

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 Assist-

ant 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.

[70 FR 28482, May 18, 2005, as amended at 78 FR 58481, Sept. 24, 2013]

### Subpart D—General Rules and Hearings

#### § 386.30 Enforcement proceedings under part 395.

(a) *General.* A motor carrier is liable for any act or failure to act by an employee, as defined in § 390.5 of this subchapter, that violates any provision of part 395 of this subchapter if the act or failure to act is within the course of the motor carrier's operations. The fact that an employee may be liable for a violation in a proceeding under this subchapter, based on the employee's act or failure to act, does not affect the liability of the motor carrier.

(b) *Burden of proof.* Notwithstanding any other provision of this subchapter, the burden is on a motor carrier to prove that the employee was acting outside the scope of the motor carrier's operations when committing an act or failing to act in a manner that violates any provision of part 395 of this subchapter.

(c) *Imputed knowledge of documents.* A motor carrier shall be deemed to have knowledge of any document in its possession and any document that is available to the motor carrier and that the motor carrier could use in ensuring compliance with part 395 of this subchapter. "Knowledge of any document" means knowledge of the fact that a document exists and the contents of the document.

[80 FR 78382, Dec. 16, 2015]

#### § 386.31 Official notice.

Upon notification to all parties, the Assistant Administrator or Administrative Law Judge may take official notice of any fact or document not appearing in evidence in the record. Any party objecting to the official notice must file an objection within 10 days after service of the notice. If a Final

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Agency Order has been issued, and the decision rests on a material and disputable fact of which the Agency decisionmaker has taken official notice, a party may challenge the action of official notice in accordance with § 386.64 of this part.

[70 FR 28483, May 18, 2005]

#### § 386.34 Motions.

(a) *General.* An application for an order or ruling not otherwise covered by these rules shall be by motion. All motions filed prior to the calling of the matter for a hearing shall be to the Assistant Administrator. All motions filed after the matter is called for hearing shall be to the administrative law judge.

(b) *Form.* Unless made during hearing, motions shall be made in writing, shall state with particularity the grounds for relief sought, and shall be accompanied by affidavits or other evidence relied upon.

(c) *Answers.* Except when a motion is filed during a hearing, any party may file an answer in support or opposition to a motion, accompanied by affidavits or other evidence relied upon. Such answers shall be served within 20 days after the motion is served or within such other time as the Assistant Administrator or administrative law judge may set.

(d) *Argument.* Oral argument or briefs on a motion may be ordered by the Assistant Administrator or the administrative law judge.

(e) *Disposition.* Motions may be ruled on immediately or at any other time specified by the administrative law judge or the Assistant Administrator.

(f) *Suspension of time.* The pendency of a motion shall not affect any time limits set in these rules unless expressly ordered by the Assistant Administrator or administrative law judge.

[50 FR 40306, Oct. 2, 1985. Redesignated and amended at 70 FR 28483, May 18, 2005]

#### § 386.35 Motions to dismiss and motions for a more definite statement.

(a) Motions to dismiss must be made within the time set for reply or petition to review, except motions to dismiss for lack of jurisdiction, which may be made at any time.

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(b) Motions for a more definite statement may be made in lieu of a reply. The motion must point out the defects complained of and the details desired. If the motion is granted, the pleading complained of must be remedied within 15 days of the granting of the motion or it will be stricken. If the motion is denied, the party who requested the more definite statement must file his/her pleading within 10 days after the denial.

[50 FR 40306, Oct. 2, 1985. Redesignated at 70 FR 28483, May 18, 2005]

#### § 386.36 Motions for final agency order.

(a) *Generally.* Unless otherwise provided in this section, the motion and answer will be governed by § 386.34. Either party may file a motion for final order. The motion must be served in accordance with §§ 386.6 and 386.7. If the matter is still pending before the service center, upon filing, the matter is officially transferred from the service center to the Agency decisionmaker, who will then preside over the matter.

(b) *Form and content.* (1) Movant's filing must contain a motion and memorandum of law, which may be separate or combined and must include all responsive pleadings, notices, and other filings in the case to date.

(2) The motion for final order must be accompanied by written evidence in accordance with § 386.49.

(3) The motion will state with particularity the grounds upon which it is based and the substantial matters of law to be argued. A Final Agency Order may be issued if, after reviewing the record in a light most favorable to the non-moving party, the Agency decisionmaker determines no genuine issue exists as to any material fact.

(c) *Answer to Motion.* The non-moving party will, within 45 days of service of the motion for final order, submit and serve a response to rebut movant's motion.

[70 FR 28483, May 18, 2005]

#### § 386.37 Discovery.

(a) Parties may obtain discovery by one or more of the following methods: Depositions upon oral examination or