

§ 13.3

6 CFR Ch. I (1–1–07 Edition)

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

(f) *Complaint* means the administrative Complaint served by the Reviewing Official on the Defendant under § 13.7.

(g) *Defendant* means any Person alleged in a Complaint under § 13.7 to be liable for a civil penalty or assessment under § 13.3.

(h) *Government* means the Government of the United States.

(i) *Individual* means a natural Person.

(j) *Initial Decision* means the written decision of the ALJ required by § 13.10 or § 13.37, and includes a revised Initial Decision issued following a remand or a motion for reconsideration.

(k) *Investigating Official* means the Inspector General of the Department of Homeland Security or an officer or employee of the Office of the Inspector General designated by the Inspector General and eligible under 31 U.S.C. 3801(a)(4)(B).

(l) *Knows or Has Reason to Know*, means that a Person, with respect to a Claim or Statement:

(1) Has actual knowledge that the Claim or Statement is false, fictitious, or fraudulent;

(2) Acts in deliberate ignorance of the truth or falsity of the Claim or Statement; or

(3) Acts in reckless disregard of the truth or falsity of the Claim or Statement.

(m) *Makes* includes presents, submits, and causes to be made, presented, or submitted. As the context requires, Making or Made will likewise include the corresponding forms of such terms.

(n) *Person* means any Individual, partnership, corporation, association, or private organization, and includes the plural of that term.

(o) *Representative* means an attorney who is a member in good standing of the bar of any State, Territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico. This definition is not intended to foreclose *pro se* appearances. That is, an Individual may appear for himself or herself, and a corporation or other entity may appear by

an owner, officer, or employee of the corporation or entity.

(p) *Reviewing Official* means the General Counsel of the Department of Homeland Security, or other officer or employee of the Department who is designated by the General Counsel and eligible under 31 U.S.C. 3801(a)(8).

(q) *Statement* means any representation, certification, affirmation, Document, record, or accounting or book-keeping entry Made:

(1) With respect to a Claim or to obtain the approval or payment of a Claim (including relating to eligibility to Make a Claim); or

(2) With respect to (including relating to eligibility for):

(i) A contract with, or bid or proposal for a contract with the Authority, or any State, political subdivision of a State, or other party, 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 such State, political subdivision, or party for any portion of the money or property under such contract or for such grant, loan, or Benefit; or

(ii) A grant, loan, or Benefit from, the Authority, or any State, political subdivision of a State, or other party, 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 such State, political subdivision, or party for any portion of the money or property under such contract or for such grant, loan, or Benefit.

§ 13.3 Basis for civil penalties and assessments.

(a) *Claims*. (1) Except as provided in paragraph (c) of this section, a Person will be subject, in addition to any other remedy that may be prescribed by law, to a civil penalty of not more than \$5,500 for each Claim (as adjusted in accordance with the Federal Civil Penalties Inflation Adjustment Act of 1990 (Public Law 101-140), as amended by the Debt Collection Improvement Act of 1996 (Public Law 104-134)) if such Person Makes a Claim that such Person Knows or Has Reason to Know:

(i) Is false, fictitious, or fraudulent;

(ii) Includes or is supported by any written Statement that asserts a material fact that is false, fictitious, or fraudulent;

(iii) Includes or is supported by any written Statement that:

(A) Omits a material fact;

(B) Is false, fictitious, or fraudulent as a result of such omission; and

(C) Is a Statement in which the Person Making such Statement has a duty to include such material fact; or

(iv) Is for payment for the provision of property or services that the Person has not provided as claimed.

(2) Each voucher, invoice, Claim form, or other Individual request or demand for property, services, or money constitutes a separate Claim.

(3) A Claim will be considered Made to the Authority, recipient, or party when such Claim is actually Made to an agent, fiscal intermediary, or other entity, including any State or political subdivision thereof, acting for or on behalf of the Authority, recipient, or party.

(4) Each 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.

(5) If the Government has Made any payment (including transferred property or provided services) on a Claim, a Person subject to a civil penalty under paragraph (a)(1) of this section will also be subject to an assessment of not more than twice the amount of such Claim or that portion thereof that is determined to be in violation of paragraph (a)(1) of this section. Such assessment will be in lieu of damages sustained by the Government because of such Claim.

(b) *Statements.* (1) Except as provided in paragraph (c) of this section, a Person will be subject, in addition to any other remedy that may be prescribed by law, to a civil penalty of not more than \$5,500 (as adjusted in accordance with the Federal Civil Penalties Inflation Adjustment Act of 1990 (Public Law 101-140), as amended by the Debt Collection Improvement Act of 1996 (Public Law 104-134)) if such Person Makes a written Statement that:

(i) The Person Knows or Has Reason to Know:

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

(B) Is false, fictitious, or fraudulent because it omits a material fact that the Person Making the Statement has a duty to include in such Statement; and

(ii) Contains, or is accompanied by, an express certification or affirmation of the truthfulness and accuracy of the contents of the Statement.

(2) Each written representation, certification, or affirmation constitutes a separate Statement.

(3) A Statement will be considered Made to the Authority when such Statement is actually Made to an agent, fiscal intermediary, or other entity, including any State or political subdivision thereof, acting for or on behalf of the Authority.

(c) *Specific intent not required.* No proof of specific intent to defraud is required to establish liability under this section.

(d) *More than one Person liable.* (1) In any case in which it is determined that more than one Person is liable for Making a Claim or Statement under this section, each such Person may be held liable for a civil penalty under this section.

(2) 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 such Persons.

§ 13.4 Investigation.

(a) If an Investigating Official concludes that a subpoena pursuant to the Authority conferred by 31 U.S.C. 3804(a) is warranted:

(1) The subpoena so issued will notify the Person to whom it is addressed of the Authority under which the subpoena is issued and will 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) The Person receiving such subpoena will be required to tender to the