

a person alleging the violation of one or more provisions of the Federal hazardous material transportation law or any provision of this subchapter or subchapter C of this chapter, or any special permit, or order issued thereunder.

(b) A notice of probable violation issued under this section includes the following information:

(1) A citation of the provisions of the Federal hazardous material transportation law, an order issued thereunder, this subchapter, subchapter C of this chapter, or the terms of any special permit issued thereunder which the Office of Chief Counsel believes the respondent is violating or has violated.

(2) A statement of the factual allegations upon which the demand for remedial action, a civil penalty, or both, is based.

(3) A statement of the respondent's right to present written or oral explanations, information, and arguments in answer to the allegations and in mitigation of the sanction sought in the notice of probable violation.

(4) A statement of the respondent's right to request a hearing and the procedures for requesting a hearing.

(5) In addition, in the case of a notice of probable violation proposing a compliance order, a statement of the proposed actions to be taken by the respondent to achieve compliance.

(6) In addition, in the case of a notice of probable violation proposing a civil penalty:

(i) A statement of the maximum civil penalty for which the respondent may be liable;

(ii) The amount of the preliminary civil penalty being sought by the Office of Chief Counsel, constitutes the maximum amount the Chief Counsel may seek throughout the proceeding; and

(iii) A description of the manner in which the respondent makes payment of any money due the United States as a result of the proceeding.

(c) The Office of Chief Counsel may amend a notice of probable violation at any time before issuance of a compliance order or an order assessing a civil penalty. If the Office of Chief Counsel alleges any new material facts or seeks new or additional remedial action or an increase in the amount of the proposed

civil penalty, it issues a new notice of probable violation under this section.

[Amdt. 107-11, 48 FR 2651, Jan. 20, 1983, as amended at 50 FR 45730, Nov. 1, 1985; Amdt. 107-24, 56 FR 8624, Feb. 28, 1991; Amdt. 107-32, 59 FR 49131, Sept. 26, 1994; Amdt. 107-35, 60 FR 49108, Sept. 21, 1995; Amdt. 107-36, 61 FR 7184, Feb. 26, 1996]

#### § 107.313 Reply.

(a) Within 30 days of receipt of a notice of probable violation, the respondent must either:

(1) Admit the violation under § 107.315;

(2) Make an informal response under § 107.317; or

(3) Request a hearing under § 107.319.

(b) Failure of the respondent to file a reply as provided in this section constitutes a waiver of the respondent's right to appear and contest the allegations and authorizes the Chief Counsel, without further notice to the respondent, to find the facts to be as alleged in the notice of probable violation and issue an order directing compliance or assess a civil penalty, or, if proposed in the notice, both. Failure to request a hearing under paragraph (a)(3) of this section constitutes a waiver of the respondent's right to a hearing.

(c) Upon the request of the respondent, the Office of Chief Counsel may, for good cause shown and filed within the 30 days prescribed in the notice of probable violation, extend the 30-day response period.

#### § 107.315 Admission of violations.

(a) In responding to a notice of probable violation issued under § 107.311, the respondent may admit the alleged violations and agree to accept the terms of a proposed compliance order or to pay the amount of the preliminarily assessed civil penalty, or, if proposed in the notice, both.

(b) If the respondent agrees to the terms of a proposed compliance order, the Chief Counsel issues a final order prescribing the remedial action to be taken by the respondent.

(c) Payment of a civil penalty, when the amount of the penalty exceeds \$10,000, must be made by wire transfer, through the Federal Reserve Communications System (Fedwire), to the account of the U.S. Treasury. Detailed

## § 107.317

instructions on making payments by wire transfer may be obtained from the Financial Operations Division (AMZ-120), Federal Aviation Administration, Mike Monroney Aeronautical Center, P.O. Box 25082, Oklahoma City, OK 73125.

(d) Payment of a civil penalty, when the amount of the penalty is \$10,000 or less, must be made either by wire transfer, as set forth in paragraph (c) of this section, or certified check or money order payable to "U.S. Department of Transportation" and submitted to the Financial Operations Division (AMZ-120), Federal Aviation Administration, Mike Monroney Aeronautical Center, P.O. Box 25082, Oklahoma City, OK 73125.

[Amdt. 107-11, 48 FR 2651, Jan. 20, 1983, as amended by Amdt. 107-23, 57 FR 45453, Oct. 1, 1992; Amdt. 107-29, 58 FR 51527, Oct. 1, 1993; Amdt. 107-38, 61 FR 21100, May 9, 1996; 68 FR 52848, Sept. 8, 2003]

## § 107.317 Informal response.

(a) In responding to a notice of probable violation under §107.311, the respondent may submit to the official who issued the notice, written explanations, information, or arguments in response to the allegations, the terms of a proposed compliance order, or the amount of the preliminarily assessed civil penalty.

(b) The respondent may include in his informal response a request for a conference. Upon the request of the respondent, the conference may be either in person or by telephone. A request for a conference must set forth the issues the respondent will raise at the conference.

(c) Upon receipt of a request for a conference under paragraph (b) of this section, the Chief Counsel's Office, in consultation with the Associate Administrator, arranges for a conference as soon as practicable at a time and place of mutual convenience.

(d) The respondent's written explanations, information, and arguments as well as the respondent's presentation at a conference are considered by the Chief Counsel in reviewing the notice of probable violation. Based upon a review of the proceeding, the Chief Counsel may dismiss the notice of probable violation in whole or in part. If he does

## 49 CFR Ch. I (10-1-14 Edition)

not dismiss it in whole, he issues an order directing compliance or assessing a civil penalty, or, if proposed in the notice, both.

[Amdt. 107-11, 48 FR 2651, Jan. 20, 1983, as amended by Amdt. 107-23, 56 FR 66157, Dec. 20, 1991; 66 FR 45377, Aug. 28, 2001]

## § 107.319 Request for a hearing.

(a) In responding to a notice of probable violation under §107.311, the respondent may request a formal administrative hearing on the record before an Administrative Law Judge (ALJ) obtained by the Office of the Chief Counsel.

(b) A request for a hearing under paragraph (a) of this section must:

(1) State the name and address of the respondent and of the person submitting the request if different from the respondent;

(2) State which allegations of violations, if any, are admitted; and

(3) State generally the issues to be raised by the respondent at the hearing. Issues not raised in the request are not barred from presentation at the hearing; and

(4) Be addressed to the official who issued the notice.

(c) After a request for a hearing that complies with the requirements of paragraph (b) of this section, the Chief Counsel obtains an ALJ to preside over the hearing and notifies the respondent of this fact. Upon assignment of an ALJ, further matters in the proceeding generally are conducted by and through the ALJ, except that the Chief Counsel and respondent may compromise or settle the case under §107.327 of this subpart without order of the ALJ or voluntarily dismiss the case under Rule 41(a)(1) of the Federal Rules of Civil Procedure without order of the ALJ; in the event of such a compromise, settlement or dismissal, the Chief Counsel expeditiously will notify the ALJ thereof.

(d) At any time after requesting a formal administrative hearing but prior to the issuance of a decision and final order by the ALJ, the respondent may withdraw such request in writing, thereby terminating the jurisdiction