

§ 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;

49 CFR Ch. III (10–1–05 Edition)

(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:

§ 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.

§ 386.23 Content of consent order.

EFFECTIVE DATE NOTE: At 70 FR 28483, May 18, 2005, § 386.23 was removed, effective November 14, 2005.

(a) Every agreement filed with the Assistant Administrator under § 386.22 must contain:

(1) An order for the disposition of the case in a form suitable for the Assistant Administrator's signature that has been signed by the respondent;

(2) An admission of all jurisdictional facts;

(3) A waiver of further procedural steps, of the requirement that the decision or order must contain findings of fact and conclusions of law, and of all right to seek judicial review or otherwise challenge or contest the validity of the order;

(4) Provisions that the notice of investigation or settlement agreement