounts collected pursuant to this part must be deposited as miscellaneous receipts in the Treasury of the United States.

§ 1149.73 What if the investigation indicates criminal misconduct or a violation of the False Claims Act?

(a) Investigating officials may:

(1) Refer allegations of criminal misconduct or a violation of the False Claims Act directly to the Department of Justice for prosecution and/or civil action, as appropriate;

(2) Defer or postpone a report or referral to the reviewing official to avoid interference with a criminal or civil investigation, prosecution or litigation; or

(3) Issue subpoenas under any other statutory authority.

(b) Nothing in this part limits the requirement that NEA employees report suspected false or fraudulent conduct, claims or statements, and violations of criminal law to the NEA Office of Inspector General or to the Attorney General.

§ 1149.74 How does the NEA protect your rights?

These procedures separate the functions of the investigating official, reviewing official, and the ALJ, each of whom report to a separate organizational authority. Except for purposes of settlement, or as a witness or a representative in public proceedings, no investigating official, reviewing official, or NEA employee or agent who helps investigate, prepare, or present a case may (in such case, or a factually related case) participate in the initial decision or the review of the initial decision by the authority head. This separation of functions and organization is designed to assure the independence and impartiality of each government official during every stage of the proceeding. The representative for the NEA may be employed in the offices of either the investigating official or the reviewing official.

Dated: July 30, 2014.

India J. Pinkney,

General Counsel.

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R2–ES–2014–0026; 4500030113]

Endangered and Threatened Wildlife and Plants; 12-Month Finding on a Petition To List the Warton's Cave Meshweaver as Endangered or Threatened

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 12-month petition finding.

SUMMARY: We, the U.S. Fish and Wildlife Service, announce a 12-month finding on a petition to list the Warton's cave meshweaver (*Cicurina wartoni*) as an endangered or threatened species and to designate critical habitat under the Endangered Species Act (Act) of 1973, as amended. After a review of the