

§76.3

28 CFR Ch. I (7-1-05 Edition)

(ii) One gram of a mixture or substance containing a detectable amount of—

(A) Coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and derivations of ecgonine or their salts have been removed;

(B) Cocaine, its salts, optical and geometric isomers, and salts of isomers;

(C) Ecgonine, its derivatives, their salts, isomers, and salts of isomers; or

(D) Any compound, mixture, or preparation which contains any quantity of any of the substances referred to in paragraphs (h)(6)(ii) (A) through (C) of this section;

(iii) $\frac{1}{10}$ gram of a mixture or substance described in paragraph (h)(6)(ii) of this section which contains cocaine base;

(iv) $\frac{1}{10}$ gram of a mixture or substance containing a detectable amount of phencyclidine (PCP);

(v) 500 micrograms of a mixture or substance containing a detectable amount of lysergic acid diethylamide (LSD);

(vi) One ounce of a mixture or substance containing a detectable amount of marijuana;

(vii) One gram of methamphetamine, its salts, isomers, and salts of its isomers, or one gram of a mixture or substance containing a detectable amount of methamphetamine, its salts, isomers, or salts of its isomers.

(i) *United States Attorney* means the United States Attorney in the federal district in which the alleged violation occurred, or his or her designees, or an Assistant Attorney General.

(j) *Commencement of proceeding* is the service upon a respondent of a Notice of Intent to Assess a Civil Penalty.

(k) *Complainant* means the United States.

(l) *Complaint* means the formal document initiating adjudicatory proceedings.

(m) *Consent Order* means any written document containing a specified remedy or other relief agreed to by all parties and entered as an order by the Judge.

(n) *Hearing* means that part of a proceeding which involves the submission

of evidence, either by oral presentation or written submission.

(o) *Motion* means an oral or written request, made by a person or party, for some action by a Judge.

(p) *Order* means the whole or any part of a final procedural or substantive disposition of a matter by the Judge.

(q) *Party* includes the United States of America and any person named as a respondent.

(r) *Respondent* means any person alleged in a Notice of Intent to Assess a Civil Penalty or Complaint under 28 CFR 76.4 and 76.5 to be liable for a civil penalty under 28 CFR 76.3.

§76.3 Basis for civil penalty.

(a) Any individual who knowingly possesses a controlled substance that is listed in §76.2(h) in violation of 21 U.S.C. 844a shall be liable to the United States for a civil penalty in an amount of not to exceed \$10,000 for each such violation occurring before September 29, 1999, and not to exceed \$11,000 for each such violation occurring on or after September 29, 1999.

(b) The income and net assets of an individual shall not be relevant to the determination whether to assess a civil penalty under this part or to prosecute the individual criminally. However, if a decision is made to assess a civil penalty, the income and net assets of an individual shall be considered in determining the amount of a penalty under this part.

(c) A civil penalty may not be assessed under this part if the individual previously was 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).

(d) A civil penalty may not be assessed on an individual under this part on more than two separate occasions.

(e) A civil penalty under this part may be assessed by the Attorney General only after an order has been issued on the record and after an opportunity for a hearing has been given in accordance with 5 U.S.C. 554. The Attorney General by and through the United States Attorney having jurisdiction over the matter shall provide written

Department of Justice

§ 76.5

notice to the individual who is the subject of the proposed order informing the individual of the opportunity to receive such a hearing with respect to the proposed order. The hearing may be held only if the individual makes a request for the hearing before the expiration of the thirty (30) day period beginning on the date such notice is served.

[Order No. 1462-90, 56 FR 1089, Jan. 11, 1991, as amended by Order No. 2249-99, 64 FR 47103, Aug. 30, 1999]

§ 76.4 Enforcement procedures.

(a) *Commencement of proceedings.* If the United States Attorney's office having jurisdiction over the matter determines that a person has violated section 6486 of the Act, the proceeding to assess a civil penalty under section 6486 of the Act shall be commenced by the United States Attorney issuing a Notice of Intent to Assess Civil Penalty. Service of this Notice shall be accomplished pursuant to 28 CFR 76.6.

(b) *Notice of intent to assess a civil penalty.* The Notice of Intent to Assess Civil Penalty (Notice) will contain a concise statement of factual allegations informing the respondent of the act or conduct alleged to be in violation of law, the statutory and regulatory provisions alleged to have been violated, and the amount of penalty for which the respondent could be liable. The Notice will advise the respondent of the following, in addition to any other specific information determined by the United States Attorney to be necessary:

(1) That the respondent has the right to representation by counsel, but not at government expense;

(2) That any statement given during the course of this proceeding may be used against the person in this or any other proceeding, including any criminal prosecution;

(3) That a respondent may be able to assert a privilege, such as the privilege against self-incrimination;

(4) That failure to file a response to the allegations listed in the Notice within thirty (30) days of the date of service may result in the entry of a non-appealable final order assessing a penalty in an amount to be determined by the Attorney General;

(5) That the respondent has the right to request an adjudicatory proceeding, including a hearing, before a Judge pursuant to 5 U.S.C. 554-557 and this part, and that such request, in accordance with paragraph (c) of this section, must be made within thirty (30) days from the date the notice is served;

(6) That a respondent may waive an adjudicatory proceeding at any time and agree to pay a penalty in an amount to be determined by the Attorney General; and

(7) That in determining the amount of the penalty the respondent's income and net assets must be considered.

(c) *Answer to notice.* To timely request an adjudicatory proceeding in response to a Notice, a respondent must serve upon the United States Attorney designated in the Notice a written answer responding to each allegation listed in the Notice and request a hearing, in accordance with 28 CFR 76.4(b), within thirty (30) days from the date the Notice was served upon the respondent. If the respondent does not serve an answer within thirty (30) days, the Attorney General or his designee may enter a final order, from which there is no appeal, ordering a payment of a civil penalty.

§ 76.5 Complaint.

(a) If the respondent requests an adjudicatory proceeding, the United States Attorney, within fifteen (15) days after receipt of the request, shall file a complaint against the respondent with a Judge who has been assigned to hear and decide the case and shall serve a copy of the complaint on the respondent as provided in 28 CFR 76.6(b).

(b) The complaint shall contain a concise statement of factual allegations informing the respondent of the act or conduct alleged to be in violation of law, the approximate date, place and location of the alleged violation including the federal district, the statutory provisions alleged to have been violated, the amount of penalty for which the respondent could be held liable, and the amount of the proposed penalty. It shall also indicate the date upon which the Notice of Intent to Assess Civil Penalty was served and shall