

## § 2.203

the order if it finds that there is adequate evidence to support immediate effectiveness. An order upholding immediate effectiveness will constitute the final agency action on immediate effectiveness. An order setting aside immediate effectiveness will be referred promptly to the Commission itself and will not be effective pending further order of the Commission.

(ii) The presiding officer may, on motion by the staff or any other party to the proceeding, where good cause exists, delay the hearing on the immediately effective order at any time for such periods as are consistent with the due process rights of the licensee and other affected parties.

(d) An answer may consent to the entry of an order in substantially the form proposed in the order with respect to all or some of the actions proposed in the order. The consent, in the answer or other written document, of the licensee or other person to whom the order has been issued to the entry of an order shall constitute a waiver by the licensee or other person of a hearing, findings of fact and conclusions of law, and of all right to seek Commission and judicial review or to contest the validity of the order in any forum as to those matters which have been consented to or agreed to or on which a hearing has not been requested. An order that has been consented to shall have the same force and effect as an order made after hearing by a presiding officer or the Commission, and shall be effective as provided in the order.

(e) If the order involves the modification of a part 50 license and is a backfit, the requirements of § 50.109 of this chapter shall be followed, unless the licensee has consented to the action required.

[56 FR 40684, Aug. 15, 1991, as amended at 57 FR 20198, May 12, 1992]

## § 2.203 Settlement and compromise.

At any time after the issuance of an order designating the time and place of hearing in a proceeding to modify, suspend, or revoke a license or for other action, the staff and a licensee or other person may enter into a stipulation for the settlement of the proceeding or the compromise of a civil penalty. The stipulation or compromise shall be sub-

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ject to approval by the designated presiding officer or, if none has been designated, by the Chief Administrative Law Judge, according due weight to the position of the staff. The presiding officer, or if none has been designated, the Chief Administrative Law Judge, may order such adjudication of the issues as he may deem to be required in the public interest to dispose of the proceeding. If approved, the terms of the settlement or compromise shall be embodied in a decision or order settling and discontinuing the proceeding.

[36 FR 16896, Aug. 26, 1971]

## § 2.204 Demand for information.

(a) The Commission may issue to a licensee or other person subject to the jurisdiction of the Commission a demand for information for the purpose of determining whether an order under § 2.202 should be issued, or whether other action should be taken, which demand will:

(1) Allege the violations with which the licensee or other person is charged, or the potentially hazardous conditions or other facts deemed to be sufficient ground for issuing the demand; and

(2) Provide that the licensee must, or the other person may, file a written answer to the demand for information under oath or affirmation within twenty (20) days of its date, or such other time as may be specified in the demand for information.

(b) A licensee to whom the Commission has issued a demand for information under this section must respond to the demand by filing a written answer under oath or affirmation; any other person to whom the Commission has issued a demand for information may, in its discretion, respond to the demand by filing a written answer under oath or affirmation. The licensee's answer shall specifically admit or deny each allegation or charge made in the demand for information, and shall set forth the matters of fact and law on which the licensee relies. A person other than a licensee may answer as described above, or by setting forth its reasons why the demand should not have been issued and, if the requested information is not provided, the reasons why it is not provided.

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(c) Upon review of the answer filed pursuant to paragraph (a)(2) of this section, or if no answer is filed, the Commission may institute a proceeding pursuant to 10 CFR 2.202 to take such action as may be proper.

(d) An answer may consent to the entry of an order pursuant to § 2.202 in substantially the form proposed in the demand for information. Such consent shall constitute a waiver as provided in § 2.202(d).

[56 FR 40685, Aug. 15, 1991]

### § 2.205 Civil penalties.

(a) Before instituting any proceeding to impose a civil penalty under section 234 of the Act, the Executive Director for Operations or the Executive Director's designee, as appropriate, shall serve a written notice of violation upon the person charged. This notice may be included in a notice issued pursuant to § 2.201 or § 76.70(d) of this chapter. The notice of violation shall specify the date or dates, facts, and the nature of the alleged act or omission with which the person is charged, and shall identify specifically the particular provision or provisions of the law, rule, regulation, license, permit, part 76 certificate of compliance or compliance plan, or cease and desist order involved in the alleged violation and must state the amount of each proposed penalty. The notice of violation shall also advise the person charged that the civil penalty may be paid in the amount specified therein, or the proposed imposition of the civil penalty may be protested in its entirety or in part, by a written answer, either denying the violation or showing extenuating circumstances. The notice of violation shall advise the person charged that upon failure to pay a civil penalty subsequently determined by the Commission, if any, unless compromised, remitted, or mitigated, be collected by civil action, pursuant to Section 234c of the Act.

(b) Within twenty (20) days of the date of a notice of violation or other time specified in the notice, the person charged may either pay the penalty in the amount proposed or answer the notice of violation. The answer to the notice of violation shall state any facts, explanations, and arguments, denying

the charges of violation, or demonstrating any extenuating circumstances, error in the notice of violation, or other reason why the penalty should not be imposed and may request remission or mitigation of the penalty.

(c) If the person charged with violation fails to answer within the time specified in paragraph (b) of this section, an order may be issued imposing the civil penalty in the amount set forth in the notice of violation described in paragraph (a) of this section.

(d) If the person charged with violation files an answer to the notice of violation, the Executive Director for Operations or the Executive Director's designee, upon consideration of the answer, will issue an order dismissing the proceeding or imposing, mitigating, or remitting the civil penalty. The person charged may, within twenty (20) days of the date of the order or other time specified in the order, request a hearing.

(e) If the person charged with violation requests a hearing, the Commission will issue an order designating the time and place of hearing.

(f) If a hearing is held, an order will be issued after the hearing by the presiding officer or the Commission dismissing the proceeding or imposing, mitigating, or remitting the civil penalty.

(g) The Executive Director for Operations or the Executive Director's designee, as appropriate may compromise any civil penalty, subject to the provisions of § 2.203.

(h) If the civil penalty is not compromised, or is not remitted by the Executive Director for Operations or the Executive Director's designee, as appropriate, the presiding officer, or the Commission, and if payment is not made within ten (10) days following either the service of the order described in paragraph (c) or (f) of this section, or the expiration of the time for requesting a hearing described in paragraph (d) of this section, the Executive Director for Operations or the Executive Director's designee, as appropriate, may refer the matter to the Attorney General for collection.

(i) Except when payment is made after compromise or mitigation by the Department of Justice or as ordered by