

60101 *et seq.*, the Administrator, RSPA or the Associate Administrator, OPS may require testing of portions of pipeline facilities that have been involved in, or affected by, an accident. However, before exercising this authority, the Administrator, RSPA or the Associate Administrator, OPS shall make every effort to negotiate a mutually acceptable plan with the owner of those facilities and, where appropriate, the National Transportation Safety Board for performing the testing.

(e) When the information obtained from an inspection or from other appropriate sources indicates that further OPS action is warranted, the OPS issues a warning letter under §190.205 or initiates one or more of the enforcement proceedings prescribed in §§190.207 through 190.235.

[45 FR 20413, Mar. 17, 1980, as amended by Amdt. 190-3, 56 FR 31090, July 9, 1991; Amdt. 190-6, 61 FR 18513, Apr. 26, 1996; Amdt. 190-7, 61 FR 27792, June 3, 1996; Amdt. 190-7, 63 FR 7722, Feb. 17, 1998]

#### § 190.205 Warning letters.

Upon determining that a probable violation of 49 U.S.C. 60101 *et seq.* or any regulation or order issued thereunder has occurred, the Associate Administrator, OPS, may issue a Warning Letter notifying the owner or operator of the probable violation and advising the owner or operator to correct it or be subject to enforcement action under §§190.207 through 190.235.

[Amdt. 190-6, 61 FR 38403, July 24, 1996]

#### § 190.207 Notice of probable violation.

(a) Except as otherwise provided by this subpart, a Regional Director begins an enforcement proceeding by serving a notice of probable violation on a person charging that person with a probable violation of 49 U.S.C. 60101 *et seq.* or any regulation or order issued thereunder.

(b) A notice of probable violation issued under this section shall include:

(1) Statement of the provisions of the laws, regulations or orders which the respondent is alleged to have violated and a statement of the evidence upon which the allegations are based;

(2) Notice of response options available to the respondent under § 190.209;

(3) If a civil penalty is proposed under §190.221, the amount of the proposed civil penalty and the maximum civil penalty for which respondent is liable under law; and

(4) If a compliance order is proposed under §190.217, a statement of the remedial action being sought in the form of a proposed compliance order.

(c) The Associate Administrator, OPS may amend a notice of probable violation at any time prior to issuance of a final order under §190.213. If an amendment includes any new material allegations of fact or proposes an increased civil penalty amount or new or additional remedial action under §190.217, the respondent shall have the opportunity to respond under §190.209.

[45 FR 20413, Mar. 27, 1980, as amended by Amdt. 190-6, 61 FR 18513, Apr. 26, 1996]

#### § 190.209 Response options.

Within 30 days of receipt of a notice of probable violation, the respondent shall respond to the Regional Director who issued the notice in the following way:

(a) When the notice contains a proposed civil penalty—

(1) Pay the proposed civil penalty as provided in §190.227 and close the case with prejudice to the respondent;

(2) Submit written explanations, information or other materials in answer to the allegations or in mitigation of the proposed civil penalty; or

(3) Request a hearing under §190.211.

(b) When the notice contains a proposed compliance order—

(1) Agree to the proposed compliance order;

(2) Request the execution of a consent order under §190.219;

(3) Object to the proposed compliance order and submit written explanations, information or other materials in answer to the allegations in the notice of probable violation; or

(4) Request a hearing under §190.211.

(c) Failure of the respondent to respond in accordance with paragraph (a) of this section or, when applicable, paragraph (c) of this section, constitutes a waiver of the right to contest the allegations in the notice of probable violation and authorizes the Associate Administrator, OPS, without further notice to the respondent, to

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find facts to be as alleged in the notice of probable violation and to issue a final order under §190.213.

[45 FR 20413, Mar. 27, 1980, as amended by Amdt. 190-1, 53 FR 1635, Jan. 21, 1988; Amdt. 190-6, 61 FR 18513, Apr. 26, 1996; Amdt. 190-7, 61 FR 27792, June 3, 1996; Amdt. 190-7, 63 FR 7722, Feb. 17, 1998]

### § 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,

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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;