

§ 16.201

(2) Waive hearing and appeal the Director's determination in writing to the Associate Administrator, as provided in § 16.33;

(3) File, jointly with a complainant, a motion to withdraw the complaint and to dismiss the proposed compliance action; or

(4) Submit, jointly with the agency attorney, a proposed consent order under § 16.243(e).

(d) If the respondent fails to request a hearing or to file an appeal in writing within the time periods provided in paragraph (c) of this section, the Director's determination becomes final.

Subpart F—Hearings

§ 16.201 Notice and order of hearing.

(a) If a respondent is provided the opportunity for hearing in an initial determination and does not waive hearing, the Deputy Chief Counsel within 10 days after the respondent elects a hearing will issue and serve on the respondent and complainant a hearing order. The hearing order will set forth:

(1) The allegations in the complaint, or notice of investigation, and the chronology and results of the investigation preliminary to the hearing;

(2) The relevant statutory, judicial, regulatory, and other authorities;

(3) The issues to be decided;

(4) Such rules of procedure as may be necessary to supplement the provisions of this part;

(5) The name and address of the person designated as hearing officer, and the assignment of authority to the hearing officer to conduct the hearing in accordance with the procedures set forth in this part; and

(6) The date by which the hearing officer is directed to issue an initial decision.

(b) Where there are no genuine issues of material fact requiring oral examination of witnesses, the hearing order may contain a direction to the hearing officer to conduct a hearing by submission of briefs and oral argument without the presentation of testimony or other evidence.

§ 16.202 Powers of a hearing officer.

In accordance with the rules of this subpart, a hearing officer may:

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(a) Give notice of, and hold, pre-hearing conferences and hearings;

(b) Administer oaths and affirmations;

(c) Issue subpoenas authorized by law and issue notices of deposition requested by the parties;

(d) Limit the frequency and extent of discovery;

(e) Rule on offers of proof;

(f) Receive relevant and material evidence;

(g) Regulate the course of the hearing in accordance with the rules of this part to avoid unnecessary and duplicative proceedings in the interest of prompt and fair resolution of the matters at issue;

(h) Hold conferences to settle or to simplify the issues by consent of the parties;

(i) Dispose of procedural motions and requests;

(j) Examine witnesses; and

(k) Make findings of fact and conclusions of law, and issue an initial decision.

§ 16.203 Appearances, parties, and rights of parties.

(a) *Appearances.* Any party may appear and be heard in person.

(1) Any party may be accompanied, represented, or advised by an attorney licensed by a State, the District of Columbia, or a territory of the United States to practice law or appear before the courts of that State or territory, or by another duly authorized representative.

(2) An attorney, or other duly authorized representative, who represents a party shall file a notice of appearance in accordance with § 16.13.

(b) *Parties and agency participation.*

(1) The parties to the hearing are the respondent (s) named in the hearing order, the complainant(s), and the agency.

(2) Unless otherwise specified in the hearing order, the agency attorney will serve as prosecutor for the agency from the date of issuance of the Director's determination providing an opportunity for hearing.