

Department of Justice

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Judge, any fees in connection therewith shall be the responsibility of the parties.

(b) *Corrections.* Corrections to the official transcript will be permitted upon motion. Motions for corrections must be submitted within ten (10) days of the service by the Judge of the notice of the filing of the transcript, or such other time as may be permitted by the Judge. Corrections of the official transcript will be permitted only when errors of substance are involved and only upon approval of the Judge.

(c) The record of the proceedings shall consist of the notices, pleadings, motions, rulings, exhibits, orders, the findings, decisions or opinions of the Judge, the stipulations and briefs, and the transcript(s) of the hearing(s).

§ 76.35 Decision and Order of the Judge.

(a) *Proposed decision and order.* Within twenty (20) days of the filing of the transcript of the testimony, or such additional time as the Judge may allow, a party, if authorized by the Judge, may file proposed Findings of Fact, Conclusions of Law, and Order together with a supporting brief expressing the reasons for such proposals. Such proposals and briefs shall be served on all parties, and shall refer to all portions of the record and to all authorities relied upon in support of each proposal.

(b) *Decision.* Within a reasonable time, but not later than forty-five (45) days after the filing of the hearing transcript, and the time allowed for the filing of the post-hearing briefs, proposed Findings of Fact, Conclusions of Law, and Order, if any, or within thirty (30) days after receipt of an agreement containing Consent Findings and Order disposing of the disputed matter in whole, the Judge shall make a decision. The decision of the Judge shall include Findings of Fact and Conclusions of Law upon each material issue of fact or law presented on the record. The decision of the Judge shall be based upon the whole record. It shall be supported by reliable and probative evidence. The standard of proof shall be a preponderance of the evidence. Such decision shall be in accordance with the regulations and the statutes conferring jurisdiction. If the

Judge fails to meet the deadline contained in this paragraph, he or she shall notify the parties and the Attorney General of the reason for the delay and shall set a new deadline.

(c) *Order.* If the Judge determines, by a preponderance of the evidence, that the respondent knowingly possessed a controlled substance that is listed in section 401(b)(1)(A) of the Controlled Substances Act (21 U.S.C. 841(b)) in violation of 21 U.S.C. 844, in an amount that, as specified by this part, is a personal use amount, the order shall require the respondent to pay a civil penalty of not more than \$10,000 for each violation. If the Judge determines that a preponderance of the evidence does not establish that the respondent knowingly possessed a controlled substance as described above, for his or her personal use, then the order shall dismiss the complaint. A copy of the decision and order together with a record of the proceedings will be forwarded to the Attorney General.

§ 76.36 Administrative and judicial review.

(a) Upon entry of an order by a Judge, any party may file with the Attorney General, within ten (10) days of the date of the Judge's decision and order, a written request for review of the decision and order together with supporting arguments. Within thirty (30) days from the date of the filing of the request for review, the Attorney General may enter an order which adopts, affirms, modifies or vacates the Judge's order.

(b) If a party does not seek review of the Judge's decision, or if the Attorney General enters no order within thirty (30) days from the date of the filing of the request for review, the order of the Judge becomes the final order of the Attorney General. If the Attorney General modifies or vacates the order, the order of the Attorney General becomes the final order.

(c) An individual subject to an order assessing a penalty after a hearing may, before the expiration of the thirty (30) day period beginning on the date the final order is entered, either by the Judge or the Attorney General, whichever is applicable, bring a civil action in the appropriate District Court of the

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United States pursuant to the provisions of 21 U.S.C. 844a(g) and obtain *de novo* judicial review of the final order.

§ 76.37 Collection of civil penalties.

(a) Collection of any penalty shall be the responsibility of the United States Attorney having jurisdiction over the matter.

(b) The United States Attorney having jurisdiction over the matter may commence a civil action in any appropriate district court of the United States for the purpose of recovering the amount assessed and an amount representing interest at a rate computed in accordance with 28 U.S.C. 1961.

§ 76.38 Deposit in the United States Treasury.

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

§ 76.39 Compromise or settlement after Decision and Order of a Judge.

(a) The United States Attorney having jurisdiction over the case may, at any time before the Attorney General issues an order, compromise, modify, or remit, with or without conditions, any civil penalty imposed under this section.

(b) Any compromise or settlement must be in writing.

§ 76.40 Records to be public.

All documents contained in the records of formal proceedings for imposing a penalty under this part may be inspected and copied, unless ordered sealed by the Judge.

§ 76.41 Expungement of records.

(a) The Attorney General shall expunge all official Department records created pursuant to this part upon application of a respondent at any time after the expiration of three (3) years from the date of the final order of assessment if:

- (1) The respondent has not previously been assessed a civil penalty under this section;
- (2) The respondent has paid the penalty;

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(3) The respondent has complied with any conditions imposed by the Attorney General;

(4) The respondent has not been convicted of a federal or state offense relating to a controlled substance as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802); and

(5) The respondent agrees to submit to a drug test, and such test shows the individual to be drug free.

(b) A non-public record of a disposition under this part shall be retained by the Department solely for the purpose of determining in any subsequent proceeding whether the person qualifies for a civil penalty or expungement under this part.

(c) If a record is expunged under this part, the individual for whom such an expungement was made shall not be held guilty of perjury, false swearing, or making a false statement by reason of his failure to recite or acknowledge a proceeding under this part or the results thereof in response to an inquiry made of him for any purpose.

§ 76.42 Limitations.

No action under this part shall be entertained unless commenced within five (5) years from the date on which the violation occurred.

PART 77—ETHICAL STANDARDS FOR ATTORNEYS FOR THE GOVERNMENT

Sec.

- 77.1 Purpose and authority.
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AUTHORITY: 28 U.S.C. 530B.

SOURCE: Order No. 2216-99, 64 FR 19275, Apr. 20, 1999, unless otherwise noted.

§ 77.1 Purpose and authority.

(a) The Department of Justice is committed to ensuring that its attorneys perform their duties in accordance with the highest ethical standards. The purpose of this part is to implement 28 U.S.C. 530B and to provide guidance to attorneys concerning the requirements imposed on Department attorneys by 28 U.S.C. 530B.