

§ 386.15

§ 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The respondent's consent to a settlement agreement that has not been executed by the Assistant Administrator may not be withdrawn for a period of 30

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days after it is executed by the respondent.

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

EFFECTIVE DATE NOTE: At 70 FR 28481, May 18, 2005, §386.16 was revised, effective November 14, 2005. For the convenience of the user, the revised text is set forth as follows:

§ 386.16 Action on replies to the Notice of Claim.

(a) *Requests to submit written evidence without a hearing.* Where respondent has elected to submit written evidence in accordance with §386.14(d)(1)(iii)(A):

(1) Agency Counsel must serve all written evidence and argument in support of the Notice of Claim no later than 60 days following service of respondent's reply. The written evidence and argument must be served on the Assistant Administrator in accordance with §§386.6 and 386.7. The submission must include all pleadings, notices, and other filings in the case to date.

(2) Respondent will, not later than 45 days following service of Agency Counsel's written evidence and argument, serve its written evidence and argument on the Assistant Administrator in accordance with §§386.6 and 386.7.

(3) Agency Counsel may file a written response to respondent's submission. Any such submission must be filed within 20 days of service of respondent's submission.

(4) All written evidence submitted by the parties must conform to the requirements of §386.49.

(5) Following submission of evidence and argument as outlined in this section, the Assistant Administrator may issue a Final Agency Order and order based on the evidence and arguments submitted, or may issue any other order as may be necessary to adjudicate the matter.

(b) *Requests for hearing.* (1) If a request for a formal or informal hearing has been filed, the Assistant Administrator will determine whether there exists a dispute of a material fact at issue in the matter. If so, the matter will be set for hearing in accordance with respondent's reply. If it is determined that there does not exist a dispute of a material fact at issue in the matter, the Assistant Administrator may issue a decision based on the written record, or may request the submission of further evidence or argument.

(2) If a respondent requests a formal or informal hearing in its reply, the Field Administrator must serve upon the Assistant Administrator and respondent a notice of consent or objection with a basis to the request within 60 days of service of respondent's reply. Failure to serve an objection within the time allotted may result in referral of the matter to hearing.

(3) *Requests for formal hearing.* Following the filing of an objection with basis, the Field Administrator must serve a motion for Final Agency Order pursuant to §386.36 unless otherwise ordered by the Assistant Administrator. The motion must set forth the reasons why the Field Administrator is entitled to judgment as a matter of law. Respondent must, within 45 days of service of the motion for Final Agency Order, submit and serve a response to the Field Administrator's motion. After reviewing the record, the Assistant Administrator will either set the matter for hearing by referral to the Office of Hearings or issue a Final Agency Order based upon the submissions.

(4) *Requests for informal hearing.*

(i) If the Field Administrator objects with basis to a request for an informal hearing, he/she must serve the objection, a copy of the Notice of Claim, and a copy of respondent's reply, on the respondent and Assistant Administrator, pursuant to paragraph (b)(2) of this section. Based upon the Notice of Claim, the reply, and the objection with basis, the Assistant Administrator will issue an order granting or denying the request for informal hearing.

(A) *Informal hearing granted.* If the request for informal hearing is granted by the Assistant Administrator, a Hearing Officer will be assigned to hear the matter and will set forth the date, time and location for hearing. No further motions will be entertained, and no discovery will be allowed. At hearing, all parties may present evidence, written and oral, to the Hearing Officer, following which the Hearing Officer will issue a report to the Assistant Administrator containing findings of fact and recommending a disposition of the matter. The report will serve as the sole record of the proceedings. The Assistant Administrator may issue a Final Agency Order adopting the report, or issue other such orders as he/she may deem appropriate. By participating in an informal hearing, respondent waives its right to a formal hearing.

(B) *Informal hearing denied.* If the request for informal hearing is denied, the Field Administrator must serve a motion for Final Agency Order pursuant to §386.36, unless otherwise directed by the Assistant Administrator. The motion must set forth the reasons why the Field Administrator is entitled to judgment as a matter of law. Respondent must, within 45 days of service of the motion for Final Agency Order, submit and serve a response to the Field Administrator's motion. After reviewing the record, the Assistant Administrator will set the matter for formal hearing by referral to the Office of Hearings, or will issue a Final Agency Order based upon the submissions.

(C) Nothing in this section shall limit the Assistant Administrator's authority to refer any matter for formal hearing, even in in-

stances where respondent seeks only an informal hearing.

§ 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.

§ 386.18 Payment of the claim.

EFFECTIVE DATE NOTE: At 70 FR 28482, May 18, 2005, §386.18 was added, effective November 14, 2005.

(a) Payment of the full amount claimed may be made at any time before issuance of a Final Agency Order. After the issuance of a Final Agency Order, claims are subject to interest, penalties, and administrative charges in accordance with 31 U.S.C. 3717; 49 CFR part 89; and 31 CFR 901.9.

(b) If respondent elects to pay the full amount as its response to the Notice of Claim, payment must be served upon the Field Administrator at the Service Center designated in the Notice of Claim within 30 days following service of the Notice of Claim. No written reply is necessary if respondent elects the payment option during the 30-day reply period. Failure to serve full payment within 30 days of service of the Notice of Claim when this option has been chosen may constitute a default and may result in the Notice of