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III-A-21

§ 65.400 Federal Delayed Compliance Orders Issued Under Section 113(d) (1), (3), and (4) of the Act.

Source	Location	Order No.	Date of FR proposal	SIP regulation involved	Final compliance date
Columbus Products Company, a Division of White Consolidated Industries, Inc.	Columbus, Ohio	EPA-680-A-1	8/10/76	OAC-3745-17-10	4/15/80

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40 CFR Part 205

[FRL 1360-4]

Withdrawal of Warranty Statement and Extension of Alternate Warranty Statement

AGENCY: Environmental Protection Agency.

ACTION: Withdrawal Noise Emissions Warranty Statement for Medium and Heavy Trucks and Extension of Alternate Warranty Statement.

SUMMARY: This notice withdraws the regulatory warranty statement for new medium and heavy trucks, recently invalidated by the U.S. Court of Appeals for the District of Columbia Circuit. The notice also advises that manufacturers of new medium and heavy trucks may continue to offer an alternate warranty statement pending amendment of the regulation in response to a remand from the Court.

EFFECTIVE DATE: November 27, 1979.
FOR FURTHER INFORMATION CONTACT: John S. Winder, Jr., Acting Director, Noise Enforcement Division (EN-387), Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460, (703) 557-7470.

SUPPLEMENTARY INFORMATION: On April 13, 1976, EPA published noise emission standards for new medium and heavy trucks, 40 CFR Part 205, Subparts A and B. That regulation required a noise emissions warranty statement, 40 CFR 205.50-1(a), to be included by the first manufacturer of the completed vehicle (as defined in the regulation) in the owner's manual or other consumer literature. The provision required the first manufacturer to warrant against noise defects in existence at the time of sale to the ultimate purchaser, notwithstanding modifications by subsequent manufacturers.

Subsequent to promulgation of the truck regulation, four truck manufacturers petitioned the U.S. Court

of Appeals for the District of Columbia Circuit, on June 28, 1976, to review various aspects of the regulation, including the warranty provision, *Chrysler Corp. et al. v. EPA*, 600 F.2d 904 (D.C. Cir. 1978).

In response to a proposal from petitioners in the *Chrysler* case, EPA published a revised warranty statement on November 20, 1977, 42 FR 60741, which could be used in lieu of the warranty statement found in § 205.50-1 of the truck regulation. On December 1, 1977 letters explaining this "alternate warranty statement" also were mailed by EPA to manufacturers of vehicles subject to the regulation. The alternate warranty statement, which provides that the manufacturer warrants the condition of the vehicle only up to the time it leaves that manufacturer's control, was to be used on an interim basis, pending judicial resolution of the warranty issue raised in the *Chrysler* case.

The Court decided the *Chrysler* case on April 9, 1979, and held in part that the warranty provision in the regulation was invalid because it would hold the primary manufacturer of the vehicle responsible in a warranty action, despite the potential of noise defects being caused by subsequent manufacturers.

In response to the Court's remand, EPA will propose, in the Federal Register in the near future, an amendment to 40 CFR 205.50-1, in an effort to satisfy the *Chrysler* decision and the mandate of the Noise Control Act. This notice withdraws the warranty statement in the present regulation; it announces the Agency's intention to propose and promulgate an amendment to the regulation with a new warranty statement, and it describes the course the Agency will follow prior to final promulgation of that amendment.

Although the existing warranty statement found in 40 CFR 205.50-1(a) is hereby withdrawn, Section 6(d)(1) of the Noise Control Act of 1972, 42 U.S.C. 4905(d)(1), clearly requires the

manufacturers of products, to whom the truck regulation applies, to warrant the products' compliance with the noise standard. Accordingly, the Agency will continue to require that first manufacturers provide to consumers notice of the Noise Control Act warranty. First manufacturers are still required to submit advance copies of warranty provisions to the Agency, and EPA will continue its review of proposed warranty provisions. The Agency hereby notifies manufacturers that it will accept the alternate warranty statement as meeting the manufacturers' requirement to warrant compliance, pending final Agency action on a revised warranty provision.

The alternate warranty statement was originally intended only for vehicles which would be subjected to further manufacturing operations. That warranty may now be used for all vehicles subject to the regulation. Also, the alternate warranty statement required inclusion of a footnote stating that the warranty might be revised after resolution of pending litigation; that footnote now may be omitted.

The *Chrysler* decision held in part that the warranty provision in the Noise Control Act requires not only the primary manufacturer of the vehicle, but also the subsequent manufacturer, to warrant compliance with the noise standard. Although there is currently no provision in the regulation requiring a written warranty from subsequent manufacturers, these manufacturers are put on notice of their warranty obligation, including the obligation to honor warranty claims under the Noise Control Act to the extent required by law.

Dated: November 10, 1979.
Jeffrey G. Miller,
Acting Assistant Administrator for Enforcement.

§ 205.50-1 (Amended)

- Section 205.50-1(a) is amended by deleting the "Noise Emission Warranty" statement in its entirety.
- A copy of the alternate warranty statement, with the footnote omitted, appears below.

Noise Emissions Warranty

(Name of vehicle manufacturer) warrants to the first person who purchases this vehicle for purposes other than resale and to each subsequent purchaser that this vehicle, as manufactured by (name of vehicle manufacturer), was designed, built and equipped to conform at the time it left (name of vehicle manufacturer)'s control with all applicable U.S. EPA Noise Control Regulations.

This warranty covers this vehicle as designed, built and equipped by (name of

vehicle manufacturer), and is not limited to any particular part, component or system of the vehicle manufactured by (name of vehicle manufacturer). Defects in design, assembly or in any part, component or system of the vehicle as manufactured by (name of vehicle manufacturer), which, at the time it left (name of vehicle manufacturer)'s control, caused noise emissions to exceed Federal standards, are covered by this warranty for the life of the vehicle.

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FEDERAL MARITIME COMMISSION

-48 CFR Parts 504, 505

[General Orders Nos. 25 and 30, Revised; Docket No. 79-88]

Compromise, Assessment, Settlement and Collection of Civil Penalties Under the Shipping Act, 1916, and the Intercoastal Shipping Act, 1933 (Amended)

AGENCY: Federal Maritime Commission.
ACTION: Final rule.

SUMMARY: This repeals obsolete regulations (Part 504) and amends and finalizes interim regulations (Part 505) which are enacted to implement recent amendments to the Shipping Act, 1916 which authorize the Federal Maritime Commission to assess or compromise all civil penalties provided in the Act.

EFFECTIVE DATE: November 27, 1979.

FOR FURTHER INFORMATION CONTACT: Francis C. Hurney, Secretary, Federal Maritime Commission, Room 11101, 1100 L Street, N.W., Washington, D.C. 20573, (202) 523-5725.

SUPPLEMENTAL INFORMATION: This proceeding was instituted by publication of Interim Regulations made immediately effective on July 5, 1979 (44 FR 30178), to amend 48 CFR Part 505 (General Order 30) which, as amended, implements the assessment of civil penalty authorization provisions of Pub. L. 96-25.

Comments to the Interim Regulations were invited and were received from eleven parties in four submissions. Commentators consist of one attorney, one steamship company and nine conferences/agreements.

J. Alton Boyer, Esquire (Boyer) suggests clarification that both the finding of violations and assessment of penalties therefor be encompassed in a single proceeding, and clarification of the role of Hearing Counsel, the differences between compromise and settlement, if any exists, who makes the determination that a violation may have occurred, and the opportunity for judicial review. Boyer further raises

questions concerning due process, the desirability of maximizing opportunity for settlement, the necessity for approval of settlement at three levels, too much formality in the compromise procedure, the desirability of using confess-judgment notes, and the public availability of internal settlement guidelines. Finally, Boyer suggests that the rules make clear that they are not intended to impose a harsher outcome than the previous rules.

Lykos Brothers Steamship Co., Inc., supports the interim regulations *in toto* and urges expedited approval.

Agreements 10107 and 10108, Japan/Korea-Atlantic and Gulf Freight Conference, Philippines North America Conference, Straits New York Conference, Thailand/Pacific Freight Conference, Thailand/U.S. Atlantic and Gulf Conference and Trans-Pacific Freight Conference of Japan/Korea (Conferences) suggest clarification of the presiding officer's authority to modify a settlement in an assessment proceeding, insist that compromise procedures be available to all on an equal basis, and agree that obsolete 48 CFR Part 504 (General Order 25) need not be retained.

Inter-American Freight Conference (IAFC) suggests changes to clarify the role of Hearing Counsel and two other minor sections.

Each of the specific proposals advanced by the comments will now be discussed:

1. *Repeal of General Order 25 as Obsolete.* In the preamble of the Interim Regulations, the Commission indicated that it " . . . perceives no probable regulatory need for the retention of General Order 25 (48 CFR Part 504) Collection, Compromise and Termination of Enforcement Claims which implemented the Federal Claims Collection Act of 1980. The need to retain such General Order will be considered by the Commission in connection with comments invited to these interim regulations." The only comment received on this point was from the Conferences, which agree that General Order 25 need not be retained. Accordingly, 48 CFR Part 504 will be revoked.

2. *Finding of Violations and Assessment of Penalties in the Same Proceeding.* As raised by Boyer, it is contemplated that both the issue of whether violations have been committed as well as the assessment of penalties for such violations may be encompassed in a single proceeding. Such a specific provision, however, is not necessary in view of the Commission's need for flexibility in structuring proceedings

under section 23 of the Shipping Act and the Administrative Procedure Act.

3. *The Role of Hearing Counsel.* IAFC suggests there is no need to define the role of Hearing Counsel because the duties of this Bureau are already defined in 48 CFR Part 502. Boyer, on the other hand, refers to the "newly assigned role of prosecutor" and the seeming inconsistency with the duty of Hearing Counsel "to act as he deems is required by the public interest . . ." under 40 CFR 502.42.

The pertinent part of 48 CFR 502.42 reads "Hearing Counsel shall actively participate . . . to the extent required in the public interest . . ." Whatever this may mean in other types of proceedings, Hearing Counsel have always been the staff attorney in Commission instituted cases to establish violations. The "prosecutorial" role was always there; the only "newly assigned" role under Pub. L. 96-25 is the ability to request assessment of civil penalties in such a proceeding.

In an assessment proceeding, as in violations cases before the enactment of Pub. L. 96-25, Hearing Counsel are subject to the direction of the Commission only as set forth in the order(s) instituting the case and are otherwise fully subject to the separation of functions as in all other adjudicatory proceedings. Also, as in previous violations cases, it is clear that Hearing Counsel have the burden of proof to establish such violations.

To clarify this provision somewhat, we will delete the phrase: "shall participate as attorney for the Commission" and related language in section 505.3. The remaining language will be retained to specifically provide that all negotiations for settlement will be with Hearing Counsel in assessment proceedings, and not with General Counsel as in compromise cases where no formal proceeding has been instituted.

4. *Settlement Procedures in Formal Proceedings.* The difference between "compromise" and "settlement" was questioned by Boyer. Of course, in addition to the traditional legal connotation, a "compromise" proceeding as defined in § 505.2(c) is the informal process, while the "assessment" proceeding is a formal docket. (See § 505.2(a).) Settlements can be reached in either process with General Counsel or Hearing Counsel, as the case may be.

Boyer suggests that it is desirable to maximize opportunity for settlement ("compromise") in a formal proceeding but the rules "seem to tend in the opposite direction." He questions the necessity of having such settlements