

§ 1264.105

(1) A statement of the reviewing official's reasons for issuing a complaint;

(2) A statement specifying the evidence that supports the allegations of liability;

(3) A description of the claims or statements upon which the allegations of liability are based;

(4) An estimate of the amount of money or the value of property, services, or other benefits requested or demanded in violation of § 1264.102 of this part;

(5) A statement of any exculpatory or mitigating circumstances that may relate to the claims or statements known by the reviewing official or the investigating official; and

(6) A statement that there is a reasonable prospect of collecting an appropriate amount of penalties and assessments. Such a statement may be based upon information then known or an absence of any information indicating that the person may be unable to pay such an amount.

§ 1264.105 Prerequisites for issuing a complaint.

(a) The reviewing official may issue a complaint under § 1264.106 only if—

(1) The Department of Justice approves the issuance of a complaint in a written statement described in 31 U.S.C. 3803(b)(1); and

(2) In the case of allegations of liability under § 1264.102(a) with respect to a claim, the reviewing official determines that, with respect to such claim or a group of related claims submitted at the same time such claim is submitted (as defined in paragraph (b) of this section), the amount of money or the value of property or services demanded or requested in violation of § 1264.102(a) does not exceed \$150,000.

(b) For the purposes of this section, a related group of claims submitted at the same time shall include only those claims arising from the same transaction (e.g., grant, loan, application, or contract) that are submitted simultaneously as part of a single request, demand, or submission.

(c) Nothing in this section shall be construed to limit the reviewing official's authority to join in a single complaint against a person claims that are unrelated or were not submitted simul-

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taneously, regardless of the amount of money or the value of property or services demanded or requested.

§ 1264.106 Complaint.

(a) On or after the date the Department of Justice approves the issuance of a complaint in accordance with 31 U.S.C. 3803(b)(1), the reviewing official may serve a complaint on the defendant, as provided in § 1264.107.

(b) The complaint shall state—

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

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

(3) Instructions for filing an answer to request a hearing, including a specific statement of the defendant's right to request a hearing by filing an answer and to be represented by a representative; and

(4) That failure to file an answer within 30 days of service of the complaint will result in the imposition of the maximum amount of penalties and assessments without right to appeal as provided in § 1264.109.

(c) At the same time the defendant is served with the complaint, he or she shall also be served with a—

(1) Notice to Consent to the Chairperson of the NASA Board of Contract Appeals (BCA), or Designee, as presiding officer;

(2) Copy of this part 1264 of 14 CFR.

[52 FR 39498, Oct. 22, 1987, as amended at 54 FR 599, Jan. 9, 1989]

§ 1264.107 Service of complaint.

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

(1) Affidavit of the individual servicing the complaint by delivery;

(2) A United States Postal Service return receipt card acknowledging receipt; or

(3) Written acknowledgment of receipt by the defendant or his/her representative.

[52 FR 39498, Oct. 22, 1987, as amended at 54 FR 600, Jan. 9, 1989]

§ 1264.108 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 the name, address, and telephone number of the person authorized by the defendant to act as defendant's representative, if any.

(c) If the defendant is unable to file an answer meeting the requirements of paragraph (b) of this section within the time provided, the defendant may, before the expiration of 30 days from service of the complaint, file with the reviewing official a general answer denying liability and requesting a hearing, and a request for an extension of time within which to file an answer meeting the requirements of paragraph (b) of this section. The reviewing official, as provided in § 1264.110, shall file promptly with the presiding officer the complaint, the general answer denying liability, and the request for an extension of time. For good cause shown, the presiding officer may grant the defendant up to 30 additional days within which to file an answer meeting the requirements of paragraph (b) of this section.

[52 FR 39498, Oct. 22, 1987, as amended at 54 FR 600, Jan. 9, 1989]

§ 1264.109 Default upon failure to file an answer.

(a) If the defendant does not file an answer within the time prescribed in § 1264.108(a), the reviewing official may refer the complaint to the presiding officer.

(b) Upon the referral of the complaint, the presiding officer shall promptly serve on defendant, in the manner prescribed in § 1264.107, a notice that an initial decision will be issued under this section.

(c) If the defendant fails to answer, the presiding officer shall assume the facts alleged in the complaint to be true and, if such facts establish liability under § 1264.102, the presiding officer 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 presiding officer seeking to reopen on the grounds that extraordinary circumstances prevented the defendant from filing an answer, the initial decision shall be stayed pending the presiding officer's decision on the motion.

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

(g) A decision of the presiding officer denying a defendant's motion under paragraph (e) of this section is not subject to reconsideration under § 1264.137.

(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 presiding officer denies the motion. The timely filing of a