

§ 1174.27 The hearing and the burden of proof.

- (a) The ALJ conducts a hearing in order to determine whether a defendant is liable for a civil penalty, assessment, or both and, if so, the appropriate amount of the penalty and/or assessment.
- (b) The hearing will be recorded and transcribed. The transcript of testimony, exhibits and other evidence admitted at the hearing, and all papers and requests filed in the proceeding, constitute the record for the ALJ's and the authority head's decisions.
- (c) The hearing will be open to the public unless otherwise ordered by the ALJ for good cause shown.
- (d) The authority must prove a defendant's liability and any aggravating factors by a preponderance of the evidence.
- (e) A defendant must prove any affirmative defenses and any mitigating factors by a preponderance of the evidence.