

(e) *Failure to reply or request a hearing.* If the respondent does not reply to a Claim Letter within the time prescribed in this section, the Claim Letter becomes the final agency order in the proceeding 25 days after it is served. When no reply to the Notice of Investigation is received, the Assistant Administrator may, on motion of any party, issue a final order in the proceeding.

(f) *Non-compliance with final order.* Failure to pay the civil penalty as directed in a final order constitutes a violation of that order subjecting the respondent to an additional penalty as prescribed in subpart G of this part.

[50 FR 40306, Oct. 2, 1985, as amended at 56 FR 10183, Mar. 11, 1991]

§ 386.15 [Reserved]

§ 386.16 Action on petitions or replies.

(a) *Replies not requesting an oral hearing.* If the reply submitted does not request an oral hearing, the Assistant Administrator may issue a final decision and order based on the evidence and arguments submitted.

(b) *Request for oral hearing.* If a request for an oral hearing has been filed, the Assistant Administrator shall determine whether there are any material factual issues in dispute. If there are, he/she shall call the matter for a hearing. If there are none, he/she shall issue an order to that effect and set a time for submission of argument by the parties. Upon the submission of argument he/she shall decide the case.

(c) *Settlement of civil forfeitures.* (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 Assistant Administrator. 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 exe-

cuted by the Assistant Administrator; and

(vi) A statement that failure to pay in accordance with the terms of the agreement which has been adopted as a Final Order will result in the loss of any reductions in penalties for claims found to be valid, and the original amount claimed will be due immediately.

(2) Any settlement agreement may contain a consent order.

(3) An executed settlement agreement is binding on the respondent and the claimant according to its terms. The respondent's consent to a settlement agreement that has not been executed by the Assistant Administrator may not be withdrawn for a period of 30 days after it is executed by the respondent.

[50 FR 40306, Oct. 2, 1985, as amended at 56 FR 10183, Mar. 11, 1991]

§ 386.17 Intervention.

After the matter is called for hearing and before the date set for the hearing to begin, any person may petition for leave to intervene. The petition is to be served on the administrative law judge. The petition must set forth the reasons why the petitioner alleges he/she is entitled to intervene. The petition must be served on all parties in accordance with § 386.31. Any party may file a response within 10 days of service of the petition. The administrative law judge shall then determine whether to permit or deny the petition. The petition will be allowed if the administrative law judge determines that the final decision could directly and adversely affect the petitioner or the class he/she represents, and if the petitioner may contribute materially to the disposition of the proceedings and his/her interest is not adequately represented by existing parties. Once admitted, a petitioner is a party for the purpose of all subsequent proceedings.

Subpart C—Compliance and Consent Orders

§ 386.21 Compliance order.

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

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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;

(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 filed an election not to contest under § 386.15(a), or

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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]

§ 386.23 Content of consent order.

(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 may be used to construe the terms of the order;

(5) Provisions that the order has the same force and effect, becomes final, and may be modified, altered, or set aside in the same manner as other orders issued under 49 U.S.C. Chapters 5, 131–149, 311 and 315;

(6) Provisions that the agreement will not be part of the record in the proceeding unless and until the Assistant Administrator executes it.

(b) A consent order may also contain any of the provisions enumerated in § 386.21—Compliance Order.

[50 FR 40306, Oct. 2, 1985. Redesignated and amended at 56 FR 10183, Mar. 11, 1991; 65 FR 7756, Feb. 16, 2000]