

§ 190.211

49 CFR Ch. I (10–1–02 Edition)

§ 190.211 Hearing.

(a) A request for a hearing provided for in this part must be accompanied by a statement of the issues that the respondent intends to raise at the hearing. The issues may relate to the allegations in the notice, the proposed corrective action (including a proposed amendment, a proposed compliance order, or a proposed hazardous facility order), or the proposed civil penalty amount. A respondent's failure to specify an issue may result in waiver of the respondent's right to raise that issue at the hearing. The respondent's request must also indicate whether or not the respondent will be represented by counsel at the hearing.

(b) A telephone hearing will be held if the amount of the proposed civil penalty or the cost of the proposed corrective action is less than \$10,000, unless the respondent submits a written request for an in-person hearing. Hearings are held in a location agreed upon by the presiding official, OPS and the respondent.

(c) An attorney from the Office of the Chief Counsel, Research and Special Programs Administration, serves as the presiding official at the hearing.

(d) The hearing is conducted informally without strict adherence to rules of evidence. The respondent may submit any relevant information and material and call witnesses on the respondent's behalf. The respondent may also examine the evidence and witnesses presented by the government. No detailed record of a hearing is prepared.

(e) Upon request by respondent, and whenever practicable, the material in the case file pertinent to the issues to be determined is provided to the respondent 30 days before the hearing. The respondent may respond to or rebut this material at the hearing.

(f) During the hearing, the respondent may offer any facts, statements, explanations, documents, testimony or other items which are relevant to the issues under consideration.

(g) At the close of the respondent's presentation, the presiding official may present or allow the presentation of any OPS rebuttal information. The respondent may then respond to that information.

(h) After the evidence in the case has been presented, the presiding official shall permit argument on the issues under consideration.

(i) The respondent may also request an opportunity to submit further written material for inclusion in the case file. The presiding official shall allow a reasonable time for the submission of the material and shall specify the date by which it must be submitted. If the material is not submitted within the time prescribed, the case shall proceed to final action without the material.

(j) After submission of all materials during and after the hearing, the presiding official shall prepare a written recommendation as to final action in the case. This recommendation, along with any material submitted during and after the hearing, shall be included in the case file which is forwarded to the Associate Administrator, OPS for final administrative action.

[45 FR 20413, Mar. 17, 1980, as amended by Amdt. 190-3, 56 FR 31090, July 9, 1991; Amdt. 190-6, 61 FR 18514, Apr. 26, 1996; Amdt. 190-7, 61 FR 27792, June 3, 1996]

§ 190.213 Final order.

(a) After a hearing under §190.211 or, if no hearing has been held, after expiration of the 30 day response period prescribed in §190.209, the case file of an enforcement proceeding commenced under §190.207 is forwarded to the Associate Administrator, OPS for issuance of a final order.

(b) The case file of an enforcement proceeding commenced under §190.207 includes:

(1) The inspection reports and any other evidence of alleged violations;

(2) A copy of the notice of probable violation issued under §190.207;

(3) Material submitted by the respondent in accord with §190.209 in response to the notice of probable violation;

(4) The Regional Director's evaluation of response material submitted by the respondent and recommendation for final action to be taken under this section; and

(5) In cases involving a §190.211 hearing, any material submitted during and after the hearing and the presiding official's recommendation for final action to be taken under this section.