

§ 16.8 Service of complaint.

(a) Service of a complaint must be made by a 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 complaint was served, and the manner and date of service, may be made by—

- (1) Affidavit of the individual making service;
- (2) An acknowledged United States Postal Service return receipt card; or
- (3) Written acknowledgement of the defendant or his representative.

§ 16.9 Answer.

(a) The defendant may request a hearing by filing an answer with the reviewing official within 30 days of service of the complaint. An answer shall be deemed to be a request for hearing.

(b) In the answer, the defendant—

- (1) Shall admit or deny each of the allegations of liability made in the complaint;
- (2) Shall state any defense on which the defendant intends to rely;
- (3) May state any reasons why the defendant contends that the penalties and assessments should be less than the statutory maximum; and
- (4) Shall state whether the defendant has authorized an attorney to act as defendant's representative, and shall state the name, address, and telephone number of the representative.

§ 16.10 Default upon failure to file an answer.

(a) If the defendant does not file an answer within the time prescribed in § 16.9(a), the reviewing official may refer the complaint to the ALJ for initial decision.

(b) Upon the referral of the complaint, the ALJ shall promptly serve on defendant in the manner prescribed in § 16.8, a notice that an initial decision will be issued under this section.

(c) If the defendant fails to file a timely answer, the ALJ shall assume the facts alleged in the complaint to be true and, if such facts establish liability under § 16.3, the ALJ shall issue an initial decision imposing the maximum

amount of penalties and assessments allowed under the statute.

(d) Except as otherwise provided in this section, by failing to file a timely answer, the defendant waives any right to further review of the penalties and assessments imposed under paragraph (c) of this section, and the initial decision shall become final and binding upon the parties 30 days after it is issued.

(e) If, before such an initial decision becomes final, the defendant files a motion with the ALJ, and serves a copy on the agency, seeking to reopen on the grounds that extraordinary circumstances prevented the defendant from filing a timely answer, the initial decision shall be stayed pending the ALJ's decision on the motion. The ALJ shall permit the agency a reasonable amount of time, not less than 15 calendar days, to respond to the defendant's motion.

(f) If, on such motion, the defendant can demonstrate extraordinary circumstances excusing the failure to file a timely answer, the ALJ shall withdraw the initial decision, if such a decision has been issued pursuant to paragraph (c) of this section, and shall grant the defendant an opportunity to answer the complaint.

(g) A decision of the ALJ denying a defendant's motion under paragraph (e) of this section is not subject to reconsideration under § 16.38.

(h) The defendant may appeal to the authority head the decision denying a motion to reopen by filing a notice of appeal with the authority head within 15 days after the ALJ denies the motion. The timely filing of a notice of appeal shall stay the initial decision until the authority head decides the issue.

(i) If the defendant files a timely notice of appeal with the authority head, the ALJ shall forward the record of the proceeding to the authority head.

(j) The authority head shall decide expeditiously, and based solely on the record before the ALJ, whether extraordinary circumstances excuse the defendant's failure to file a timely answer.

(k) If the authority head decides that extraordinary circumstances excuse the defendant's failure to file a timely

§ 16.11

answer, the authority head shall remand the case to the ALJ with instructions to grant the defendant an opportunity to file an answer.

(l) If the authority head decides that the defendant's failure to file a timely answer is not excused, the authority head shall reinstate the initial decision of the ALJ, which shall become final and binding upon the parties 30 days after the authority head issues such decision.

§ 16.11 Referral of complaint and answer to the ALJ.

Upon receipt of an answer, the reviewing official shall file the complaint and answer with the ALJ.

§ 16.12 Notice of hearing.

(a) When the ALJ receives the complaint and answer, the ALJ shall promptly serve a notice of hearing upon the defendant and the agency representative in the manner prescribed by § 16.8.

(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 names, addresses, and telephone numbers of the representatives of the Government and of the defendant, if any; and

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

§ 16.13 Parties to the hearing.

(a) The parties to the hearing shall be the defendant and the authority.

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

§ 16.14 Separation of functions.

(a) The investigating official, the reviewing official, and any employee or agent of the authority who takes part in investigating, preparing, or presenting a particular case may not, in such case or a factually related case—

31 CFR Subtitle A (7-1-05 Edition)

(1) Participate in the hearing as the ALJ;

(2) Participate or advise in the initial decision or the review of the initial decision by the authority head, except as a witness or a representative in public proceedings; or

(3) Make the collection of penalties and assessments under 31 U.S.C. 3806.

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

(c) Except as provided in paragraph (a) of this section, the representative for the Government may be an attorney employed anywhere in the Legal Division of the Department, or an attorney employed in the offices of either the investigating official or the reviewing official; however the representative of the Government may not participate or advise in the review of the initial decision by the authority head.

§ 16.15 Ex parte contacts.

No party or person (except employees of the ALJ's office) shall communicate in any way with the ALJ on any matter at issue in a case, unless on notice and opportunity for all parties to participate. This provision does not prohibit a person or party from inquiring about the status of a case or asking routine questions concerning administrative functions or procedures.

§ 16.16 Disqualification of reviewing official or ALJ.

(a) A reviewing official or ALJ in a particular case may disqualify himself or herself at any time.

(b) A party may file with the ALJ a motion for disqualification of a reviewing official or an ALJ. Such motion shall be accompanied by an affidavit alleging personal bias or other reason for disqualification.

(c) Such motion and affidavit shall be filed promptly upon the party's discovery of reasons requiring disqualification, or such objections shall be deemed waived.

(d) Such affidavit shall state specific facts that support the party's assertion that personal bias or other reason for disqualification exists and the time