**Section 386.1190 Appeal**

a) Orders of dismissal and orders assessing civil penalties may be appealed to the Secretary. An appeal must be filed within 20 days of service of the presiding officer's order.

b) The decision of the Secretary on appeal shall be made on the record of the hearing, including all pleadings and the decision of the officer who presided at the hearing. No new or additional evidence shall be considered by the Secretary without a positive showing by the party presenting such evidence that the evidence was not available or, through due diligence, could not have been made available at the hearing. At the discretion of the Secretary, for clarification purposes, and upon reasonable notice of the parties, oral argument may be had on appeal. Any party requesting oral argument must detail in his petition for appeal the reasons for the request for argument.

c) If the Secretary affirms the assessment and the respondent does not pay the civil penalty within 35 days after service of the Secretary's decision on appeal and no complaint for administrative review has been filed, the case shall be referred to the Attorney General with a request that an action to collect the penalty be brought in the appropriate Circuit Court.

d) Petition for appeal shall detail the assailed findings and be confined to factual and legal issues which are essential to the ultimate and just determination of the proceeding. Petitions shall not exceed 10 pages in length, excluding a separate preface and summary of argument which shall not exceed three pages. A reply to the petition, if any, shall be filed within 20 days of receipt of the petition for appeal and shall meet requirements as to length and format.

e) The filing of the petition shall stay the effect of the prior decision, order or requirement pending the determination of the appeal.