

§ 901.37

20 CFR Ch. VIII (4-1-08 Edition)

§ 901.37 Answer.

(a) *Filing.* The respondent's answer shall be filed in writing within the time specified in the complaint or notice of initiation of the proceeding, unless, on application, the time is extended by the Executive Director or the Administrative Law Judge. The answer shall be filed in duplicate with the Executive Director.

(b) *Contents.* The answer shall contain a statement of facts which constitute the grounds of defense and it shall specifically admit or deny each allegation set forth in the complaint, except that the respondent shall not deny a material allegation in the complaint which he/she knows to be true, or state that he/she is without sufficient information to form a belief when in fact the respondent possesses such information. The respondent may also state affirmatively special matters of defense.

(c) *Failure to deny or answer allegations in the complaint.* Every allegation in the complaint which is not denied in the answer shall be deemed to be admitted and may be considered as proven, and no further evidence in respect of such allegation need be adduced at a hearing. Failure to file an answer within the time prescribed in the notice to the respondent, except as the time for answer is extended by the Executive Director or the Administrative Law Judge, shall constitute an admission of the allegations of the complaint and a waiver of hearing, and the Administrative Law Judge may make a decision by default, without a hearing or further procedure.

§ 901.38 Supplemental charges.

If it appears to the Executive Director that the respondent in his/her answer falsely and in bad faith denies a material allegation of fact in the complaint or states that the respondent has no knowledge sufficient to form a belief when he/she in fact possesses such knowledge, or if it appears that the respondent has knowingly introduced false testimony during proceedings for suspension or termination of his/her enrollment, the Executive Director may file supplemental charges against the respondent. Such supplemental charges may be tried with

other charges in the case, provided the respondent is given due notice thereof and is afforded an opportunity to prepare a defense thereto.

§ 901.39 Reply to answer.

No reply to the respondent's answer shall be required, but the Executive Director may file a reply at his/her discretion or at the request of the Administrative Law Judge.

§ 901.40 Proof; variance; amendment of pleadings.

In the case of a variance between the allegations in a pleading and the evidence adduced in support of the pleading, the Administrative Law Judge may order or authorize amendment of the pleading to conform to the evidence, provided that the party who would otherwise be prejudiced by the amendment is given reasonable opportunity to meet the allegations of the pleading as amended. The Administrative Law Judge shall make findings on any issue presented by the pleadings as so amended.

§ 901.41 Motions and requests.

Motions and requests may be filed with the Executive Director or with the Administrative Law Judge.

§ 901.42 Representation.

A respondent or proposed respondent may appear at conference or hearing in person or may be represented by counsel or other representative. The Executive Director may be represented by an attorney or other employee of the Treasury Department.

§ 901.43 Administrative Law Judge.

(a) *Appointment.* An administrative law judge, appointed as provided by section 11 of the Administrative Procedure Act, 60 Stat. 244 (5 U.S.C. 3105), shall conduct proceedings upon complaints for the suspension or termination of enrolled actuaries.

(b) *Powers of Administrative Law Judge.* Among other powers, the Administrative Law Judge shall have authority, in connection with any suspension or termination proceeding of an enrolled actuary, to do the following:

(1) Administer oaths and affirmations;