

**§ 209.207**

the time for filing for good cause shown.

(b) The reply must be in writing, signed by the person filing it, and state with respect to each factual allegation whether it is admitted or denied. Even though formally denied, a factual allegation set forth in a notice of investigation is considered to be admitted for purposes of the proceeding unless:

- (1) Opposed by the affidavit of an individual having personal knowledge of the subject matter;
- (2) Challenged as defective on its face together with a supporting explanation as to why it is believed to be defective; or
- (3) Otherwise actively put at issue through the submission of relevant evidence.

(c) The reply must set forth any affirmative defenses and include a statement of the form and nature of proof by which those defenses are to be established.

(d) If it is necessary to respond to an amendment to the notice of investigation, the respondent may amend the reply concerning the substance of matters contained in the amendment to the notice at any time before the issuance of an order under § 209.211.

(e) If the respondent elects not to contest one or more factual allegations, he or she should so state in the reply. An election not to contest a factual allegation is an admission of that allegation solely for the purpose of issuing a compliance order. That election constitutes a waiver of hearing as to that allegation but does not, by itself, constitute a waiver of the right to be heard on other issues. In connection with a statement of election not to contest a factual allegation, the respondent may propose an appropriate order for issuance by the Administrator or propose the negotiation of a consent order.

(f) Failure of the respondent to file a reply within the period provided constitutes a waiver of his or her right to appear and contest the allegation and authorizes the Administrator, without further notice to the respondent, to find the facts to be as alleged in the notice of proposed violation and to issue an appropriate order directing compliance.

**49 CFR Ch. II (10-1-03 Edition)**

**§ 209.207 Consent order.**

(a) At any time before the issuance of an order under § 209.211, the Chief Counsel and the respondent may execute an agreement proposing the entry by consent of an order directing compliance. The Administrator may accept the proposed order by signing it. If the Administrator rejects the proposed order, he or she directs that the proceeding continue.

(b) An agreement submitted to the Administrator under this section must include:

- (1) A proposed compliance order suitable for the Administrator's signature;
- (2) An admission of all jurisdictional facts;
- (3) An express waiver of further procedural steps and of all right to seek judicial review or otherwise challenge or contest the validity of the order; and
- (4) An acknowledgment that the notice of investigation may be used to construe the terms of the order.

**§ 209.209 Hearing.**

(a) When a respondent files a reply contesting allegations in a notice of investigation issued under § 209.203 or when the FRA and the respondent fail to agree upon an acceptable consent order, the hearing officer designated by the Chief Counsel convenes and presides over a hearing on the proposed compliance order.

- (b) The presiding official may:
- (1) Administer oaths and affirmations;
  - (2) Issue subpoenas as provided by § 209.7;
  - (3) Adopt procedures for the submission of evidence;
  - (4) Take or cause depositions to be taken;
  - (5) Rule on offers of proof and receive relevant evidence;
  - (6) Examine witnesses at the hearing;
  - (7) Convene, recess, reconvene, adjourn and otherwise regulate the course of the hearing;
  - (8) Hold conferences for settlement, simplification of the issues or any other proper purpose; and
  - (9) Take any other action authorized by or consistent with the provisions of this subpart pertaining to compliance orders and permitted by law which may