



SMALL BUSINESS ADMINISTRATION

13 CFR Part 142

RIN 3245-AI29

Program Fraud Civil Remedies Act Regulations Statutory Updates

AGENCY: U.S. Small Business Administration.

ACTION: Direct final rule.

SUMMARY: The United States Small Business Administration (SBA) is amending the Program Fraud Civil Remedies Act regulations in 13 CFR part 142 to reflect changes made to the Program Fraud Civil Remedies Act of 1986 by the Administrative False Claims Act of 2023. These changes, among other things, revise the name of the administrative action from “Program Fraud Civil Remedies” to “Administrative False Claims” and increase the threshold for a claim from \$150,000 to \$1,000,000. The Administrative False Claims Act mandates that the Agency issue regulations to update part 142 and this direct final rule conforms the regulations to the Administrative False Claims Act by adopting the new statutory requirements without change.

DATES: This rule is effective [INSERT DATE 45 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER], without further action, unless significant adverse comment is received by [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. If significant adverse comment is received, SBA will publish a timely withdrawal of the rule in the Federal Register.

ADDRESSES: You may submit comments, identified by number SBA-2026-0067 or RIN 3245-AI29, in the Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

SBA will post all comments on www.regulations.gov. If you wish to submit confidential business information (CBI) as defined in the User Notice at

www.regulations.gov, please send an email to Kandace Zelaya at Kandace.Zelaya@sba.gov and highlight the information that you consider to be CBI and explain why you believe SBA should hold this information as confidential. SBA will review the information and make the final determination whether it will publish the information. All other comments must be submitted through the Federal eRulemaking Portal described above.

FOR FURTHER INFORMATION CONTACT: Kandace Zelaya, Office of General Counsel, (504)589-2033, Kandace.Zelaya@sba.gov.

SUPPLEMENTARY INFORMATION:

I. Background

This direct final rule implements regulatory changes required by the Administrative False Claims Act of 2023 (AFCA), Public Law 118-159, sec. 5203, 138 Stat. 2440 (December 23, 2024). The specific regulatory changes are further described below.

II. Description of Regulatory Changes

SBA is revising the title of part 142 from “Program Fraud Civil Remedies Act Regulations” to “Administrative False Claims Act Regulations.” In addition, SBA is revising all references to “Program Fraud Civil Remedies” within part 142 to “Administrative False Claims.”

SBA is revising 13 CFR 142.1 by adding a reference to the Administrative False Claims Act of 2023, Public Law 118-159, sec. 5203, 138 Stat. 2440 (2024).

The AFCA expanded the list of claims that a Federal agency can pursue by imposing liability for submissions of “reverse false claims.” A reverse false claim is when a person acts improperly – not to obtain money from the Government – but to avoid having to pay money to the Government. Thus, SBA is revising the definition of a “claim” in 13 CFR 142.3 by modifying paragraph (a)(2) to state that a claim includes any

request, demand, or submission made to SBA which “has the effect of concealing or improperly avoiding or decreasing an obligation to pay or transmit property, services, or money.” Additionally, the AFCA adopted the definition of “obligation” from the Federal False Claims Act (FCA) (31 U.S.C. 3729-3733). Thus, SBA is adding a parenthetical to paragraph (a)(2) to explain that “obligation” has the meaning given the term in 31 U.S.C. 3729(b).

The AFCA also adopted the definition of “material” from the FCA. Therefore, SBA is revising 13 CFR 142.5(a)(2) to include a parenthetical explaining that “material” has the meaning given the term in 31 U.S.C. 3729(b).

SBA is revising 13 CFR 142.7 to replace “the Program Fraud Civil Remedies Act” with “the Administrative False Claims Act.”

SBA is revising 13 CFR 142.9 to increase the threshold for a claim or a group of related claims from \$150,000 to \$1,000,000. Additionally, SBA is restructuring the existing text into a new paragraph (a) and adding two new paragraphs. SBA is adding a new paragraph (b) to this regulation to provide that the maximum amount of a claim or a group of related claims shall be adjusted for inflation in the same manner and to the same extent as civil monetary penalties under the Federal Civil Penalties Inflation Adjustment Act (28 U.S.C. 2461 note). SBA is adding a new paragraph (c) to this regulation to incorporate the revised statute of limitations included in the AFCA. The AFCA revised the statute of limitations for bringing an action to the later of 6 years after the date of the violation or 3 years after the date on which facts material to the action are known or reasonably should have been known by the agency head, but in no event more than 10 years after the violation.

SBA is making two minor technical corrections to 13 CFR 142.12. In paragraph (a), SBA is replacing “the Office of Hearings and Appeals” with “OHA” because the

term is defined previously in § 142.10. In paragraph (d), SBA is replacing “the ALJ” with “OHA.”

As discussed above, the AFCA revised the statute of limitations for bringing a claim and, thus, SBA is revising 13 CFR 142.9 to state when SBA will bring an action by issuing a complaint and incorporating the new timeframes set in the AFCA.

Consequently, SBA is revising 13 CFR 142.14(b) to remove the six-year limitation on serving the notice of oral hearing, which incorporated the previous statutory language in 31 U.S.C. 3808(a) that was stricken and replaced under the AFCA. The requirement that the ALJ promptly serve a notice of oral hearing upon receipt of the complaint and answer will remain.

The AFCA added a requirement that the reviewing official notify the Attorney General in writing not later than 30 days before entering into any agreement to compromise or settle allegations of liability under the AFCA and before the date on which the reviewing official is permitted to refer allegations of liability to a presiding officer. SBA is revising 13 CFR 142.38 by adding the new notification requirement to paragraph (b).

Finally, SBA is revising 13 CFR 142.39 to add language from the statute that states that a civil action to recover a penalty or assessment under this part shall be commenced within 3 years after the date on which the determination of liability for such penalty or assessment becomes final.

III. Justification for Direct Final Rule

In general, SBA publishes a rule for public comment before issuing a final rule in accordance with the Administrative Procedure Act, 5 U.S.C. 553. The Administrative Procedure Act provides an exception to this standard rulemaking process, however, where an agency finds good cause to adopt a rule without prior public participation. 5

U.S.C. 553(b)(B). The good cause requirement is satisfied when prior public participation is impracticable, unnecessary, or contrary to the public interest.

Agencies typically utilize direct final rulemakings for routine, non-controversial regulatory actions that are unlikely to receive adverse comments. In direct final rulemaking, an agency publishes a final rule with a statement that the rule will go into effect unless the agency receives significant adverse comment within a specified period. Significant adverse comments are comments that provide strong justifications why the rule should not be adopted or for changing the rule. If the agency receives no significant adverse comment in response to the direct final rule, the rule goes into effect on the date listed in the DATES section without further notice. If the agency receives significant adverse comment, the agency will withdraw the direct final rule prior to the effective date and may instead issue a proposed rulemaking.

SBA has determined that prior public participation is unnecessary, because the regulatory changes addressed in this direct final rulemaking are routine, non-controversial, and not likely to result in adverse comments. SBA is implementing changes required by statute which are already in effect and is merely updating the regulations in order to conform to the statute. Because the changes in this rule are prescribed by statute, SBA does not expect significant adverse comments.

Compliance with Executive Orders 12866, 12988, 13132, 13175, 13563, 14192, the Congressional Review Act (5 U.S.C. 801-808), Paperwork Reduction Act (44 U.S.C., Ch. 35), and the Regulatory Flexibility Act (5 U.S.C. 601-612).

Executive Orders 12866 and 13563

Executive Order 12866, Regulatory Planning and Review, requires agencies to provide a Regulatory Impact Analysis assessing costs and benefits and addressing available alternatives for any “significant regulatory action.” The Office of Management

and Budget has determined that this direct final rule does not constitute a “significant regulatory action.”

Executive Order 13563, Improving Regulation and Regulatory Review, reaffirms the principles of Executive Order 12866 and requires agencies to adopt regulations through a process that involves public participation and, to the extent feasible, base regulations on the open exchange of information and perspectives from affected stakeholders and the public as a whole. SBA has developed this direct final rule in a manner consistent with these requirements. Moreover, Executive Order 13563 requires agencies to assess the benefits and costs of any regulations and address available alternatives to direct regulation. This rule implements statutory changes and is not expected to have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. As a result, no Regulatory Impact Analysis is required.

Executive Order 14192

This rule is not an Executive Order 14192 regulatory action because it is not significant under Executive Order 12866.

Executive Order 12988

This action meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden. The action does not have preemptive effect or retroactive effect.

Executive Order 13132

This rule does not have federalism implications as defined in Executive Order 13132. It will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and

responsibilities among the various levels of government, as specified in the Executive Order. As such it does not warrant the preparation of a Federalism Assessment.

Executive Order 13175

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Congressional Review Act, 5 U.S.C. 801-808

This rule has been determined not to meet the criteria set forth in 5 U.S.C. 804(2). SBA will submit the rule to Congress and the Government Accountability Office consistent with the Congressional Review Act's requirements.

Paperwork Reduction Act, 44 U.S.C. Ch. 35

SBA has determined that this rule does not impose additional reporting or recordkeeping requirements under the Paperwork Reduction Act, 44 U.S.C., Chapter 35.

Regulatory Flexibility Act, 5 U.S.C. 601-612

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601-612, requires administrative agencies to consider the effect of their actions on small entities, small nonprofit enterprises, and small local governments. Pursuant to the RFA, when an agency issues a rulemaking, the agency must prepare a regulatory flexibility analysis which describes the impact of the rule on small entities. However, the RFA requires such analysis only where notice and comment rulemaking is required. As discussed above, SBA has found good cause that notice and public comment are impracticable, unnecessary, or contrary to the public interest. Accordingly, SBA is not required to conduct a regulatory flexibility analysis and is publishing this rule as a direct final rule without advance notice and public comment.

List of Subjects in 13 CFR Part 142

Administrative practice and procedure, Claims, Fraud, Penalties.

For the reasons set forth in the preamble, the SBA amends 13 CFR part 142 as follows:

PART 142-ADMINISTRATIVE FALSE CLAIMS ACT REGULATIONS

1. The authority citation for part 142 continues to read as follows:

Authority: 15 U.S.C. 634(b); 31 U.S.C. 3803(g)(2).

2. The heading for part 142 is revised to read as set forth above.

3. Amend § 142.1 by revising the first sentence of paragraph (a) to read as follows:

§ 142.1 Overview of regulations.

(a) * * * This part implements the Program Fraud Civil Remedies Act of 1986, 31 U.S.C. 3801-3812, as amended by the Administrative False Claims Act of 2023, Public Law 118-159, sec. 5203, 138 Stat. 2440 (“the Act”). * * *

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4. Amend § 142.3 by revising paragraph (a)(3) to read as follows:

§ 142.3 What is a claim?

(a) * * *

(3) Made to SBA which has the effect of concealing or improperly avoiding or decreasing an obligation to pay or transmit property, services, or money (“obligation” has the meaning given the term in 31 U.S.C. 3729(b)).

* * * * *

5. Amend § 142.5 by revising paragraph (a)(2) to read as follows:

§ 142.5 What is a false claim or statement?

(a) * * *

(2) Includes or is supported by a written statement which asserts or contains a material fact which is false, fictitious, or fraudulent (“material” has the meaning given the term in 31 U.S.C. 3729(b));

* * * * *

§ 142.7 [Amended]

6. Amend § 142.7 by removing “Program Fraud Civil Remedies Act” and adding in its place “Administrative False Claims Act”.

7. Revise § 142.9 to read as follows:

§ 142.9 When will SBA issue a complaint?

(a) SBA will issue a complaint:

(1) If the Attorney General (or designee) approves the referral of the allegations for adjudication; and

(2) In a case of submission of false claims, if the amount of money or the value of property or services demanded or requested in a false claim, or a group of related claims submitted at the same time, does not exceed \$1,000,000. A group of related claims submitted at the same time includes only those claims arising from the same transaction (such as a grant, loan, application, or contract) which are submitted together as part of a single request, demand, or submission.

(b) Adjustment for inflation: the maximum amount in paragraph (a)(2) shall be adjusted for inflation in the same manner and to the same extent as civil monetary penalties under the Federal Civil Penalties Inflation Adjustment Act (28 U.S.C. 2461 note).

(c) The complaint must be served not later than the later of:

(1) 6 years after the date on which such claim or statement is made; or

(2) 3 years after the date on which facts material to the action are known or reasonably should have been known by SBA, but in no event later than 10 years after the date on which the claim or statement was made.

§ 142.12 [Amended]

8. Amend § 142.12 as follows:

a. In paragraph (a), remove “the Office of Hearings and Appeals” and add in its place “OHA”; and

b. In paragraph (d), remove “the ALJ” and add in its place “OHA”.

§ 142.14 [Amended]

9. Amend § 142.14 in paragraph (b) by removing the last sentence.

10. Amend § 142.38 by adding a sentence to the end of paragraph (b) to read as follows:

§ 142.38 Can the administrative complaint be settled voluntarily?

* * * * *

(b) * * * A reviewing official shall notify the Attorney General in writing not later than 30 days before entering into an agreement to compromise or settle allegations of liability under 31 U.S.C. 3802 and before the date on which the reviewing official is permitted to refer allegations of liability to a Presiding Officer under 31 U.S.C. 3803(d)(2)(B).

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11. Amend § 142.39 by adding a sentence at the end to read as follows:

§ 142.39 How are civil penalties and assessments collected?

* * * A civil action to recover a penalty or assessment under this part shall be commenced within 3 years after the date on which the determination of liability for such penalty or assessment becomes final.

Kelly Loeffler,

Administrator.

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