

Department of Energy

§ 820.28

any civil penalty set forth in the Notice of Violation within 60 days of the filing of waiver unless the Director grants additional time.

(d) *Effect of request.* If a respondent files a request for an on-the-record adjudication, then an enforcement adjudication commences.

(e) *Effect of notice of intent.* If a respondent files a Notice of Intent, the Final Notice of Violation shall be deemed a Final Order enforceable against the respondent.

(f) *Amendment.* The Director may amend the Final Notice of Violation at any time before an action takes place pursuant to paragraph (b) of this section. An amendment shall add fifteen days to the time periods under paragraph (b) of this section.

(g) *Withdrawal.* The Director may withdraw the Final Notice of Violation, or any part thereof, at any time before an action under paragraph (b) of this section.

§ 820.26 Enforcement adjudication.

If a respondent files a request for an on-the-record adjudication, an enforcement adjudication is initiated and the Docketing Clerk shall notify the Secretary who shall appoint an Administrative Law Judge to be the Presiding Officer.

§ 820.27 Answer.

(a) *General.* If a respondent files a request for an on-the-record adjudication pursuant to § 820.25, a written answer to the Final Notice of Violation shall be filed at the same time the request is filed.

(b) *Contents of the answer.* The answer shall clearly and directly admit, deny or explain each of the factual allegations contained in the Final Notice of Violation with regard to which respondent has any knowledge, information or belief. Where respondent has no knowledge, information or belief of a particular factual allegation and so states, the allegation is deemed denied. The answer shall also state the circumstance or argument that is alleged to constitute the grounds of defense and the facts that respondent intends to place at issue.

(c) *Failure to admit, deny, or explain.* Failure of respondent to admit, deny,

or explain any material factual allegation contained in the Final Notice of Violation constitutes an admission of the allegation.

(d) *Amendment of the answer.* The respondent may amend the answer to the Final Notice of Violation upon motion granted by the Presiding Officer.

§ 820.28 Prehearing actions.

(a) *General.* The Presiding Officer shall establish a schedule for the adjudication and take such other actions as he determines appropriate to conduct the adjudication in a fair and expeditious manner.

(b) *Prehearing conference.* The Presiding Officer, at any time before a hearing begins, may direct the parties and their counsel, or other representatives, to appear at a conference before him to consider, as appropriate:

- (1) The settlement of the case;
- (2) The simplification of issues and stipulation of facts not in dispute;
- (3) The necessity or desirability of amendments to pleadings;
- (4) The exchange of exhibits;
- (5) The limitation of the number of expert or other witnesses;
- (6) Setting a time and place for the hearing; and
- (7) Any other matters that may expedite the disposition of the proceeding.

(c) *Exchange of witness lists and documents.* Unless otherwise ordered by the Presiding Officer, at least five (5) days before any prehearing conference, each party shall make available to all other parties, as appropriate, the names of the expert and other witnesses it intends to call, together with a brief narrative summary of their expected testimony, and copies of all documents and exhibits that each party intends to introduce into evidence. Documents and exhibits shall be marked for identification as ordered by the Presiding Officer. Documents that have not been exchanged and witnesses whose names have not been exchanged shall not be introduced into evidence or allowed to testify without permission of the Presiding Officer. The Presiding Officer shall allow the parties reasonable opportunity to review new evidence.

(d) *Prehearing conference order.* The Presiding Officer shall prepare an order incorporating any action taken at the