

Pt. 386

49 CFR Ch. III (10–1–07 Edition)

§ 180.417(a)(1) Failing to retain cargo tank manufacturer's data report certificate and related papers, as required (critical).

§ 180.417(a)(2) Failing to retain copies of cargo tank manufacturer's certificate and related papers (or alternative report) as required (critical).

[62 FR 60043, Nov. 6, 1997, as amended at 63 FR 62959, Nov. 10, 1998; 65 FR 11907, Mar. 7, 2000; 68 FR 22513, Apr. 28, 2003; 70 FR 50070, Aug. 25, 2005; 72 FR 36789, July 5, 2007]

PART 386—RULES OF PRACTICE FOR MOTOR CARRIER, BROKER, FREIGHT FORWARDER, AND HAZARDOUS MATERIALS PROCEEDINGS

Subpart A—Scope of Rules; Definitions and General Provisions

- Sec.
- 386.1 Scope of rules in this part.
- 386.2 Definitions.
- 386.3 Separation of functions.
- 386.4 Appearances and rights of parties.
- 386.5 Form of filings and extensions of time.
- 386.6 Service.
- 386.7 Filing of documents.
- 386.8 Computation of time.

Subpart B—Commencement of Proceedings, Pleadings

- 386.11 Commencement of proceedings.
- 386.12 Complaint.
- 386.13 Petitions to review and request for hearing: Driver qualification proceedings.
- 386.14 Reply.
- 386.15 [Reserved]
- 386.16 Action on replies to the Notice of Claim.
- 386.17 Intervention.
- 386.18 Payment of the claim.

Subpart C—Settlement Agreements

- 386.22 Settlement agreements and their contents.

Subpart D—General Rules and Hearings

- 386.31 Official notice.
- 386.34 Motions.
- 386.35 Motions to dismiss and motions for a more definite statement.
- 386.36 Motions for final agency order.
- 386.37 Discovery.
- 386.38 Scope of discovery.
- 386.39 Protective orders.
- 386.40 Supplementation of responses.
- 386.41 Stipulations regarding discovery.
- 386.42 Written interrogatories to parties.
- 386.43 Production of documents and other evidence; entry upon land for inspection

and other purposes; and physical and mental examination.

- 386.44 Request for admissions.
- 386.45 Motion to compel discovery.
- 386.46 Depositions.
- 386.47 Use of deposition at hearings.
- 386.48 Medical records and physicians' reports.
- 386.49 Form of written evidence.
- 386.51 Amendment and withdrawal of pleadings.
- 386.52 Appeals from interlocutory rulings.
- 386.53 Subpoenas, witness fees.
- 386.54 Administrative law judge.
- 386.55 Prehearing conferences.
- 386.56 Hearings.
- 386.57 Proposed findings of fact, conclusions of law.
- 386.58 Burden of proof.

Subpart E—Decision

- 386.61 Decision.
- 386.62 Review of administrative law judge's decision.
- 386.63 Decision on review.
- 386.64 Reconsideration.
- 386.65 Failure to comply with final order.
- 386.66 Motions for rehearing or for modification.
- 386.67 Judicial review.

Subpart F—Injunctions and Imminent Hazards

- 386.71 Injunctions.
- 386.72 Imminent hazard.

Subpart G—Penalties

- 386.81 General.
- 386.82 Civil penalties for violations of notices and orders.
- 386.83 Sanction for failure to pay civil penalties or abide by payment plan; operation in interstate commerce prohibited.
- 386.84 Sanction for failure to pay civil penalties or abide by payment plan; suspension or revocation of registration.

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. 521, 5123, 13301, 13902, 14915, 31132–31133, 31136, 31144, 31502, 31504; Sec. 204, Pub. L. 104–88, 109 Stat. 803, 941 (49 U.S.C. 701 note); Sec. 217, Pub. L. 105–159, 113 Stat. 1748, 1767; and 49 CFR 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.

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

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

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.

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(e). 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).

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

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.

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