

§ 386.14

(2) Copies of all evidence upon which petitioner relies in the form set out in § 386.49;

(3) All legal and other arguments which the petitioner wishes to make in support of his/her position;

(4) A request for oral hearing, if one is desired, which must set forth material factual issues believed to be in dispute;

(5) Certification that the reply has been filed in accordance with § 386.31; and

(6) Any other pertinent material.

(b) Failure to submit a petition as specified in paragraph (a) of this section shall constitute a waiver of the right to petition for review of the determination or letter of disqualification. In these cases, the determination or disqualification issued automatically becomes the final decision of the Assistant Administrator 30 days after the time to submit the reply or petition to review has expired, unless the Assistant Administrator orders otherwise.

(c) If the petition does not request a hearing, the Assistant Administrator may issue a final decision and order based on the evidence and arguments submitted.

§ 386.14 Replies and request for hearing: Civil forfeiture proceedings.

(a) *Time for reply.* The respondent must reply within 15 days after a Claim Letter is served, or 30 days after a Notice of Investigation is received.

(b) *Contents of reply.* The reply must contain the following:

(1) An admission or denial of each allegation of the claim or notice and a concise statement of facts constituting each defense;

(2) If the respondent contests the claim or notice, a request for an oral hearing or notice of intent to submit evidence without an oral hearing must be contained in the reply. A request for a hearing must list all material facts believed to be in dispute. Failure to request a hearing within 15 days after the Claim Letter is served, or 30 days in the case of a Notice of Investigation, shall constitute a waiver of any right to a hearing;

(3) A statement of whether the respondent wishes to negotiate the terms

49 CFR Ch. III (10-1-04 Edition)

of payment or settlement of the amount claimed, or the terms and conditions of the order; and

(4) Certification that the reply has been served in accordance with § 386.31.

(c) *Submission of evidence.* If a notice of intent to submit evidence without oral hearing is filed, or if no hearing is requested under paragraph (b)(2) of this section, and the respondent contests the claim or the contents of the notice, all evidence must be served in written form no later than the 40th day following service of the Claim Letter or Notice of Investigation. Evidence must be served in the form specified in § 386.49.

(d) *Complainant's request for a hearing.* If the respondent files a notice of intent to submit evidence without formal hearing, the complainant may, within 15 days after that reply is filed, submit a request for a formal hearing. The request must include a listing of all factual issues believed to be in dispute.

(e) *Failure to reply or request a hearing.* If the respondent does not reply to a Claim Letter within the time prescribed in this section, the Claim Letter becomes the final agency order in the proceeding 25 days after it is served. When no reply to the Notice of Investigation is received, the Assistant Administrator may, on motion of any party, issue a final order in the proceeding.

(f) *Non-compliance with final order.* Failure to pay the civil penalty as directed in a final order constitutes a violation of that order subjecting the respondent to an additional penalty as prescribed in subpart G of this part.

[50 FR 40306, Oct. 2, 1985, as amended at 56 FR 10183, Mar. 11, 1991]

§ 386.15 [Reserved]

§ 386.16 Action on petitions or replies.

(a) *Replies not requesting an oral hearing.* If the reply submitted does not request an oral hearing, the Assistant Administrator may issue a final decision and order based on the evidence and arguments submitted.

(b) *Request for oral hearing.* If a request for an oral hearing has been filed, the Assistant Administrator shall determine whether there are any material factual issues in dispute. If there

are, he/she shall call the matter for a hearing. If there are none, he/she shall issue an order to that effect and set a time for submission of argument by the parties. Upon the submission of argument he/she shall decide the case.

(c) *Settlement of civil forfeitures.* (1) When negotiations produce an agreement as to the amount or terms of payment of a civil penalty or the terms and conditions of an order, a settlement agreement shall be drawn and signed by the respondent and the Assistant Administrator. Such settlement agreement must contain the following:

- (i) The statutory basis of the claim;
- (ii) A brief statement of the violations;
- (iii) The amount claimed and the amount paid;
- (iv) The date, time, and place and form of payment;
- (v) A statement that the agreement is not binding on the agency until executed by the Assistant Administrator; and
- (vi) A statement that failure to pay in accordance with the terms of the agreement which has been adopted as a Final Order will result in the loss of any reductions in penalties for claims found to be valid, and the original amount claimed will be due immediately.

(2) Any settlement agreement may contain a consent order.

(3) An executed settlement agreement is binding on the respondent and the claimant according to its terms. The respondent's consent to a settlement agreement that has not been executed by the Assistant Administrator may not be withdrawn for a period of 30 days after it is executed by the respondent.

[50 FR 40306, Oct. 2, 1985, as amended at 56 FR 10183, Mar. 11, 1991]

§ 386.17 Intervention.

After the matter is called for hearing and before the date set for the hearing to begin, any person may petition for leave to intervene. The petition is to be served on the administrative law judge. The petition must set forth the reasons why the petitioner alleges he/she is entitled to intervene. The petition must be served on all parties in accordance

with § 386.31. Any party may file a response within 10 days of service of the petition. The administrative law judge shall then determine whether to permit or deny the petition. The petition will be allowed if the administrative law judge determines that the final decision could directly and adversely affect the petitioner or the class he/she represents, and if the petitioner may contribute materially to the disposition of the proceedings and his/her interest is not adequately represented by existing parties. Once admitted, a petitioner is a party for the purpose of all subsequent proceedings.

Subpart C—Compliance and Consent Orders

§ 386.21 Compliance order.

(a) When a respondent contests a Notice of Investigation or fails to reply to such notice, the final order disposing of the proceeding may contain a compliance order.

(b) A compliance order shall be executed by the Assistant Administrator and shall contain the following:

- (1) A statement of jurisdictional facts;
- (2) Findings of facts, or reference thereto in an accompanying decision, as determined by a hearing officer or by the Assistant Administrator upon respondent's failure to reply to the notice, which establish the violations charged;
- (3) A specific direction to the respondent to comply with the regulations violated within time limits provided;
- (4) Other directions to the respondent to take reasonable measures, in the time and manner specified, to assure future compliance;
- (5) A statement of the consequences for failure to meet the terms of the order;
- (6) Provision that the Notice of Investigation and the final decision of the hearing officer or Assistant Administrator may be used to construe the terms of the order; and
- (7) A statement that the order constitutes final agency action, subject to review as provided in 49 U.S.C. 521(b)(8) for violations of regulations issued under the authority of 49 U.S.C. 31502,