

[54 FR 22898](#)

May 30, 1989

Rules and Regulations

Reporter

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Title: Settlements and Compromises of Civil Penalty and Compliance Order Cases

Action: Final rule.

Agency

FEDERAL REGISTER

DEPARTMENT OF TRANSPORTATION > Research and Special Programs Administration

Identifier: [Docket No. HM-138B; Amdt. No. 107-19]

Administrative Code Citation

49 CFR Part 107

Synopsis

SUMMARY: RSPA is amending its procedural rules for civil penalty and compliance order cases under the Hazardous Materials Transportation Act (HMTA), 49 App. U.S.C. 1801 *et seq.*, to facilitate expeditious compromises and settlements of such enforcement cases. Under this rule, parties may compromise or settle any of those enforcement cases without the approval of an administrative law judge (ALJ) even when the case is pending before an ALJ.

Text

SUPPLEMENTARY INFORMATION: Questions have been raised concerning the role, if any, of the administrative law judge (ALJ) in the compromise or settlement of HMTA civil penalty or compliance order enforcement cases pending before an ALJ. The procedural rules for those cases are being amended to specifically provide that the Chief Counsel of the Research and Special Programs Administration (RSPA) and a respondent in such a case may compromise or settle the case, under [49 CFR 107.327](#), without order of the ALJ. In addition, this amendment specifically authorizes the voluntary dismissal of a case by the Chief Counsel of RSPA and the respondent without order of the ALJ pursuant to [Rule 41\(a\)\(1\) of the Federal Rules of Civil Procedure](#) (FRCP). Section 107.321 makes the FRCP generally applicable in these cases. In the event of such a compromise, settlement or voluntary dismissal

of a case pending before an ALJ, the Chief Counsel expeditiously will notify the ALJ before whom the case is pending of such compromise, settlement or voluntary dismissal. Finally, this amendment specifically authorizes a respondent to withdraw, in writing, a request for a formal administrative hearing. Such a withdrawal constitutes an irrevocable waiver of respondent's right to such a hearing on the facts, allegations, and proposed sanction presented in the notice of probable violation to which the request for hearing relates.

These changes are intended to expedite and facilitate compromise and settlement of HMTA enforcement cases by specifically authorizing the parties to those cases to compromise or settle them without involvement of, or approval by, an ALJ. Because these amendments are procedural in nature, no prior notice of proposed rulemaking (NPRM) is required under 5 U.S.C. 553.

Administrative Notices

RSPA has determined that this final rule (1) is not "major" under Executive Order 12291; (2) is not "significant" under DOT's regulatory policies and procedures ([44 FR 11034](#)); (3) will not affect not-for-profit enterprises, or small governmental jurisdictions; and (4) does not require an environmental impact statement under the National Environmental Policy Act (40 U.S.C. 4321 *et seq.*). A final regulatory evaluation was not prepared as these amendments are not substantive changes. I certify that these amendments will not, as promulgated, have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. I have reviewed this regulation in accordance with Executive Order 12612 ("Federalism"). It has no substantial direct effects on the States, on the Federal-State relationship or on the distribution of power and responsibilities among levels of government. Thus, this regulation contains no policies that have Federalism implications as defined in Executive Order 12612.

Regulations

List of Subjects in 49 CFR Part 107

Administrative practice and procedure.

In consideration of the foregoing, 49 CFR Part 107 is amended as follows:

PART 107 -- HAZARDOUS MATERIALS PROGRAM PROCEDURES

1. The authority citation for Part 107 is revised to read as follows:

Authority: 49 App. U.S.C. 1421(c); 49 App. U.S.C. 1802, 1806, 1808-1811; [49 CFR 1.45](#) and [1.53](#); [Pub. L. 89-670 \(49 App. U.S.C. 1653\)](#)(d), 1655).

2. In § 107.319, the last sentence in paragraph (c) is revised and a new paragraph (d) is added to read as follows:

§ 107.319 Request for a hearing.

* * * * *

(c) * * * 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 of the ALJ in the case. Such a withdrawal constitutes an irrevocable waiver of respondent's right to such a hearing on the facts, allegations, and proposed sanction presented in the notice of probable violation to which the request for hearing relates.

Issued in Washington, D.C. on May 24, 1989, under authority delegated in 49 CFR Part 1.

Travis P. Dungan,
Administrator, Research and Special Programs Administration.
[FR Doc. 89-12797 Filed 5-26-89; 8:45 am]
BILLING CODE 4910-60-M

Dates

EFFECTIVE DATE: These regulations are effective May 30, 1989. The good cause for making them effective immediately is that doing so will enable parties to expeditiously compromise or settle pending enforcement cases without detrimentally affecting the rights of any party.

Contacts

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