

## Coast Guard, DHS

## § 20.311

answer must conform to the requirements of this subpart for filing and service.

(b) The person filing the answer shall, in the answer, either agree to the place of hearing proposed in the complaint or propose an alternative.

(c) Each answer must state whether the respondent intends to contest any of the allegations set forth in the complaint. It must include any affirmative defenses that the respondent intends to assert at the hearing. The answer must admit or deny each numbered paragraph of the complaint. If it states that the respondent lacks sufficient knowledge or information to admit or deny a particular numbered paragraph, it denies that paragraph. If it does not specifically deny a particular numbered paragraph, it admits that paragraph.

(d) A respondent's failure without good cause to file an answer admits each allegation made in the complaint.

### § 20.309 Motions.

(a) A person may apply for an order or ruling not specifically provided for in this subpart, but shall apply for it by motion. Each written motion must comply with the requirements of this subpart for form, filing, and service. Each motion must state clearly and concisely—

- (1) Its purpose, and the relief sought;
- (2) Any statutory or regulatory authority; and
- (3) The facts constituting the grounds for the relief sought.

(b) A proposed order may accompany a motion.

(c) Each motion must be in writing; except that one made at a hearing will be sufficient if stated orally upon the record, unless the ALJ directs that it be reduced to writing.

(d) Except as otherwise required by this part, a party shall file any response to a written motion 10 days or less after service of the motion. When a party makes a motion at a hearing, an oral response to the motion made at the hearing is timely.

(e) Unless the ALJ orders otherwise, the filing of a motion does not stay a proceeding.

(f) The ALJ will rule on the record either orally or in writing. She or he

may summarily deny any dilatory, repetitive, or frivolous motion.

### § 20.310 Default by respondent.

(a) The ALJ may find a respondent in default upon failure to file a timely answer to the complaint or, after motion, upon failure to appear at a conference or hearing without good cause shown.

(b) Each motion for default must conform to the rules of form, service, and filing of this subpart. Each motion must include a proposed decision and proof of service under section 20.304(d). The respondent alleged to be in default shall file a reply to the motion 20 days or less after service of the motion.

(c) Default by respondent constitutes, for purposes of the pending action only, an admission of all facts alleged in the complaint and a waiver of her or his right to a hearing on those facts.

(d) Upon finding a respondent in default, the ALJ shall issue a decision against her or him.

(e) For good cause shown, the ALJ may set aside a finding of default.

### § 20.311 Withdrawal or dismissal.

(a) An administrative proceeding may end in withdrawal without any act by an ALJ in any of the following ways:

(1) By the filing of a stipulation by all parties who have appeared in the proceeding.

(2) By the filing of a notice of withdrawal by the Coast Guard representative at any time before the respondent has served a responsive pleading.

(3) With respect to a complaint filed under section 311(b)(6) of the Federal Water Pollution Control Act (33 U.S.C. 1321(b)(6)) or section 109(d) of the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. 9609(b)), by the filing of—

(i) A notice of withdrawal by the Coast Guard representative at any time after the respondent has served a responsive pleading, but before the issuance of an order assessing or denying a class II civil penalty, together with

(ii) A certification by the representative that the filing of the notice is due to a request by the Attorney General—in accordance with subsection 10(d) of