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APPENDIX A TO PART 386—PENALTY SCHEDULE; VIOLATIONS OF NOTICES AND ORDERS  
APPENDIX B TO PART 386—PENALTY SCHEDULE; VIOLATIONS AND MAXIMUM MONETARY PENALTIES

AUTHORITY: 49 U.S.C. 113, chapters 5, 51, 59, 131–141, 145–149, 311, 313, and 315; sec. 206, Pub. L. 106–159, 113 Stat. 1763; and 49 CFR 1.45 and 1.73.

SOURCE: 50 FR 40306, Oct. 2, 1985, unless otherwise noted.

EDITORIAL NOTE: Nomenclature changes to part 386 appear at 65 FR 7755, Feb. 16, 2000, and 66 FR 49873, Oct. 1, 2001.

## 49 CFR Ch. III (10–1–05 Edition)

### Subpart A—Scope of Rules; Definitions

EFFECTIVE DATE NOTE: At 70 FR 28478, May 18, 2005, the heading to subpart A was revised, effective November 14, 2005. For the convenience of the user, the revised text is set forth as follows:

### Subpart A—Scope of Rules; Definitions and General Provisions

#### § 386.1 Scope of rules in this part.

The rules in this part govern proceedings before the Assistant Administrator, who also acts as the Chief Safety Officer of the Federal Motor Carrier Safety Administration (FMCSA), under applicable provisions of the Federal Motor Carrier Safety Regulations (49 CFR parts 350–399), including the commercial regulations (49 CFR parts 360–379) and the Hazardous Materials Regulations (49 CFR parts 171–180). The purpose of the proceedings is to enable the Assistant Administrator to determine whether a motor carrier, property broker, freight forwarder, or its agents, employees, or any other person subject to the jurisdiction of the FMCSA, has failed to comply with the provisions or requirements of applicable statutes and the corresponding regulations and, if such violations are found, to issue an appropriate order to compel compliance with the statute or regulation, assess a civil penalty, or both.

[65 FR 78427, Dec. 15, 2000]

#### § 386.2 Definitions.

*Abate or abatement* means to discontinue regulatory violations by refraining from or taking actions identified in a notice to correct noncompliance.

*Administration* means the Federal Motor Carrier Safety Administration.

*Administrative law judge* means an administrative law judge appointed pursuant to the provisions of 5 U.S.C. 3105.

*Assistant Administrator* means the Assistant Administrator of the Federal Motor Carrier Safety Administration. The Assistant Administrator is the Chief Safety Officer of the agency pursuant to 49 U.S.C. 113(d). Decisions of

the Assistant Administrator in motor carrier, broker, freight forwarder, and hazardous materials proceedings under this part are administratively final.

*Broker* means a person who, for compensation, arranges or offers to arrange the transportation of property by an authorized motor carrier. A motor carrier, or person who is an employee or bona fide agent of a carrier, is not a broker within the meaning of this section when it arranges or offers to arrange the transportation of shipments which it is authorized to transport and which it has accepted and legally bound itself to transport.

*Civil forfeiture proceedings* means proceedings to collect civil penalties for violations under the Commercial Motor Vehicle Safety Act of 1986 (49 U.S.C. Chapter 313); the Hazardous Materials Transportation Act of 1975, as amended (49 U.S.C. Chapter 51); the Motor Carrier Safety Act of 1984 (49 U.S.C. Chapter 311, Subchapter III); section 18 of the Bus Regulatory Reform Act of 1982 (49 U.S.C. 31138); section 30 of the Motor Carrier Act of 1980 (49 U.S.C. 31139); and the ICC Termination Act of 1995 (49 U.S.C. Chapters 131–149).

*Claimant* means the representative of the Federal Motor Carrier Safety Administration authorized to make claims.

*Commercial regulations* means statutes and regulations that apply to persons providing or arranging transportation for compensation subject to the Secretary's jurisdiction under 49 U.S.C. Chapter 135. The statutes are codified in Part B of Subtitle IV, Title 49, U.S.C. (49 U.S.C. 13101 through 14913). The regulations include those issued by the Federal Motor Carrier Safety Administration or its predecessors under authority provided in 49 U.S.C. 13301 or a predecessor statute.

*Compliance Order* means a written direction to a respondent under this part requiring the performance of certain acts which, based upon the findings in the proceeding, are considered necessary to bring respondent into compliance with the regulations found to have been violated.

*Consent Order* means a compliance order which has been agreed to by re-

spondent in the settlement of a civil forfeiture proceeding.

*Driver qualification proceeding* means a proceeding commenced under 49 CFR 391.47 or by issuance of a letter of disqualification.

*Final agency order* means a notice of final agency action issued pursuant to this part by either the appropriate FMCSA Field Administrator (for default judgements under §386.14(e)), the FMCSA Chief Safety Officer, or an Administrative Law Judge (ALJ), typically requiring payment of a civil penalty by a broker, freight forwarder, driver, or motor carrier.

*Freight forwarder* means a person holding itself out to the general public (other than as an express, pipeline, rail, sleeping car, motor, or water carrier) to provide transportation of property for compensation in interstate commerce, and in the ordinary course of its business:

(1) Performs or provides for assembling, consolidating, break-bulk, and distribution of shipments;

(2) Assumes responsibility for transportation from place of receipt to destination; and

(3) Uses for any part of the transportation a carrier subject to FMCSA jurisdiction.

*Motor carrier* means a motor carrier, motor private carrier, or motor carrier of migrant workers as defined in 49 U.S.C. 13102 and 31501.

*Petitioner* means a party petitioning to overturn a determination in a driver qualification proceeding.

*Respondent* means a party against whom relief is sought or claim is made.

[50 FR 40306, Oct. 2, 1985, as amended at 53 FR 2036, Jan. 26, 1988; 56 FR 10182, Mar. 11, 1991; 65 FR 7755, Feb. 16, 2000; 65 FR 78427, Dec. 15, 2000; 67 FR 61821, Oct. 2, 2002]

EFFECTIVE DATE NOTE: At 70 FR 28478, May 18, 2005, §386.2 was amended by removing the definitions for *Compliance Order* and *Consent Order* and revising the definitions for *Civil penalty proceedings* and *Final agency order*; and by adding definitions for *Administrative adjudication*, *Agency*, *Agency Counsel*, *Decisionmaker*, *Default*, *Department*, *Dockets*, *Field Administrator*, *FMCSRs*, *Formal hearing*, *Hearing officer*, *HMRs*, *Informal hearing*, *Mail*, *Notice of Claim*, *Notice of Violation*, *Person*, *Reply*, *Secretary*, and *Submission of written evidence without hearing* effective November 14, 2005.

§ 386.2

For the convenience of the user, the revised text is set forth as follows:

§ 386.2 Definitions.

\* \* \* \* \*

*Administrative adjudication* means a process or proceeding to resolve contested claims in conformity with the Administrative Procedure Act, 5 U.S.C. 554–558.

*Agency* means the Federal Motor Carrier Safety Administration.

*Agency Counsel* means the attorney who prosecutes a civil penalty matter on behalf of the Field Administrator.

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*Civil penalty proceedings* means proceedings to collect civil penalties for violations of regulations and statutes within the jurisdiction of FMCSA.

\* \* \* \* \*

*Decisionmaker* means the Assistant Administrator of FMCSA, acting in the capacity of the decisionmaker or any person to whom the Assistant Administrator has delegated his/her authority in a civil penalty proceeding. As used in this subpart, the Agency decisionmaker is the official authorized to issue a final decision and order of the Agency in a civil penalty proceeding.

*Default* means an omission or failure to perform a legal duty within the time specified for action, failure to reply to a Notice of Claim within the time required, or failure to submit a reply in accordance with the requirements of this part. A default may result in issuance of a Final Agency Order or additional penalties against the defaulting party.

*Department* means the U.S. Department of Transportation.

*Dockets* means the U.S. Department of Transportation’s docket management system, which is the central repository for original copies of all documents filed before the agency decisionmaker.

*Federal Motor Carrier Commercial Regulations (FMCCRs)* means statutes and regulations applying to persons providing or arranging transportation for compensation subject to the Secretary’s jurisdiction under 49 U.S.C. Chapter 135. The statutes are codified in Part B of Subtitle IV, Title 49 U.S.C. (49 U.S.C. 13101 through 14913). The regulations include those issued by FMCSA or its predecessors under authority provided in 49 U.S.C. 13301 or a predecessor statute.

\* \* \* \* \*

*Field Administrator* means the head of an FMCSA Service Center who has been dele-

gated authority to initiate compliance and enforcement actions on behalf of FMCSA.

*Final Agency Order* means the final action by FMCSA issued pursuant to this part by the appropriate Field Administrator (for default judgments under § 386.14) or the Assistant Administrator, or settlement agreements which become the Final Agency Order pursuant to 386.22, or decisions of the Administrative Law Judge, which become the Final Agency Order pursuant to 386.61 or binding arbitration awards. A person who fails to perform the actions directed in the Final Agency Order commits a violation of that order and is subject to an additional penalty as prescribed in Subpart G of this part.

*FMCSRs* means the Federal Motor Carrier Safety Regulations.

*Formal hearing* means an evidentiary hearing on the record in which parties have the opportunity to conduct discovery, present relevant evidence, and cross-examine witnesses.

*Hearing officer* means a neutral Agency employee designated by the Assistant Administrator to preside over an informal hearing.

*HMRs* means Hazardous Materials Regulations.

*Informal hearing* means 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.

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*Mail* means U.S. first class mail, U.S. registered or certified mail, or use of a commercial delivery service.

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*Notice of Claim (NOC)* means the initial document issued by FMCSA to assert a civil penalty for alleged violations of the FMCSRs, HMRs, or FMCCRs.

*Notice of Violation (NOV)* means a document alleging a violation of the FMCSRs, HMRs, or FMCCRs, for which corrective action, other than payment of a civil penalty, is recommended.

*Person* means any individual, partnership, association, corporation, business trust, or any other organized group of individuals.

*Reply* means a written response to a Notice of Claim, admitting or denying the allegations contained within the Notice of Claim. In addition, the reply provides the mechanism for determining whether the respondent seeks to pay, settle, contest, or seek binding arbitration of the claim. See § 386.14.

If contesting the allegations, the reply must also set forth all known affirmative defenses and factors in mitigation of the claim.

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*Secretary* means the Secretary of Transportation.

*Submission of written evidence without hearing* means the submission of written evidence and legal argument to the Agency decisionmaker, or his/her representative, in lieu of a formal or informal hearing.

### § 386.3 Separation of functions.

EFFECTIVE DATE NOTE: At 70 FR 28479, May 18, 2005, §§ 386.3 was added, effective November 14, 2005.

(a) Civil penalty proceedings will be prosecuted by Agency Counsel who represent the Field Administrator. In Notices of Violation, the Field Administrator will be represented by Agency Counsel.

(b) An Agency employee, including those listed in paragraph (c) of this section, engaged in the performance of investigative or prosecutorial functions in a civil penalty proceeding may not, in that case or a factually related case, discuss or communicate the facts or issues involved with the Agency decisionmaker, Administrative Law Judge, Hearing Officer or others listed in paragraph (d) of this section, except as counsel or a witness in the public proceedings. This prohibition also includes the staff of those covered by this section.

(c) The Deputy Chief Counsel, Assistant Chief Counsel for Enforcement and Litigation, and attorneys in the Enforcement and Litigation Division serve as enforcement counsel in the prosecution of all cases brought under this part.

(d) The Chief Counsel, the Special Counsel to the Chief Counsel, and attorneys serving as Adjudications Counsel advise the Agency decisionmaker regarding all cases brought under this Part.

(e) Nothing in this part shall preclude agency decisionmakers or anyone advising an agency decisionmaker from taking part in a determination to launch an investigation or issue a complaint, or similar preliminary decision.

### § 386.4 Appearances and rights of parties.

EFFECTIVE DATE NOTE: At 70 FR 28479, May 18, 2005, §§ 386.4 was added, effective November 14, 2005.

(a) A party may appear in person, by counsel, or by other representative, as the party elects, in a proceeding under this subpart.

(b) A person representing a party must file a notice of appearance in the proceeding, in the manner provided in § 386.7 of this subpart. The notice of appearance must list the name, address, telephone number, and facsimile number of the person designated to represent the party. A copy of the notice of appearance must be served on each party, in the manner provided in § 386.6 of this subpart. The notice of appearance must be filed and served before the representative can participate in the proceeding. Any changes in an attorney or representative's contact information must be served and filed according to §§ 386.6 and 386.7 in a timely manner.

(c) A separate notice of appearance must be filed by a representative in each case. Blanket appearances on behalf of a party will not be accepted.

### § 386.5 Form of filings and extensions of time.

EFFECTIVE DATE NOTE: At 70 FR 28479, May 18, 2005, §§ 386.5 was added, effective November 14, 2005.

(a) *Form.* Each document must be typewritten or legibly handwritten.

(b) *Contents.* Unless otherwise specified in this part, each document must contain a short, plain statement of the facts on which the person's case rests and a brief statement of the action requested in the document. Except by prior order, all contents will be made publicly available.

(c) *Length.* Except for the Notice of Claim and reply, motions, briefs, and other filings may not exceed 20 pages except as permitted by Order following a motion to exceed the page limitation based upon good cause shown. Exhibits or attachments in support of the relevant filing are not included in the page limit.

(d) *Paper and margins.* Filed documents must be printed on 8½" by 11"