

§ 386.21

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.

Subpart C—Compliance and Consent Orders

EFFECTIVE DATE NOTE: At 70 FR 28478, May 18, 2005, the heading to subpart A was revised, effective November 14, 2005. For the convenience of the user, the revised text is set forth as follows:

Subpart C—Settlement Agreements

§ 386.21 Compliance order.

EFFECTIVE DATE NOTE: At 70 FR 28482, May 18, 2005, § 386.21 was removed, effective November 14, 2005.

(a) When a respondent contests a Notice of Investigation or fails to reply to such notice, the final order disposing of the proceeding may contain a compliance order.

(b) A compliance order shall be executed by the Assistant Administrator and shall contain the following:

(1) A statement of jurisdictional facts;

(2) Findings of facts, or reference thereto in an accompanying decision, as determined by a hearing officer or by the Assistant Administrator upon respondent's failure to reply to the notice, which establish the violations charged;

(3) A specific direction to the respondent to comply with the regulations violated within time limits provided;

(4) Other directions to the respondent to take reasonable measures, in the time and manner specified, to assure future compliance;

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(5) A statement of the consequences for failure to meet the terms of the order;

(6) Provision that the Notice of Investigation and the final decision of the hearing officer or Assistant Administrator may be used to construe the terms of the order; and

(7) A statement that the order constitutes final agency action, subject to review as provided in 49 U.S.C. 521(b)(8) for violations of regulations issued under the authority of 49 U.S.C. 31502, the Motor Carrier Safety Act of 1984 or sections 12002, 12003, 12004, 12005(b), or 12008(d)(2) of the Commercial Motor Vehicle Safety Act of 1986; or as provided in 5 U.S.C. 701 *et seq.*, for violations of regulations issued under the authority of 49 U.S.C. 5123 (hazardous materials proceedings) or 49 U.S.C. 31138–31139 (financial responsibility proceedings) or violations of the commercial regulations.

(c) *Notice of imminent hazard.* A compliance order may also contain notice that further violations of the same regulations may constitute an imminent hazard subjecting respondent to an order under subpart F of this part.

[56 FR 10183, Mar. 11, 1991, as amended at 65 FR 7756, Feb. 16, 2000]

§ 386.22 Consent order.

When a respondent has agreed to settlement of a civil forfeiture, and at any time before the hearing is concluded, the parties may execute an appropriate agreement for disposing of the case by consent for the consideration of the Assistant Administrator. The agreement is filed with the Assistant Administrator who may (a) accept it, (b) reject it and direct that proceedings in the case continue, or (c) 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.

[50 FR 40306, Oct. 2, 1985. Redesignated at 56 FR 10183, Mar. 11, 1991; 67 FR 61821, Oct. 2, 2002]

EFFECTIVE DATE NOTE: At 70 FR 28482, May 18, 2005, § 386.22 was revised, effective November 14, 2005. For the convenience of the user, the revised text is set forth as follows: