

(4) The Regional Director's evaluation of response material submitted by the respondent and recommendation for final action to be taken under this section; and

(5) In cases involving a §190.211 hearing, any material submitted during and after the hearing and the presiding official's recommendation for final action to be taken under this section.

(c) Based on a review of a case file described in paragraph (b) of this section, the Associate Administrator, OPS shall issue a final order that includes—

(1) A statement of findings and determinations on all material issues, including a determination as to whether each alleged violation has been proved;

(2) If a civil penalty is assessed, the amount of the penalty and the procedures for payment of the penalty, provided that the assessed civil penalty may not exceed the penalty proposed in the notice of probable violation; and

(3) If a compliance order is issued, a statement of the actions required to be taken by the respondent and the time by which such actions must be accomplished.

(d) Except as provided by §190.215, an order issued under this section regarding an enforcement proceeding is considered final administrative action on that enforcement proceeding.

(e) It is the policy of the Associate Administrator, OPS to issue a final order under this section within 45 days of receipt of the case file, unless it is found impracticable to take action within that time. In cases where it is so found and the delay beyond that period is expected to be substantial, notice of that fact and the date by which it is expected that action will be taken is issued to the respondent.

[45 FR 20413, Mar. 27, 1980, as amended by Amdt. 190-6, 61 FR 18514, Apr. 26, 1996]

**§ 190.215 Petitions for reconsideration.**

(a) A respondent may petition the Associate Administrator, OPS for reconsideration of a final order issued under §190.213. It is requested, but not required, that three copies be submitted. The petition must be received no later than 20 days after service of the final order upon the respondent. Petitions received after that time will not be considered. The petition must

contain a brief statement of the complaint and an explanation as to why the effectiveness of the final order should be stayed.

(b) If the respondent requests the consideration of additional facts or arguments, the respondent must submit the reasons they were not presented prior to issuance of the final order.

(c) The Associate Administrator, OPS does not consider repetitious information, arguments, or petitions.

(d) The filing of a petition under this section stays the payment of any civil penalty assessed. However, unless the Associate Administrator, OPS otherwise provides, the order, including any required corrective action, is not stayed.

(e) The Associate Administrator, OPS may grant or deny, in whole or in part, any petition for reconsideration without further proceedings. In the event the Associate Administrator, OPS reconsiders a final order, a final decision on reconsideration may be issued without further proceedings, or, in the alternative, additional information, data, and comment may be requested by the Associate Administrator, OPS as deemed appropriate.

(f) It is the policy of the Associate Administrator, OPS to issue notice of the action taken on a petition for reconsideration within 20 days after receipt of the petition, unless it is found impracticable to take action within that time. In cases where it is so found and delay beyond that period is expected to be substantial, notice of that fact and the date by which it is expected that action will be taken is issued to the respondent.

[Amdt. 190-6, 61 FR 18514, Apr. 26, 1996, as amended by Amdt 190-7, 61 FR 27792, June 3, 1996]

COMPLIANCE ORDERS

**§ 190.217 Compliance orders generally.**

When the Associate Administrator, OPS has reason to believe that a person is engaging in conduct which involves a violation of the 49 U.S.C. 60101 *et seq.* or any regulation issued thereunder, and if the nature of the violation, and the public interest warrant, the Associate Administrator, OPS may conduct proceedings under §§190.207

## § 190.219

through 190.213 of this part to determine the nature and extent of the violations and to issue an order directing compliance.

[Amdt. 190-6, 61 FR 18514, Apr. 26, 1996]

### § 190.219 Consent order.

(a) At any time before the issuance of a compliance order under §190.213 the Associate Administrator, OPS and the respondent may agree to dispose of the case by joint execution of a consent order. Upon such joint execution, the consent order shall be considered a final order under §190.213.

(b) A consent order executed under paragraph (a) of this section shall include:

(1) An admission by the respondent of all jurisdictional facts;

(2) An express waiver of further procedural steps and of all right to seek judicial review or otherwise challenge or contest the validity of that order;

(3) An acknowledgement that the notice of probable violation may be used to construe the terms of the consent order; and

(4) A statement of the actions required of the respondent and the time by which such actions shall be accomplished.

[45 FR 20413, Mar. 27, 1980, as amended by Amdt. 190-6, 61 FR 18514, Apr. 26, 1996]

## CIVIL PENALTIES

### § 190.221 Civil penalties generally.

When the Associate Administrator, OPS has reason to believe that a person has committed an act which is a violation of any provision of the 49 U.S.C. 60101 *et seq.* or any regulation or order issued thereunder, proceedings under §§190.207 through 190.213 may be conducted to determine the nature and extent of the violations and to assess and, if appropriate, compromise a civil penalty.

[Amdt. 190-6, 61 FR 18515, Apr. 26, 1996]

### § 190.223 Maximum penalties.

(a) Any person who is determined to have violated a provision of 49 U.S.C. 60101 *et seq.* or any regulation or order issued thereunder, is subject to a civil penalty not to exceed \$25,000 for each violation for each day the violation

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continues except that the maximum civil penalty may not exceed \$500,000 for any related series of violations.

(b) Any person who knowingly violates a regulation or order under this subchapter applicable to offshore gas gathering lines issued under the authority of 49 U.S.C. 5101 *et seq* is liable for a civil penalty of not more than \$25,000 for each violation, and if any such violation is a continuing one, each day of violation constitutes a separate offense.

(c) Any person who is determined to have violated any standard or order under 49 U.S.C. 60103 shall be subject to a civil penalty of not to exceed \$50,000, which penalty shall be in addition to any other penalties to which such person may be subject under paragraph (a) of this section.

(d) No person shall be subject to a civil penalty under this section for the violation of any requirement of this subchapter and an order issued under §190.217, §190.219 or §190.233 if both violations are based on the same act.

[45 FR 20413, Mar. 27, 1980, as amended by Amdt. 190-2, 54 FR 32344, Aug. 7, 1989; Amdt. 190-6, 61 FR 18515, Apr. 26, 1996; 61 FR 38403, July 24, 1996]

### § 190.225 Assessment considerations.

The Associate Administrator, OPS assesses a civil penalty under this part only after considering:

(a) The nature, circumstances and gravity of the violation;

(b) The degree of the respondent's culpability;

(c) The respondent's history of prior offenses;

(d) The respondent's ability to pay;

(e) Any good faith by the respondent in attempting to achieve compliance;

(f) The effect on the respondent's ability to continue in business; and

(g) Such other matters as justice may require.

[45 FR 20413, Mar. 27, 1980, as amended by Amdt. 190-6, 61 FR 18515, Apr. 26, 1996]

### § 190.227 Payment of penalty.

(a) Except for payments exceeding \$10,000, payment of a civil penalty proposed or assessed under this subpart may be made by certified check or