

requirements set forth in §§ 890.1022 through 1024, as well as this section, apply.

(c) *Settling or compromising proposed sanctions.* As part of or in lieu of a contest, a provider may offer to settle the proposed penalties and assessments. The debarring official has authority to settle or compromise proposed sanctions at any time before issuing a final decision under § 890.1071.

§ 890.1068 Effect of not contesting proposed penalties and assessments.

(a) *Proposed sanctions may be implemented immediately.* If a provider does not inform the debarring official of his intention to contest proposed penalties and assessments within the 30-day period set forth by § 890.1067(a), OPM may implement the proposed sanctions immediately, without further procedures.

(b) *Debarring official sends notice after implementing sanctions.* The debarring official shall send the provider written notice, via certified return receipt mail or express delivery service, stating:

(1) The amount of penalties and assessments imposed;

(2) The date on which they were imposed; and

(3) The means by which the provider may pay the penalties and assessments.

(c) *No appeal rights.* A provider may not pursue a further administrative or judicial appeal of the debarring official's final decision implementing any sanctions unless a timely contest was filed in response to OPM's notice under § 890.1066.

§ 890.1069 Information the debarring official shall consider in deciding a provider's contest of proposed penalties and assessments.

(a) *Documentary material and written arguments.* As part of the contest, a provider shall furnish a written statement of reasons why the proposed penalties and assessments should not be imposed and/or why the amounts proposed are excessive.

(b) *Mandatory disclosures.* In addition to any other information submitted during the contest, the provider shall inform the debarring official in writing of:

(1) Any existing, proposed, or prior exclusion, debarment, penalty, assessment, or other sanction that was imposed by a Federal, State, or local government agency, including any administrative agreement that purports to affect only a single agency; and

(2) Any current or prior criminal or civil legal proceeding that was based on the same facts as the penalties and assessments proposed by OPM.

(c) *In-person appearance.* A provider may request a personal appearance (in person, by telephone conference, or through a representative) to provide testimony and oral arguments to the debarring official.

§ 890.1070 Burdens of proof and standards of evidence in contests of proposed penalties and assessments.

(a) *Previously determined facts.* Any facts relating to the basis for the proposed penalties and assessments that were determined in a prior due process proceeding are binding on the debarring official in deciding the contest. Prior due process proceedings are those set forth in § 890.1025(a)(1) through (4).

(b) *Preponderance of the evidence.* To impose penalties and assessments, the debarring official must find that the preponderance of the evidence in the entire official record demonstrates that the provider committed a sanctionable violation described in § 890.1061.

(c) *Final decision regarding the amount of penalties and assessments.* If the preponderance of the evidence establishes that a provider committed a sanctionable violation for which penalties and assessments may be imposed, the debarring official may impose financial sanctions in amounts not exceeding those proposed in the notice issued to the provider under § 890.1066.

§ 890.1071 Deciding contests of proposed penalties and assessments.

(a) *Debarring official reviews entire official record.* After the provider submits the information and evidence authorized or required by § 890.1069, the debarring official shall review the entire official record to determine if the contest can be decided without additional administrative proceedings, or if an evidentiary hearing is required to resolve disputed material facts.

(b) *Deciding the contest without further proceedings.* To decide the contest without further administrative proceedings, the debarring official must determine that the evidentiary record contains no *bona fide* dispute as to material facts. A "material fact" is a fact essential to determining whether a provider committed a sanctionable violation for which penalties and assessments may be imposed. If there are no *bona fide* disputed material facts, the debarring official shall apply the provisions of § 890.1070 to reach a final decision of the contest.

(c) *Bona fide dispute about material facts.* If the debarring official determines that the official record contains a *bona fide* dispute about any fact material to the basis for the proposed penalties and

assessments, a fact-finding hearing shall be held to resolve the disputed facts. The provisions of §§ 890.1027(b) and (c), 1028, and 1029(a) and (b) govern such hearings.

(d) *Debarring official's decision after fact-finding hearing.* After receiving the results of the fact-finding hearing, the debarring official shall apply the provisions of § 890.1070 to reach a final decision of the contest.

§ 890.1072 Further appeal rights after final decision to impose penalties and assessments.

If the debarring official's final decision imposes any penalties and assessments, the affected provider may appeal it to the appropriate United States district court under the provisions of 5 U.S.C. 8902a(h)(2).

§ 890.1073 Collecting penalties and assessments.

(a) *Agreed-upon payment schedule.* At the time OPM imposes penalties and assessments, or the amounts are settled or compromised, the provider shall be afforded the opportunity to arrange an agreed-upon payment schedule.

(b) *No agreement on payment schedule.* In the absence of an agreed-upon payment schedule, OPM shall collect penalties and assessments under its regular procedures for resolving debts owed to the Employees Health Benefits Fund.

(c) *Offsets.* As part of its debt collection efforts, OPM may request other Federal agencies to offset the penalties and assessments against amounts that the agencies may owe to the provider, including Federal income tax refunds.

(d) *Civil lawsuit.* If necessary to obtain payment of penalties and assessments, the United States may file a civil lawsuit as set forth in 5 U.S.C. 8902(i).

(e) *Crediting payments.* OPM shall deposit payments of penalties and assessments into the Employees Health Benefits Fund.

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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 360

[Docket No. 02-067-1]

Noxious Weeds; Cultivars of Kikuyu Grass

AGENCY: Animal and Plant Health Inspection Service, USDA.