

### § 1.308

(1) The allegations of liability, including the statutory basis for liability, an identification of the claims or statements that are the basis for the alleged liability, and the reasons that liability allegedly arises from such claims or statements;

(2) The maximum amount of penalties and assessments for which the respondent may be held liable;

(3) Instructions for requesting a hearing, including a specific advice of the respondent's right to request a hearing and to be represented by a representative; and

(4) That failure to file an answer within 30 days of service of the complaint may result in the imposition of the penalty and assessment sought in the complaint without right to appeal.

(c) At the same time the reviewing official serves the complaint, he or she shall serve the respondent with a copy of these regulations.

### § 1.308 Service of complaint and notice of hearing.

(a) Service of a complaint or notice of hearing shall be made by certified or registered mail or by delivery in any manner authorized by Rule 4(d) of the Federal Rules of Civil Procedure.

(b) Proof of service, stating the name and address of the person on whom the notice was served, and the manner and date of service, shall be made by:

(1) Affidavit of the individual making service;

(2) An acknowledged United States Postal Service return receipt card; or

(3) Written acknowledgment by the respondent or his representative.

### § 1.309 Answer and request for hearing.

(a) Within 30 days of the date of receipt or refusal to accept service of the complaint, the respondent may file an answer with the reviewing official.

(b) In the answer, the respondent—

(1) Shall admit or deny each of the allegations of liability made in the complaint;

(2) Shall state any defense upon which the respondent intends to rely;

(3) Shall state the name, address, and telephone number of the person authorized to act as the respondent's representative, if any;

### 7 CFR Subtitle A (1-1-24 Edition)

(4) May state any reasons why the respondent contends the penalty and assessment should be reduced or modified; and

(5) May request a hearing.

### § 1.310 Default upon failure to file an answer.

(a) If the respondent does not file an answer within the time prescribed in § 1.309(a) of this part, the reviewing official may refer the complaint together with proof of service to the ALJ and request that the ALJ issue an order of default imposing the penalties and assessments sought in the complaint. An answer must comply in all material respects with § 1.309(b) of this part in order to be considered filed within the time prescribed in § 1.310(a) of this part.

(b) Upon the referral of the complaint under paragraph (a) of this section, the ALJ shall promptly serve on the respondent, in the manner prescribed in § 1.308 of this part, a notice that a decision will be issued under this section.

(c) If the respondent fails to answer, the ALJ shall assume the facts alleged in the complaint to be true and, if such facts establish liability under § 1.303 of this part, the ALJ shall issue a decision imposing the penalties and assessments sought in the complaint, not to exceed the maximum amount allowed under the statute.

(d) A respondent who fails to file a timely answer waives any right to a review of the penalty and assessment, unless he can demonstrate extraordinary circumstances justifying the failure to file an answer.

### § 1.311 Referral of complaint and answer to the ALJ.

Upon receipt of an answer, the reviewing official shall send to the ALJ copies of the complaint, proof of service, and the answer.

### § 1.312 Procedure where respondent does not request a hearing.

(a) If the respondent files an answer with the reviewing official within the time period prescribed in § 1.309(a) of this part but does not request a hearing, the ALJ, upon receipt of the complaint, proof of service, and answer, shall notify the respondent that a decision will be issued under this section