

Environmental Protection Agency

§ 209.3

- 209.13 Consolidation.
- 209.14 Motions.
- 209.15 Intervention.
- 209.16 Late intervention.
- 209.17 Amicus curiae.
- 209.18 Administrative law judge.
- 209.19 Informal settlement and consent agreement.
- 209.20 Conferences.
- 209.21 Primary discovery (exchange of witness lists and documents).
- 209.22 Other discovery.
- 209.23 Trade secrets and privileged information.
- 209.24 Default order.
- 209.25 Accelerated decision; dismissal.
- 209.26 Evidence.
- 209.27 Interlocutory appeal.
- 209.28 Record.
- 209.29 Proposed findings, conclusions.
- 209.30 Decision of the administrative law judge.
- 209.31 Appeal from the decision of the administrative law judge.
- 209.32 Review of the administrative law judge's decision in absence of appeal.
- 209.33 Decision on appeal or review.
- 209.34 Reconsideration.
- 209.35 Conclusion of hearing.
- 209.36 Judicial review.

AUTHORITY: Sec. 11, Noise Control Act of 1972 (42 U.S.C. 4910) and additional authority as specified.

SOURCE: 43 FR 34132, Aug. 3, 1978, unless otherwise noted.

Subpart A—Rules of Practice Governing Hearings for Orders Issued Under Section 11(d) of the Noise Control Act

§ 209.1 Scope.

These rules of practice govern all proceedings conducted in the issuance of an order under section 11(d) of the Noise Control Act of 1972, 42 U.S.C. 4910.

§ 209.2 Use of number and gender.

In these rules of practice, words in the singular number apply to the plural and words in the masculine gender apply to the feminine and vice versa.

§ 209.3 Definitions.

All terms not defined in this section shall have the meaning given them in the Act.

(a) *Act* means the Noise Control Act of 1972 (42 U.S.C. 4901 *et seq.*).

(b) *Administrative law judge* means an administrative law judge appointed

under 5 U.S.C. 3105 (see also 5 CFR part 930, as amended by 37 FR 16787). “Administrative law judge” is synonymous with “hearing examiner” as used in Title 5 of the United States Code.

(c) *Administrator* means the Administrator of the Environmental Protection Agency or his or her delegate.

(d) *Agency* means the U.S. Environmental Protection Agency.

(e) *Complainant* means the Agency acting through any person authorized by the Administrator to issue a complaint to alleged violators of the Act. The complainant shall not be the judicial officer or the Administrator.

(f) *Hearing clerk* means the hearing clerk of the Environmental Protection Agency.

(g) *Intervener* means a person who files a motion to be made a party under § 209.15 or § 209.16, and whose motion is approved.

(h) *Party* means the Environmental Protection Agency, the respondent(s) and any interveners.

(i) *Person* means any individual, corporation, partnership, or association, and includes any officer, employee, department, agency or instrumentality of the United States, a State, or any political subdivision of a State.

(j) *Respondent* means any person against whom a complaint has been issued under this subpart.

(k) *Environmental Appeals Board* means the Board within the Agency described in § 1.25 of this title. The Administrator delegates authority to the Environmental Appeals Board to issue final decisions in appeals filed under this part. An appeal directed to the Administrator, rather than to the Environmental Appeals Board, will not be considered. This delegation of authority to the Environmental Appeals Board does not preclude the Environmental Appeals Board from referring an appeal or a motion filed under this part to the Administrator for decision when the Environmental Appeals Board, in its discretion, deems it appropriate to do so. When an appeal or motion is referred to the Administrator, all parties shall be so notified and the rules in this part referring to the Environmental Appeals Board shall

§ 209.4

be interpreted as referring to the Administrator.

[43 FR 34132, Aug. 3, 1978, as amended at 57 FR 5344, Feb. 13, 1992]

§ 209.4 Issuance of complaint.

If the complainant has reason to believe that a person has violated any provision of the Act or the regulations, he or she may institute a proceeding for the issuance of a remedial order by issuing a complaint.

§ 209.5 Complaint.

(a) *Contents.* The complaint shall include (1) specific reference to each provision of the Act or regulations which respondent is alleged to have violated; (2) a brief statement of the factual basis for alleging each violation; (3) the proposed order issued under section 11(d) of the Act to remedy the violation, signed by the Assistant Administrator for Enforcement, with notice that the order shall be effective 20 days after service of the complaint unless respondent requests a hearing under § 209.6; (4) notice of respondent's right to request a hearing on any material fact or issue of law contained in the complaint, or on the appropriateness of the proposed order; and (5) a statement of whether the respondent must submit a remedial plan pursuant to § 209.8.

(b) *Amendment of the complaint.* At any time prior to the filing of an answer, the complainant may amend the complaint as a matter of right. Respondent shall have twenty (20) additional days from the date of service of the amended complaint to file an answer. At any time after the filing of an answer, the complaint may be amended upon motion granted by the administrative law judge.

(c) *Withdrawal of the complaint.* Where, on the basis of new information or evidence, the complainant concludes that no violation of the Act or the regulations has been committed by the respondent or that the issuance of the complaint was otherwise inappropriate, the complainant may withdraw the complaint without prejudice at any stage in the proceeding.

(d) *Service of complaint.* (1) Service of the complaint shall be made on the respondent personally (or on his or her

40 CFR Ch. I (7-1-03 Edition)

representative), or by certified mail, return receipt requested.

(2) Service upon a domestic or foreign corporation or upon a partnership or another unincorporated association which is subject to suit under a common name shall be made by personal service or certified mail, return receipt requested, directed to an officer or partner, a managing or general agent, or any other agent authorized by appointment or by Federal or State law to receive service of process.

(3) Proof of service of the complaint shall be made by affidavit of the person making personal service, or by properly executed return receipt.

§ 209.6 Answer.

(a) *General.* Where respondent (1) contests any material fact alleged in the complaint to constitute a violation of the Act or regulations; or (2) contends that the remedial order proposed in the complaint is inappropriate to the violation; or (3) contends that he or she is entitled to judgment as a matter of law, he or she shall file a written answer with the complainant. Any answer must be filed with the complainant within twenty (20) days after service of the complaint. Initiation of informal conferences with the Agency under § 209.19 does not add to the twenty (20) day period. The time period in which to file an answer may be extended by the Administrator upon motion.

(b) *Contents of the answer.* The answer shall clearly and directly admit, deny or explain each of the factual allegations contained in the complaint with regard to which respondent has any knowledge. Whenever an allegation is denied, the answer shall state briefly the facts upon which the denial is based. The answer shall also state (1) whether a hearing is requested, (2) the facts respondent intends to place at issue, and (3) the circumstances or arguments which are alleged to constitute the grounds of defense.

(c) *Hearing upon the issues.* A hearing upon the issues raised by the complaint and answer shall be held upon written demand of respondent.

(d) *Failure to plead specifically.* A respondent's failure to plead specifically