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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 and shall afford the parties 30 days in which to submit documentary evidence or other relevant written information, including briefs or other written arguments. At the end of that period, the ALJ shall issue a decision based upon the pleadings and the evidence submitted, or if no evidence has been submitted, upon the pleadings. The burden of proof shall be as set forth in § 1.329 of this part.

(b) When a decision is to be issued under this section, the ALJ shall have discretion to permit, allow, limit, or otherwise control discovery to the extent set forth under §§ 1.322 thru 1.324 of this part.

§ 1.313 Procedure where respondent requests a hearing; notice of hearing.

(a) When the ALJ receives the complaint, proof of service, and an answer requesting a hearing, the ALJ shall promptly serve, in accordance with § 1.308 of this part, a notice of hearing on all parties.

(b) Such notice shall include:

(1) The tentative time and place, and the nature of the hearing;

(2) The legal authority and jurisdiction under which the hearing is to be held;

(3) The matters of fact and law to be asserted;

(4) A description of the procedures for the conduct of the hearing;

(5) The name, address, and telephone number of the representative for the USDA and the representative for the respondent, if any; and

(6) Such other matters as the ALJ deems appropriate.

§ 1.314 Parties to the hearing.

(a) The parties to the hearing shall be the respondent and USDA. The proceeding shall be brought in the name of the Secretary.

(b) Pursuant to 31 U.S.C. 3730(c)(5), a private party plaintiff under the False Claims Act may participate in proceedings under this subpart to the extent authorized by the provisions of that Act.

§ 1.315 Separation of functions.

(a) Neither the investigating official, the reviewing official, nor any employee or agent of the USDA who takes part in investigating, preparing, or presenting a particular case may, in such case or in a factually related case—

(1) Conduct the hearing in such case;

(2) Participate in or advise the ALJ in the decision in such case, or participate in or advise in the review of the decision in such case by the judicial officer, except as a witness or representative in public proceedings; or

(3) Make the collection of penalties and assessments under § 1.341 of this part.

(b) The ALJ shall not be responsible to or subject to the supervision or direction of the investigating official or the reviewing official.