

prepenalty stage, the claim proposed in the prepenalty notice will be withdrawn, the respondent is not required to take a written position on allegations contained in the prepenalty notice, and the Office of Foreign Assets Control will make no final determination as to whether a violation occurred. The amount accepted in settlement of allegations in a prepenalty notice may vary from the civil penalty that might finally be imposed in the event of a formal determination of violation. In the event no settlement is reached, the 30 calendar day period specified in paragraph (a) of this section for written response to the prepenalty notice remains in effect unless additional time is granted by the Office of Foreign Assets Control. A failure to request a hearing and prehearing discovery in writing within 30 calendar days of service of the prepenalty notice constitutes a waiver of a hearing and prehearing discovery.

§ 515.704 Penalty imposition or withdrawal absent a hearing request.

(a) *No violation.* If, in the absence of a timely hearing request, after considering any response to the prepenalty notice and any relevant facts, the Director determines that there was no violation by the respondent named in the prepenalty notice, the Director promptly shall notify the respondent in writing of that determination and that no civil monetary penalty or civil forfeiture pursuant to this subpart will be imposed.

(b) *Violation.* If, in the absence of a timely hearing request, after considering any response to the prepenalty notice and any relevant facts, the Director determines that there was a violation by the respondent named in the prepenalty notice, the Director promptly shall issue a written notice of the imposition by the Office of Foreign Assets Control of the civil monetary penalty and/or civil forfeiture and/or other available disposition with respect to that respondent.

(1) The penalty/forfeiture notice shall inform the respondent that payment of the assessed penalty must be made within 30 calendar days of the mailing of the penalty notice.

(2) The penalty/forfeiture notice shall inform the respondent of the requirement to furnish respondent's taxpayer identification number pursuant to 31 U.S.C. 7701 and that the Department intends to use such number for the purposes of collecting and reporting on any delinquent penalty amount in the event of a failure to pay the penalty imposed.

§ 515.705 Time and opportunity to request a hearing.

(a) *Deadline for hearing request.* Within 30 calendar days of the date of mailing or other service of the prepenalty notice pursuant to § 515.702(c), the respondent may file a written request for an agency hearing conducted pursuant to this section, to present the respondent's defenses to the imposition of a penalty and/or forfeiture and to offer any other information for inclusion, if found admissible pursuant to § 515.715(a), into the agency record prior to a final determination concerning the imposition of a penalty and/or forfeiture.

(b) *Content of written response.* If an agency hearing is requested by the respondent or by the respondent's counsel, the written hearing request must be accompanied by a written response to the prepenalty notice containing the information required by § 515.703(b)(1)(i) through (iii). An untimely hearing request or written response to the prepenalty notice constitutes a waiver of a hearing.

(c) *Signature of filings.* All hearing requests, motions, responses, interrogatories, requests for deposition transcripts, requests for protective orders, and all other filings relating to requests for and responses to discovery or pertaining to the hearing process, must be signed by each requesting party or, if represented, by each party's counsel.

(d) *Computation of time—(1) Final date on weekend or holiday.* Whenever the final date for any requirement of this part falls on a Saturday, Sunday, Federal holiday, or other day on which the Office of Foreign Assets Control is not open for the transaction of business during normal working hours, the time for filing will be extended to the close of business on the next working day.

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(2) *Closing time.* The time for filing any document expires at 5:00 p.m. local Washington, DC time on the last day when such filing may be made.

§515.706 Hearing.

(a) *Notice of hearing.* (1) Any respondent requesting a hearing shall receive notice of the time and place of the hearing at the service address provided pursuant to §515.703(b)(1)(iii). Requests to change the time and place of a hearing may be submitted to the Administrative Law Judge, who may modify the original notice or subsequently set hearing dates. All requests for a change in the time or place of a hearing must be received in the Administrative Law Judge's chambers and served upon the parties no later than 15 working days before the scheduled hearing date.

(2) The hearing shall be conducted in a manner consistent with 5 U.S.C. 554-557, pursuant to section 1710(c) of the Cuban Democracy Act of 1992 (22 U.S.C. 6001-6010) and section 16 of the Trading with the Enemy Act (50 U.S.C. App. 16).

(b) *Powers.* The Administrative Law Judge shall have all powers necessary to conduct the hearing, consistent with 5 U.S.C. 554-557, including the following powers:

(1) To administer oaths and affirmations;

(2) To require production of records or any information relative to any act or transaction subject to this part, including the imposition of sanctions available under Federal Rule of Civil Procedure 37(b)(2) (Fed. R. Civ. P. 37(b)(2), 28 U.S.C.) for a party's failure to comply with discovery requests;

(3) To receive relevant and material evidence and to rule upon the admission of evidence and offers of proof;

(4) To take or cause depositions to be taken as authorized by this part;

(5) To regulate the course of the hearing and the conduct of the parties and their counsel;

(6) To hold scheduling or prehearing conferences as deemed necessary;

(7) To consider and rule upon all procedural and other motions appropriate in an adjudicatory proceeding, provided that only the Secretary or the Secretary's designee shall have the power to grant any motion to dismiss the proceeding or to decide any other

motion that results in a final determination of the merits of the proceeding;

(8) To prepare and present to the Secretary or to the Secretary's designee a recommended decision as provided in §§515.711(d) and 515.716(e);

(9) To recuse himself on motion made by a party or on the Administrative Law Judge's own motion;

(10) To establish time, place, and manner limitations on the attendance of the public and the media for any public hearing;

(11) To perform all necessary or appropriate measures to discharge the duties of an Administrative Law Judge; and

(12) To set fees and expenses for witnesses, including expert witnesses.

(c) *Appearance and practice in a civil penalty hearing*—(1) *Appearance before an Administrative Law Judge by counsel.* Any member in good standing of the bar of the highest court of any state, commonwealth, possession, or territory of the United States, or the District of Columbia may represent respondents upon written notice to the Administrative Law Judge in a civil penalty hearing.

(2) *Appearance before an Administrative Law Judge by a nonlawyer.* A respondent may appear on his own behalf; a duly authorized member of a partnership may represent the partnership; a duly authorized officer, director, or employee of any corporation may represent that corporation upon written notice to the Administrative Law Judge in a civil penalty hearing.

(3) *Office of Foreign Assets Control representation.* The Office of Foreign Assets Control shall be represented by the Office of General Counsel of the United States Department of the Treasury.

(d) *Conflicts of interest*—(1) *Conflict of interest in representation.* No individual shall appear as counsel for a party in a proceeding conducted pursuant to this subpart if it reasonably appears that such representation may be materially limited by that counsel's responsibilities to a third person, or by counsel's own interests.

(2) *Corrective measures.* The Administrative Law Judge may take corrective measures at any stage of a proceeding