

### Subpart E—Orders of Compliance Under the Hazardous Materials Transportation Act

#### § 13.71 Applicability.

Whenever the Chief Counsel, the Assistant Chief Counsel, Enforcement, the Assistant Chief Counsel, Europe, Africa, and Middle East Area Office, or a Regional Counsel has reason to believe that a person is engaging in the transportation or shipment by air of hazardous materials in violation of the Hazardous Materials Transportation Act, or any regulation or order issued under it for which the FAA exercises enforcement responsibility, and the circumstances do not require the issuance of an order of immediate compliance, he may conduct proceedings pursuant to section 109 of that Act (49 U.S.C. 1808) to determine the nature and extent of the violation, and may thereafter issue an order directing compliance.

[Doc. No. 18884, 44 FR 63723, Nov. 5, 1979, as amended by Amdt. 13-19, 54 FR 39290, Sept. 25, 1989; Amdt. 13-29, 62 FR 46866, Sept. 4, 1997]

#### § 13.73 Notice of proposed order of compliance.

A compliance order proceeding commences when the Chief Counsel, the Assistant Chief Counsel, Enforcement, the Assistant Chief Counsel, Europe, Africa, and Middle East Area Office, or a Regional Counsel sends the alleged violator a notice of proposed order of compliance advising the alleged violator of the charges and setting forth the remedial action sought in the form of a proposed order of compliance.

[Doc. No. 18884, 44 FR 63723, Nov. 5, 1979, as amended by Amdt. 13-19, 54 FR 39290, Sept. 25, 1989; Amdt. 13-29, 62 FR 46866, Sept. 4, 1997]

#### § 13.75 Reply or request for hearing.

(a) Within 30 days after service upon the alleged violator of a notice of proposed order of compliance, the alleged violator may—

- (1) File a reply in writing with the official who issued the notice; or
- (2) Request a hearing in accordance with Subpart D of this part.

(b) If a reply is filed, as to any charges not dismissed or not subject to a consent order of compliance, the alleged violator may, within 10 days after receipt of notice that the remaining charges are not dismissed, request a hearing in accordance with Subpart D of this part.

(c) Failure of the alleged violator to file a reply or request a hearing within the period provided in paragraph (a) or (b) of this section—

- (1) Constitutes a waiver of the right to a hearing and the right to an appeal, and
- (2) Authorizes the official who issued the notice to find the facts to be as alleged in the notice and to issue an appropriate order directing compliance, without further notice or proceedings.

#### § 13.77 Consent order of compliance.

(a) At any time before the issuance of an order of compliance, the official who issued the notice and the alleged violator may agree to dispose of the case by the issuance of a consent order of compliance by the official.

(b) A proposal for a consent order submitted to the official who issued the notice under this section must include—

- (1) A proposed order of compliance;
- (2) An admission of all jurisdictional facts;
- (3) An express waiver of right to further procedural steps and of all rights to judicial review;
- (4) An incorporation by reference of the notice and an acknowledgement that the notice may be used to construe the terms of the order of compliance; and

(5) If the issuance of a consent order has been agreed upon after the filing of a request for hearing in accordance with Subpart D of this part, the proposal for a consent order shall include a request to be filed with the Hearing Officer withdrawing the request for a hearing and requesting that the case be dismissed.

#### § 13.79 Hearing.

If an alleged violator requests a hearing in accordance with § 13.75, the procedure of Subpart D of this part applies. At the close of the hearing, the