

support thereof. Any party desiring to oppose such a petition shall file an answer thereto within ten (10) days after service of the petition. The filing of a petition for reconsideration shall not stay the effective date of the Decision and Order or toll the running of any statutory time period affecting the decision or order unless specifically so ordered by the Administrator.

§ 511.57 Effective date of order.

(a) *Consent orders.* An order which has been issued following acceptance of an offer of settlement in accordance with § 511.26 becomes effective upon issuance.

(b) *Litigated orders.* All other orders become effective upon the expiration of the statutory period for court review specified in section 508(c)(1) of the Motor Vehicle Information and Cost Savings Act, title 15, U.S.C. section 2008(c)(1), Pub. L. 94-163, 89 Stat. 911, or, if a petition for review has been filed, upon court affirmation of the Administrator's order.

Subpart G—Settlement Procedure in Cases of Violation of Average Fuel Economy Standards

§ 511.61 Purpose.

This subpart establishes the procedures and requirements necessary to obtain a settlement of a case of violation of section 507 (1) or (2) of the Motor Vehicle Information and Cost Savings Act, as amended, Pub. L. 94-163, 89 Stat. 911 (15 U.S.C. section 2007(1)(2)). No settlement of such cases may be had except as in accordance with this subpart.

§ 511.62 Definitions.

Average fuel economy standard means an average fuel economy standard established by or pursuant to the Motor Vehicle Information and Cost Savings Act.

Insolvency means the inability to meet expenses when due.

Settlement means a compromise, modification, or remission of a civil penalty assessed under this part for a violation of an average fuel economy standard.

§ 511.63 Criteria for settlement.

Settlement of a case of violation of an average fuel economy standard is discretionary with the Administrator. The Administrator will consider settlement only to the extent:

(a) Necessary to prevent the insolvency or bankruptcy of the person seeking settlement, or

(b) That the violation of the average fuel economy standard resulted, as shown by the person seeking settlement, from an act of God, a strike, or fire, or

(c) That modification of a civil penalty assessed under this part is necessary to prevent lessening of competition, as determined and as certified by the Federal Trade Commission under section 508(b)(4) of the Motor Vehicle Information and Cost Savings Act, Pub. L. 94-163, 89 Stat. 911 (15 U.S.C. section 2008(b)(4)).

§ 511.64 Petitions for settlement; timing, contents.

(a) A petition seeking settlement under this subpart must be filed within 30 days after the issuance of a final order assessing a civil penalty for a violation of an average fuel economy standard.

(b)(1) A petition for settlement should be sufficient to allow the Administrator to determine that at least one of the criteria set out in § 511.63 is satisfied, and that the public interest would be served by settlement.

(2) A petition asserting that settlement is necessary to prevent bankruptcy or insolvency must include:

(i) Copies of all pertinent financial records, auditor's reports, and documents that show that the imposition of a civil penalty would cause insolvency, or would cause a company to do an act of bankruptcy, and

(ii) A payment schedule that would allow the petitioner to pay a civil penalty without resulting in insolvency or an act of bankruptcy.

(3) A petition asserting that the violation of the average fuel economy standard was caused by an act of God, fire, or strike must describe corrective and ameliorative steps taken to mitigate the effects of the act of God, fire, or strike.

§511.65

(4) A petition based on a certification by the Federal Trade Commission that modification of the civil penalty assessed is necessary to prevent a substantial lessening of competition must include a certified copy of:

(i) The application to the Federal Trade Commission for a certification under section 508(b)(4) of the Motor Vehicle Information and Cost Savings Act, Pub. L. 94-163, 89 Stat. 911 (15 U.S.C. 2008(b)(4)), and materials supporting the application.

(ii) The administrative record of any Federal Trade Commission proceeding held in regard to the application, and

(iii) The certification by the Federal Trade Commission.

(c) It is the policy of the National Highway Traffic Safety Administration that unconditional settlements of violations of average fuel economy standards are not in the public interest, and absent special and extraordinary circumstances, will not be allowed. All petitions for settlement shall contain a section proposing conditions for settlement. Conditions for settlement can be specific acts designed to lead to the reduction of automotive fuel consumption, which the petitioner is not otherwise required to perform pursuant to any statute, regulation, or administrative or judicial order, such as sponsoring public education programs, advertising, accelerating commercial application of technology, accelerating technology development programs, or making public the results of privately performed studies, surveys, or research activities.

§511.65 Public comment.

Notice and opportunity for comment are provided to the public in regard to settlements under this part. Subject to §511.66, notice of receipt of a petition for settlement is published in the FEDERAL REGISTER, and a copy of such petitions and any supporting information is placed in a public docket. Any settlement agreed to by the Administrator shall be placed in the public docket for 30 days so that interested persons may comment thereon. No settlement is binding until the completion of that thirty day period.

49 CFR Ch. V (10-1-06 Edition)

§ 511.66 Confidential business information.

The Administrator shall have authority to segregate from the public docket and to protect from public view information in support of a petition for settlement which has been determined to be confidential business information. The provisions of 15 U.S.C. 2005(d) pertaining to discretionary release by the Administrator of and to limited disclosure of information determined to be confidential business information shall apply to this section.

§511.67 Settlement order.

If, in accordance with this subpart, the Administrator allows a settlement of a case of violation of an average fuel economy standard, an order of settlement shall be issued, setting out the terms of the settlement, and containing a brief discussion of the factors underlying the exercise of the Administrator's discretion in allowing the settlement, including a discussion of comments received under §511.65. If the Administrator rejects a petition for settlement, the Administrator shall give written notice of the rejection and the reasons for the rejection to the parties and the Presiding Officer.

[53 FR 15783, May 3, 1988]

Subpart H—Appearances; Standards of Conduct

§511.71 Who may make appearances.

A party or participant may appear in person, or by a duly authorized officer, partner, regular employee, or other agent of this party or participant, or by or with counsel or other duly qualified representative, in any proceeding under this part.

§511.72 Authority for representation.

Any individual acting in a representative capacity in any adjudicative proceeding may be required by the Presiding Officer or the Administrator to show his or her authority to act in such capacity. A regular employee of a party who appears on behalf of the party shall be required by the Presiding Officer or the Administrator to show his or her authority to so appear.