

• NCDOT District 1 Office, 4009 District Drive, Raleigh, NC.

The project Web site <http://www.sehsr.org> includes a complete list of locations and addresses. The document is also available at the Virginia Department of Rail and Public Transportation Office at 600 East Main Street, Suite 2102, Richmond, VA; and the North Carolina Department of Transportation Rail Division at 1 South Wilmington Street, Raleigh, NC. In addition, electronic versions of the Draft Tier II EIS and appendices are available through FRA's Web site at [www.fra.dot.gov](http://www.fra.dot.gov), on the DRPT Web site at <http://www.drpt.virginia.gov> and on the project Web site at [www.sehsr.org](http://www.sehsr.org).

Issued in Washington, DC, on June 2, 2010.

**Mark E. Yachmetz,**

Associate Administrator for Policy and Development.

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## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

[FMCSA Docket No. FMCSA-2010-0149]

#### Rules of Practice

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.

**ACTION:** Notice of suspension of informal hearing procedure; request for comments.

**SUMMARY:** The FMCSA announces that it is re-evaluating the appropriateness and effectiveness of the informal hearing procedure authorized under the Agency's Rules of Practice. Although proceedings where an informal hearing has already been requested will continue to be processed under the Rules of Practice, the Agency will not entertain any new requests for informal hearings pending its re-evaluation of the procedure.

**DATES:** Effective June 7, 2010. Comments must be received by August 6, 2010.

**ADDRESSES:** You may submit comments identified by the Federal Docket Management System Docket Number, FMCSA-2010-0149, by any of the following methods. Do not submit the same comments by more than one method. However, to allow effective public participation before the comment period deadline, the Agency encourages use of the Web site, which is listed first. It will provide the most efficient and timely method of receiving and processing your comments.

• *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Follow the online instructions for submitting comments.

• *Fax:* 1-202-493-2251.

• *Mail:* Docket Management Unit; U.S. Department of Transportation, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

• *Hand Delivery:* Ground floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays.

*Instructions:* All submissions must include the Agency name and docket number for this regulatory action. Note that all comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided. The Department of Transportation's (DOT) complete Privacy Act Statement was published in the **Federal Register** on April 11, 2000 (65 FR 19476), and can be viewed at <http://docketsinfo.dot.gov>.

*Public Participation:* The regulations.gov system is generally available 24 hours each day, 365 days each year. You can find electronic submission and retrieval help and guidelines under the "help" section of the Web site. For notification that FMCSA received the comments, please include a self-addressed, stamped envelope or postcard, or print the acknowledgement page that appears after submitting comments on line. Copies or abstracts of all documents referenced in this notice are in the docket: FMCSA-2010-0149. For access to the docket to read background documents or comments received, go to <http://www.regulations.gov> at any time or to Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays. All comments received before the close of business on the comment closing date indicated above will be considered and will be available for examination in the docket at the above address. Comments received after the closing date will be considered to the extent practicable. FMCSA may, however, issue a final determination at any time after the close of the comment period. In addition to late comments, FMCSA will also continue to file in the public docket relevant information that becomes available after the comment closing date. Interested persons should monitor the public docket for new material.

**FOR FURTHER INFORMATION CONTACT:** Michael J. Falk, Office of Chief Counsel, Adjudications Counsel (MC-CCA), FMCSA, 1200 New Jersey Avenue, SE.,

Washington, DC 20590. Tel. (202) 366-9304.

#### SUPPLEMENTARY INFORMATION:

##### Background

Under 49 U.S.C. 113(f), Congress directed FMCSA to carry out the duties and powers related to motor carriers or motor carrier safety vested in the Secretary of Transportation by chapters 5, 51, 55, 57, 59, 133 through 149, 311, 313, 315 and 317 of title 49 of the U.S. Code, except as otherwise delegated by the Secretary. Regulations implementing this statutory authority include the Federal Motor Carrier Safety Regulations (FMCSRs) (49 CFR parts 380-399), the Federal Motor Carrier Commercial Regulations (FMCCRs) (49 CFR parts 360-379), and the Federal Hazardous Materials Regulations (HMRs) (49 CFR parts 171-180).

FMCSA's enforcement powers include the general authority to conduct administrative enforcement proceedings for violations of the FMCCRs (49 U.S.C. 14701) as well as to assess civil penalties for violations related to commercial motor vehicle safety (49 U.S.C. chapter 5) and hazardous materials (49 U.S.C. chapter 51).

In accordance with this authority, the Agency promulgated regulations governing civil penalty and driver disqualification proceedings before the Agency. These regulations are known as the Rules of Practice for Motor Carrier, Intermodal Equipment Provider, Broker, Freight Forwarder, and Hazardous Materials Proceedings (Rules of Practice) and are codified at 49 CFR part 386.

In May 2005, the Agency amended the Rules of Practice to establish, among other things, an informal hearing process as an option for adjudicating administrative enforcement proceedings (see 70 FR 28467, May 18, 2005). Civil penalty proceedings are initiated by issuance of a Notice of Claim by a representative of the Agency (Claimant) pursuant to 49 CFR 386.11(c). Under 49 CFR 386.14(b)(2), the party against whom a claim is made (Respondent) must reply to the Notice of Claim by electing one of three options: (1) Paying the full amount of the claim; (2) contesting the claim by requesting administrative adjudication pursuant to section 386.14(d); or (3) seeking binding arbitration in accordance with the Agency's arbitration program. Under section 386.14(d)(1)(iii), a respondent electing administrative adjudication may request that the matter be adjudicated either through: (A) Submission of written evidence without hearing; (B) an informal hearing; or (C) a formal hearing.

The informal hearing process was intended to provide expedited consideration of a civil penalty case by a neutral third party without the formalities attendant to a hearing before an Administrative Law Judge (see 69 FR 61620, Oct. 20, 2004). Section 386.2 defines an informal hearing as “a hearing in which the parties have the opportunity to present relevant evidence to a neutral Hearing Officer, who will prepare findings of fact and recommendations for the Agency decisionmaker. The informal hearing will not be on the transcribed record and discovery will not be allowed. Parties will have the opportunity to discuss their case and present testimony and evidence before the Hearing Officer without the formality of a formal hearing.” After receiving the hearing officer’s report and recommendations, the Assistant Administrator has the discretion to either adopt the report or issue other orders as he or she deems appropriate. [See sections 386.16(b)(4)(i)(A) and 386.61(b)].

FMCSA implemented informal hearings on a graduated basis in order to evaluate the efficacy of this new process. In the first phase of implementation, FMCSA considered requests for informal hearings only from respondents in the Midwestern Service Center’s geographical area (see 71 FR 13894, Mar. 17, 2006). In the second phase, FMCSA expanded eligibility to respondents in the Eastern Service Center’s geographical area (see 72 FR 6806, Feb. 13, 2007). To date, only respondents located in States within the Agency’s Eastern and Midwestern Service Centers have been eligible to request informal hearings.

Having evaluated the implementation of the informal hearing procedure, FMCSA has concerns about the appropriateness of the personnel the Agency assigned to serve as hearing officers. Section 386.2 defines “hearing officer” as “a neutral Agency employee designated by the Assistant Administrator to preside over an

informal hearing.” The Agency selected two FMCSA employees—one located in the Southern Service Center and one located in the Western Service Center—to serve as hearing officers. However, the Agency did not receive enough informal hearing requests to dedicate these employees as full-time hearing officers. As a result, these employees continued to carry out their existing responsibilities related to the implementation of the enforcement programs in their respective Service Center areas. Although, as noted above, informal hearings are not available to respondents located in the Southern and Western Service Centers, there is legitimate concern that FMCSA personnel involved in the Agency’s enforcement program may not be considered sufficiently neutral.

#### **Suspension of Current Informal Hearing Procedure**

After careful consideration, and as a result of the issues discussed above, FMCSA has decided to suspend the use of informal hearings for enforcement actions initiated after publication of this notice pending re-evaluation of the informal hearing procedure. This re-evaluation will include consideration of possible regulatory changes as well as implementation strategies.

Five cases assigned to hearing officers are still awaiting informal hearings. There are 15 additional cases in which claimants have consented to respondents’ informal hearing requests, but have not been assigned to a hearing officer. Furthermore, in 13 additional cases, claimants in the Eastern and Midwestern Service Centers have objected to requests for informal hearings. The Agency has not yet ruled on these objections because of its concerns regarding the informal hearing procedure. In order to avoid further delaying the resolution of the 20 pending cases awaiting informal hearings or assignment of a hearing officer, the Agency will assign these cases to one or more hearing officers not connected with the Agency’s

enforcement program, who will be responsible for initiating and concluding the informal hearing process. The Agency will also make it a priority to consider the pending objections to informal hearings and may thus assign additional cases to the hearing officer(s), as appropriate.

Notices of Claim issued after publication of this notice in the **Federal Register** will advise respondents seeking to contest a claim through administrative adjudication that they may either submit written evidence without a formal hearing or request a formal hearing.

FMCSA has determined that no Respondent has suffered substantive harm or prejudice as a result of disposition under the informal hearing option. Of the 11 cases assigned to hearing officers, only three were finally resolved under the informal hearing procedure. In these cases, the hearing officer issued a final report recommending that the Assistant Administrator approve settlement agreements entered into by the parties. The Assistant Administrator accepted the recommendations, resulting in final disposition of these cases. With respect to the other eight cases, six are awaiting informal hearings following assignment of a hearing officer, one was settled before a specific hearing officer was assigned, and the final case is awaiting further action following issuance of the hearing officer’s report.

Finally, FMCSA believes that, if implemented more effectively, re-establishment of an informal hearing process would be beneficial to both the Agency and to respondents seeking more informal resolution of enforcement matters. FMCSA seeks public comment on options for implementing an effective informal hearing process.

Issued on: May 28, 2010.

**Anne S. Ferro,**  
*Administrator.*

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