

§ 386.17

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 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

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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 alleged in the Notice of Claim. Payment waives respondent's opportunity to further contest the claim, and will result in the Notice of Claim becoming the Final Agency Order.

[70 FR 28482, May 18, 2005]

Subpart C—Settlement Agreements

§ 386.22 Settlement agreements and their contents.

(a) *Settlement agreements.* (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 Field Administrator or his/her designee. 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 Field Administrator or his/her designee;
- (vi) A statement that failure to pay in accordance with the terms of the agreement or to comply with the terms of the agreement may result in the reinstatement of any penalties held in abeyance and may also result in the loss of any reductions in civil penalties asserted in the Notice of Claim, in which case the original amount asserted will be due immediately; and
- (vii) A statement that the agreement is the Final Agency Order.

(2) A settlement agreement may contain any conditions, actions, or provisions agreed by the parties to redress

the violations cited in the Notice of Claim or notice of violation.

(3) A settlement agreement accepted and approved by the Assistant Administrator or Administrative Law Judge is a Final Agency Order which is binding on all parties according to its terms. Consent to a settlement agreement which has not yet been approved by the Assistant Administrator or Administrative Law Judge may not be withdrawn for a period of 30 days.

(b) *Civil penalty proceedings not before agency decisionmaker.* When the parties have agreed to a settlement at any time prior to the case coming before the Agency decisionmaker, the parties may execute an appropriate agreement for disposing of the case. The agreement does not require approval by the Agency decisionmaker. The agreement becomes the Final Agency Order upon execution by the Field Administrator or his/her designee.

(c) *Civil penalty proceedings before agency decisionmaker.* When a respondent has agreed to a settlement of a civil penalty before a Final Agency Order has been issued, the parties may execute an appropriate agreement for disposal of the case by consent for the consideration of the Assistant Administrator. The agreement is filed with the Assistant Administrator, who may accept it, reject it and direct that proceedings in the case continue, or take such other action as he/she deems appropriate. If the Assistant Administrator accepts the agreement, he/she shall enter an order in accordance with its terms. The settlement agreement becomes the Final Agency Order as of the date the Assistant Administrator enters an order accepting the settlement agreement.

(d) *Civil penalty proceedings before Administrative Law Judge (ALJ).* When a respondent has agreed to a settlement of a civil penalty before the hearing is concluded, the parties may execute an appropriate agreement for disposing of the case by consent for the consideration of the ALJ. The agreement is filed with the ALJ who may accept it, reject it, and direct that proceedings in the case continue, or take such other action as he/she deems appropriate. If the ALJ accepts the agreement, he/she shall enter an order in accordance with

its terms. The settlement agreement becomes the Final Agency Order as per § 386.61.

(e) *Civil penalty proceedings before Hearing Officer.* When a respondent has agreed to a settlement of a civil penalty before the hearing is concluded, the parties may execute an appropriate agreement for disposal of the case for the consideration of the Hearing Officer. The agreement is filed with the Hearing Officer, who, within 20 days of receipt, will make a report and recommendation to the Assistant Administrator who may accept it, reject it, and direct that proceedings in the case continue, or take such other action as he/she deems appropriate. If the Assistant Administrator accepts the agreement, he/she will enter an order in accordance with its terms. The settlement agreement becomes the Final Agency Order as of the date the Assistant Administrator enters an order accepting the settlement agreement.

[70 FR 28482, May 18, 2005]

Subpart D—General Rules and Hearings

§ 386.31 Official notice.

Upon notification to all parties, the Assistant Administrator or Administrative Law Judge may take official notice of any fact or document not appearing in evidence in the record. Any party objecting to the official notice must file an objection within 10 days after service of the notice. If a Final Agency Order has been issued, and the decision rests on a material and disputable fact of which the Agency decisionmaker has taken official notice, a party may challenge the action of official notice in accordance with § 386.64 of this part.

[70 FR 28483, May 18, 2005]

§ 386.34 Motions.

(a) *General.* An application for an order or ruling not otherwise covered by these rules shall be by motion. All motions filed prior to the calling of the matter for a hearing shall be to the Assistant Administrator. All motions filed after the matter is called for hearing shall be to the administrative law judge.