

§ 273.3

39 CFR Ch. I (7-1-03 Edition)

of the United States Postal Service or for purposes other than specified in § 962.21 of this title any designee within the Judicial Officer Department.

(e) *Knows or has reason to know*, for purposes of establishing liability under 31 U.S.C. 3802, means that, with respect to a claim or statement, although no proof of specific intent to defraud is required, a person:

- (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.

(f) *Person* refers to any individual, partnership, corporation, association, or private organization.

(g) *Postmaster General* refers to the Postmaster General of the United States or his designee.

(h) *Presiding Officer* refers to an Administrative Law Judge designated by the Judicial Officer to conduct a hearing authorized by 31 U.S.C. 3803 in accordance with Part 962 of this title.

(i) *Respondent* refers to any person alleged to be liable for civil penalty or assessment under 31 U.S.C. 3802.

(j) *Reviewing Official* refers to the General Counsel of the Postal Service or any designee within the Law Department who serves in a position for which the rate of basic pay is not less than the minimum rate of basic pay for grade GS-16 under the General Schedule.

(k) *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 a bid or proposal for a contract with; or
 - (ii) A grant, loan, or benefit from, the Postal Service, 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.

[52 FR 12901, Apr. 20, 1987, as amended at 56 FR 55825, Oct. 30, 1991; 67 FR 16024, Apr. 4, 2002]

§ 273.3 Liability for false claims and statements.

Section 3802 of title 31, United States Code, provides for liability as follows:

(a) *Claims*. (1) Any person who makes, presents, or submits, or causes to be made, presented, or submitted, a claim that the person knows or has reason to know—

- (i) Is false, fictitious, or fraudulent; or
- (ii) Includes or is supported by any written statement asserting a material fact which is false, fictitious, or fraudulent; or
- (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, presenting, or submitting such statement has a duty to include such material fact; or
 - (iv) Is for payment for the provision of property or services which the person has not provided as claimed

Shall be subject to, in addition to any other remedy that may be prescribed by law, a civil penalty of not more than \$5,500 for each such claim.

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

(3) A claim shall be considered made, presented, or submitted to the Postal Service, 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 Postal Service, recipient, or party.

(4) Each claim for property, services, or money is subject to the civil penalty referred to in paragraph (a)(1) of this section regardless of whether such property, service, or money is actually delivered or paid.

United States Postal Service

§ 273.5

(5) If the Government has made payment on a claim, a person subject to the civil penalty referred to in paragraph (a)(1) of this section shall also be subject to an assessment of not more than twice the amount of such claim or twice the amount of that portion thereof that is determined to be in violation of paragraph (a)(1) of this section. This assessment shall be in lieu of damages sustained by the United States because of such claim.

(b) Statements. (1) Any person who makes, presents, or submits, or causes to be made, presented, or submitted, a written statement that—

(i) The person knows or has reason to know—

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

(B) Is false, fictitious, or fraudulent because it omits a material fact that the person making, presenting or submitting such statement had 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.

Shall be subject to, in addition to any other remedy that may be prescribed by law, a civil penalty of not more than \$5,500 for each such statement.

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

(3) A statement shall be considered made, presented, or submitted to the Postal Service 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 Postal Service.

(c) In any case in which it is determined that more than one person is liable for making a claim or statement under this section, the civil penalty referred to in paragraph (a)(1) of this section may be imposed on each such person without regard to the amount of any penalties collected or demanded from others.

(d) 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, an assessment may be imposed against any such person or

jointly and severally against any combination of such persons. The aggregate amount of the assessments collected with respect to such claim shall not exceed twice the portion of such claim determined to be in violation of paragraph (a)(1) of this section.

[52 FR 12901, Apr. 20, 1987, as amended at 56 FR 55825, Oct. 30, 1991; 61 FR 55750, Oct. 29, 1996]

§ 273.4 Non-exclusivity of penalty authority.

(a) A determination by the Reviewing Official that there is adequate evidence to believe that a person is liable under 31 U.S.C 3802, or a final determination that a person is liable under such statute, may provide the Postal Service with grounds for commencing any administrative or contractual action against such person which is authorized by law and which is in addition to any action against such person under chapter 38 of title 31, United States Code.

(b) In the case of an administrative or contractual action to suspend or debar any person from eligibility to enter into contracts with the Postal Service, a determination referred to in paragraph (a) of this section shall not be considered as a conclusive determination of such person's responsibility pursuant to Postal Service procurement regulations.

§ 273.5 Investigations of alleged violations.

(a) Investigations of allegations of liability under 31 U.S.C. 3802 shall be conducted by the Investigating Official.

(b)(1) For purposes of an investigation under this part, the Investigating Official may issue a subpoena requiring the production of all information, documents, reports, answers, records, accounts, papers, and data not otherwise reasonably available to the Postal Service. Any subpoena issued by the Investigating Official under this authority shall cite 31 U.S.C. 3804(a) as the authority under which it is issued, shall be signed by the Investigating Official, and shall command each person to whom it is directed to produce the specified documentary material at a prescribed time and place.