

§ 13.75 Reply or request for hearing.

(a) Within 30 days after service upon the alleged violator of a notice of proposed order of compliance, the alleged violator may—

(1) File a reply in writing with the official who issued the notice; or

(2) Request a hearing in accordance with Subpart D of this part.

(b) If a reply is filed, as to any charges not dismissed or not subject to a consent order of compliance, the alleged violator may, within 10 days after receipt of notice that the remaining charges are not dismissed, request a hearing in accordance with Subpart D of this part.

(c) Failure of the alleged violator to file a reply or request a hearing within the period provided in paragraph (a) or (b) of this section—

(1) Constitutes a waiver of the right to a hearing and the right to an appeal, and

(2) Authorizes the official who issued the notice to find the facts to be as alleged in the notice and to issue an appropriate order directing compliance, without further notice or proceedings.

§ 13.77 Consent order of compliance.

(a) At any time before the issuance of an order of compliance, the official who issued the notice and the alleged violator may agree to dispose of the case by the issuance of a consent order of compliance by the official.

(b) A proposal for a consent order submitted to the official who issued the notice under this section must include—

(1) A proposed order of compliance;

(2) An admission of all jurisdictional facts;

(3) An express waiver of right to further procedural steps and of all rights to judicial review;

(4) An incorporation by reference of the notice and an acknowledgement that the notice may be used to construe the terms of the order of compliance; and

(5) If the issuance of a consent order has been agreed upon after the filing of a request for hearing in accordance with Subpart D of this part, the proposal for a consent order shall include a request to be filed with the Hearing Officer withdrawing the request for a

hearing and requesting that the case be dismissed.

§ 13.79 Hearing.

If an alleged violator requests a hearing in accordance with § 13.75, the procedure of Subpart D of this part applies. At the close of the hearing, the Hearing Officer, on the record or subsequently in writing, sets forth the Hearing Officer's findings and conclusion and the reasons therefor, and either—

(a) Dismisses the notice of proposed order of compliance; or

(b) Issues an order of compliance.

§ 13.81 Order of immediate compliance.

(a) Notwithstanding §§ 13.73 through 13.79, the Chief Counsel, the Assistant Chief Counsel, Enforcement, the Assistant Chief Counsel, Europe, Africa, and Middle East Area Office, or a Regional Counsel may issue an order of immediate compliance, which is effective upon issuance, if the person who issues the order finds that—

(1) There is strong probability that a violation is occurring or is about to occur;

(2) The violation poses a substantial risk to health or to safety of life or property; and

(3) The public interest requires the avoidance or amelioration of that risk through immediate compliance and waiver of the procedures afforded under §§ 13.73 through 13.79.

(b) An order of immediate compliance is served promptly upon the person against whom the order is issued by telephone or telegram, and a written statement of the relevant facts and the legal basis for the order, including the findings required by paragraph (a) of this section, is served promptly by personal service or by mail.

(c) The official who issued the order of immediate compliance may rescind or suspend the order if it appears that the criteria set forth in paragraph (a) of this section are no longer satisfied, and, when appropriate, may issue a notice of proposed order of compliance under § 13.73 in lieu thereof.

(d) If at any time in the course of a proceeding commenced in accordance with § 13.73 the criteria set forth in

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paragraph (a) of this section are satisfied, the official who issued the notice may issue an order of immediate compliance, even if the period for filing a reply or requesting a hearing specified in § 13.75 has not expired.

(e) Within three days after receipt of service of an order of immediate compliance, the alleged violator may request a hearing in accordance with Subpart D of this part and the procedure in that subpart will apply except that—

(1) The case will be heard within fifteen days after the date of the order of immediate compliance unless the alleged violator requests a later date;

(2) The order will serve as the complaint; and

(3) The Hearing Officer shall issue his decision and order dismissing, reversing, modifying, or affirming the order of immediate compliance on the record at the close of the hearing.

(f) The filing of a request for hearing in accordance with paragraph (e) of this section does not stay the effectiveness of an order of immediate compliance.

(g) At any time after an order of immediate compliance has become effective, the official who issued the order may request the United States Attorney General, or the delegate of the Attorney General, to bring an action for appropriate relief in accordance with § 13.25.

[Doc. No. 18884, 44 FR 63723, Nov. 5, 1979, as amended by Amdt. 13-19, 54 FR 39290, Sept. 25, 1989; Amdt. 13-29, 62 FR 46866, Sept. 4, 1997]

§ 13.83 Appeal.

(a) Any party to the hearing may appeal from the order of the Hearing Officer by filing a notice of appeal with the Administrator within 20 days after the date of issuance of the order.

(b) Any person against whom an order of immediate compliance has been issued in accordance with § 13.81 or the official who issued the order of immediate compliance may appeal from the order of the Hearing Officer by filing a notice of appeal with the Administrator within three days after the date of issuance of the order by the Hearing Officer.

(c) Unless the Administrator expressly so provides, the filing of a notice of appeal does not stay the effectiveness of an order of immediate compliance.

(d) If a notice of appeal is not filed from the order of compliance issued by a Hearing Officer, such order is the final agency order of compliance.

(e) Any person filing an appeal authorized by paragraph (a) of this section shall file an appeal brief with the Administrator within 40 days after the date of the issuance of the order, and serve a copy on the other party. Any reply brief must be filed within 20 days after service of the appeal brief. A copy of the reply brief must be served on the appellant.

(f) Any person filing an appeal authorized by paragraph (b) of this section shall file an appeal brief with the Administrator with the notice of appeal and serve a copy on the other party. Any reply brief must be filed within 3 days after receipt of the appeal brief. A copy of the reply brief must be served on the appellant.

(g) On appeal the Administrator reviews the available record of the proceeding, and issues an order dismissing, reversing, modifying or affirming the order of compliance or the order of immediate compliance. The Administrator's order includes the reasons for the action.

(h) In cases involving an order of immediate compliance, the Administrator's order on appeal is issued within ten days after the filing of the notice of appeal.

§ 13.85 Filing, service and computation of time.

Filing and service of documents under this subpart shall be accomplished in accordance with § 13.43 except service of orders of immediate compliance under § 13.81(b); and the periods of time specified in this subpart shall be computed in accordance with § 13.44.

§ 13.87 Extension of time.

(a) The official who issued the notice of proposed order of compliance, for