

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 instances where respondent seeks only an informal hearing.

[70 FR 28481, May 18, 2005]

#### § 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.

(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 Claim, including the civil penalty assessed by the Notice of Claim, becoming the Final Agency Order in the proceeding pursuant to §386.14(c).

(c) Unless objected to in writing, submitted at the time of payment, payment of the full amount in response to the Notice of Claim constitutes an admission by the respondent of all facts