§ 395.1(h)(2)(iii) Requiring or permitting a passenger-carrying commercial motor vehicle driver to drive after having been on duty more than 70 hours in 7 consecutive days (Driving in Alaska).

§ 395.1(h)(2)(iv) Requiring or permitting a passenger-carrying commercial motor vehicle driver to drive after having been on duty more than 80 hours in 8 consecutive days (Driving in Alaska).

§ 395.1(o) Requiring or permitting a property-carrying commercial motor vehicle driver to drive after having been on duty 16 consecutive hours.

§ 395.3(a)(1) Requiring or permitting a property-carrying commercial motor vehicle driver to drive more than 11 hours.

§ 395.3(a)(2) Requiring or permitting a property-carrying commercial motor vehicle driver to drive after the end of the 14th hour after coming on duty.

§ 395.3(b)(1) Requiring or permitting a property-carrying commercial motor vehicle driver to drive after having been on duty more than 60 hours in 7 consecutive days.

§ 395.3(b)(2) Requiring or permitting a property-carrying commercial motor vehicle driver to drive after having been on duty more than 70 hours in 8 consecutive days.

§ 395.3(c)(1) Requiring or permitting a property-carrying commercial motor vehicle driver to restart a period of 7 consecutive days without taking an off-duty period of 34 or more consecutive hours.

§ 395.3(c)(2) Requiring or permitting a property-carrying commercial motor vehicle driver to restart a period of 8 consecutive days without taking an off-duty period of 34 or more consecutive hours.

§ 395.5(a)(1) Requiring or permitting a passenger-carrying commercial motor vehicle driver to drive more than 10 hours.

§ 395.5(a)(2) Requiring or permitting a passenger-carrying commercial motor vehicle driver to drive after having been on duty 15 hours.

§ 395.5(b)(1) Requiring or permitting a passenger-carrying commercial motor vehicle driver to drive after having been on duty more than 60 hours in 7 consecutive days.

§ 395.5(b)(2) Requiring or permitting a passenger-carrying commercial motor vehicle driver to drive after having been on duty more than 70 hours in 8 consecutive days.

§ 395.8(a) Failing to require driver to make a record of duty status.

§ 395.8(e) False reports of records of duty status.

§ 395.8(i) Failing to require driver to forward within 13 days of completion, the original of the record of duty status.

§ 395.8(k)(1) Failing to preserve driver’s records of duty status supporting documents for 6 months.

[75 FR 17244, Apr. 5, 2010]

PART 386—RULES OF PRACTICE FOR MOTOR CARRIER, INTER-MODAL EQUIPMENT PROVIDER, BROKER, FREIGHT FORWARDER, AND HAZARDOUS MATERIALS PROCEEDINGS

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

Commercial regulations 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 delegated 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 by 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 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.

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

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.

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.
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.

*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.

*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 evidence before the Hearing Officer without the formality of a formal hearing.

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

*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.

*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.

*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.

*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.

(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

§ 386.4 Appearances and rights of parties.

(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.

(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” paper with a one-inch margin on all four sides of text, to include pagination and footnotes.

(e) Spacing, and font size for typewritten documents. Typewritten documents will use the following line format: single-spacing for the caption and footnotes, and double-spacing for the main text. All printed matter must appear in at least 12-point font, including footnotes.

(f) Extensions of time. Only those requests showing good cause will be granted. No motion for continuance or postponement of a hearing date filed within 15 days of the date set for a hearing will be granted unless accompanied by an affidavit showing extraordinary circumstances warrant a continuance. Unless directed otherwise by the Agency decisionmaker before whom a matter is pending, the parties may stipulate to reasonable extensions of time by filing the stipulation in the official docket and serving copies on all parties on the certificate of service. Motions for extensions of time must be filed in accordance with § 386.6 and served in accordance with § 386.7. A copy must also be served upon the person presiding over the proceeding at the time of the filing.
§ 386.6 Service.

(a) General. All documents must be served upon the party or the party’s designated agent for service of process. If a notice of appearance has been filed in the specific case in question in accordance with §386.4, service is to be made on the party’s attorney of record or its designated representative.

(b) Type of service. A person may serve documents by personal delivery utilizing governmental or commercial entities, U.S. mail, commercial mail delivery, and upon prior written consent of the parties, facsimile. Written consent for facsimile service must specify the facsimile number where service will be accepted. When service is made by facsimile, a copy will also be served by any other method permitted by this section. Facsimile service occurs when transmission is complete.

(c) Certificate of service. A certificate of service will accompany all documents served in a proceeding under this Part. The certificate must show the date and manner of service, be signed by the person making service, and list the persons served in accordance with §386.7.

(d) Date of service. A document will be considered served on the date of personal delivery; or if mailed, the mailing date shown on the certificate of service, the date shown on the postmark if there is no certificate of service, or other mailing date shown by other evidence if there is no certificate of service or postmark.

(e) Valid service. A properly addressed document, sent in accordance with this subpart, which was returned, unclaimed, or refused, is deemed to have been served in accordance with this subpart. The service will be considered valid as of the date and the time the document was mailed, or the date personal delivery of the document was refused. Service by delivery after 5 p.m. in the time zone in which the recipient will receive delivery is deemed to have been made on the next day that is not a Saturday, Sunday, or legal holiday.

(f) Presumption of service. There shall be a presumption of service if the document is served where a party or a person customarily receives mail or at the address designated in the entry of appearance. If an entry of appearance has been filed on behalf of the party, service is effective upon service of a document to its representative.

[70 FR 28480, May 18, 2005]

§ 386.7 Filing of documents.

Address and method of filing. A person serving or tendering a document for filing must personally deliver or mail one copy of each document to all parties and counsel or their designated representative of record if represented. A signed original and one copy of each document submitted for the consideration of the Assistant Administrator, an Administrative Law Judge, or Hearing Officer must be personally delivered or mailed to: Department of Transportation Docket Management Facility, 1200 New Jersey Ave., SE., Washington, DC 20590-0001. A person will serve a copy of each document on each party in accordance with §386.6 of this subpart.


§ 386.8 Computation of time.

(a) Generally. In computing any time period set out in these rules or in an order issued hereunder, the time computation begins with the day following the act, event, or default. The last day of the period is included unless it is a Saturday, Sunday, or legal Federal holiday in which case the time period will run to the end of the next day that is not a Saturday, Sunday, or legal Federal holiday. All Saturdays, Sundays, and legal Federal holidays except those falling on the last day of the period will be computed.

(b) Date of entry of orders. In computing any period of time involving the date of the entry of an order, the date of entry is the date the order is served.

(c) Computation of time for delivery by mail. (1) Service of all documents is deemed effected at the time of mailing.

(2) Documents are not deemed filed until received by Dockets.

(3) Whenever a party has a right or a duty to act or to make any response within a prescribed period after service
§ 386.11 Commencement of proceedings.

(a) Driver qualification proceedings. These proceedings are commenced by the issuance of a determination by the Director, Office of Truck and Bus Standards and Operations, in a case arising under §391.47 of this chapter or by the issuance of a letter of disqualification.

(1) Such determination and letters must be accompanied by the following:

(i) A citation of the regulation under which the action is being taken;

(ii) A copy of all documentary evidence relied on or considered in taking such action, or in the case of voluminous evidence a summary of such evidence;

(iii) Notice to the driver and motor carrier involved in the case that they may petition for review of the action;

(iv) Notice that a hearing will be granted if the Assistant Administrator determines there are material factual issues in dispute;

(v) Notice that failure to petition for review will constitute a waiver of the right to contest the action; and

(vi) Notice that the burden or proof will be on the petitioner in cases arising under §391.47 of this chapter.

(2) At any time before the close of hearing, upon application of a party, the letter or determination may be amended at the discretion of the administrative law judge upon such terms as he/she approves.

(b) Notice of Violation. The Agency may issue a Notice of Violation as a means of notifying any person subject to the rules in this part that it has received information (i.e., from an investigation, audit, or any other source) wherein it has been alleged the person has violated provisions of the FMCSR, HMR, or FCCR. The notice of violation serves as an informal mechanism to address compliance deficiencies. If the alleged deficiency is not addressed to the satisfaction of the Agency, formal enforcement action may be taken in accordance with paragraph (c) of this section. A notice of violation is not a prerequisite to the issuance of a Notice of Claim. The notice of violation will address the following issues, as appropriate:

(1) The specific alleged violations.

(2) Any specific actions the Agency determines are appropriate to remedy the identified problems.

(3) The means by which the notified person can inform the Agency that it has received the notice of violation and either has addressed the alleged violation or does not agree with the Agency’s assertions in the notice of violation.

(4) Any other relevant information.

(c) Civil penalty proceedings. These proceedings are commenced by the issuance of a Notice of Claim.

(1) Each Notice of Claim must contain the following:

(i) A statement setting forth the facts alleged.

(ii) A statement of the provisions of law allegedly violated by the respondent.

(iii) The proposed civil penalty and notice of the maximum amount authorized to be claimed under statute.

(iv) The time, form, and manner whereby the respondent may pay, contest, or otherwise seek resolution of the claim.

(2) In addition to the information required by paragraph (c)(1) of this section, the Notice of Claim may contain such other matters as the Agency deems appropriate.

(3) In proceedings for collection of civil penalties for violations of the motor carrier safety regulations under the Motor Carrier Safety Act of 1984, the Agency may require the respondent to post a copy of the Notice of Claim in such place or places and for such duration as the Agency may determine appropriate to aid in the enforcement of the law and regulations.

§ 386.12 Complaint.

(a) Complaint of substantial violation. Any person may file a written complaint with the Assistant Administrator alleging that a substantial violation of any regulation issued under the Motor Carrier Safety Act of 1984 is occurring or has occurred within the preceding 60 days. A substantial violation is one which could reasonably lead to, or has resulted in, serious personal injury or death. Each complaint must be signed by the complainant and must contain:

(1) The name, address, and telephone number of the person who files it;

(2) The name and address of the alleged violator and, with respect to each alleged violator, the specific provisions of the regulations that the complainant believes were violated; and

(3) A concise but complete statement of the facts relied upon to substantiate each allegation, including the date of each alleged violation.

(b) Action on complaint of substantial violation. Upon the filing of a complaint of a substantial violation under paragraph (a) of this section, the Assistant Administrator shall determine whether it is nonfrivolous and meets the requirements of paragraph (a) of this section. If the Assistant Administrator determines the complaint is nonfrivolous and meets the requirements of paragraph (a), he/she shall investigate the complaint. The complainant shall be timely notified of findings resulting from such investigation. The Assistant Administrator shall not be required to conduct separate investigations of duplicative complaints. If the Assistant Administrator determines the complaint is frivolous or does not meet the requirements of paragraph (a) of this section, he/she shall dismiss the complaint and notify the complainant in writing of the reasons for such dismissal.

(c) Notwithstanding the provisions of section 552 of title 5, United States Code, the Assistant Administrator shall not disclose the identity of complainants unless it is determined that such disclosure is necessary to prosecute a violation. If disclosure becomes necessary, the Assistant Administrator shall take every practical means within the Assistant Administrator’s authority to assure that the complainant is not subject to harassment, intimidation, disciplinary action, discrimination, or financial loss as a result of such disclosure.

§ 386.13 Petitions to review and request for hearing: Driver qualification proceedings.

(a) Within 60 days after service of the determination under §391.47 of this chapter or the letter of disqualification, the driver or carrier may petition to review such action. Such petitions must be submitted to the Assistant Administrator and must contain the following:

(1) Identification of what action the petitioner wants overturned;

(2) Copies of all evidence upon which petitioner relies in the form set out in §386.49;

(3) All legal and other arguments which the petitioner wishes to make in support of his/her position;

(4) A request for oral hearing, if one is desired, which must set forth material factual issues believed to be in dispute;

(5) Certification that the reply has been filed in accordance with §386.31; and

(6) Any other pertinent material.

(b) Failure to submit a petition as specified in paragraph (a) of this section shall constitute a waiver of the right to petition for review of the determination or letter of disqualification. In these cases, the determination or disqualification issued automatically becomes the final decision of the Assistant Administrator.

(c) If the petition does not request a hearing, the Assistant Administrator may issue a final decision and order based on the evidence and arguments submitted.

§ 386.14 Reply.

(a) Time for reply to the Notice of Claim. Respondent must serve a reply
§ 386.15

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to the Notice of Claim in writing within 30 days following service of the Notice of Claim. The reply is to be served in accordance with §386.6 upon the Service Center indicated in the Notice of Claim.

(b) Options for reply. The respondent must reply to the Notice of Claim within the time allotted by choosing one of the following:

(1) Paying the full amount asserted in the Notice of Claim in accordance with §386.18 of this part;

(2) Contesting the claim by requesting administrative adjudication pursuant to paragraph (d) of this section; or

(3) Seeking binding arbitration in accordance with the Agency’s program. Although the amount of the proposed penalty may be disputed, referral to binding arbitration is contingent upon an admission of liability that the violations occurred.

(c) Failure to answer the Notice of Claim. (1) Respondent’s failure to answer the Notice of Claim in accordance with paragraph (a) may result in the issuance of a Notice of Default and Final Agency Order by the Field Administrator. The Notice of Default and Final Agency Order will declare respondent to be in default and further declare the Notice of Claim, including the civil penalty proposed in the Notice of Claim, to be the Final Agency Order in the proceeding. The Final Agency Order will be effective five days following service of the Notice of Default and Final Agency Order.

(2) The default constitutes an admission of all facts alleged in the Notice of Claim and a waiver of respondent’s opportunity to contest the claim. The default will be reviewed by the Assistant Administrator in accordance with §386.64(b), and the Final Agency Order may be vacated where a respondent demonstrates excusable neglect, a meritorious defense, or due diligence in seeking relief.

(3) Failure to pay the civil penalty as directed in a Final Agency Order constitutes a violation of that order, subjecting the respondent to an additional penalty as prescribed in Subpart G of this part.

(d) Request for administrative adjudication. The respondent may contest the claim and request administrative adjudication pursuant to paragraph (b)(2) of this section. An administrative adjudication is a process to resolve contested claims before the Assistant Administrator, Administrative Law Judge, or Hearing Officer. Once an administrative adjudication option is elected, it is binding on the respondent.

(1) Contents. In addition to the general requirements of this section, the reply must be in writing and state the grounds for contesting the claim and must raise any affirmative defenses the respondent intends to assert. Specifically, the reply:

(i) Must admit or deny each separately stated and numbered allegation of violation in the claim. A statement that the person is without sufficient knowledge or information to admit or deny will have the effect of a denial. Any allegation in the claim not specifically denied in the reply is deemed admitted. A mere general denial of the claim is insufficient and may result in a default being entered by the Agency decisionmaker upon motion by the Field Administrator.

(ii) Must include all known affirmative defenses, including those relating to jurisdiction, limitations, and procedure.

(iii) Must state which one of the following options respondent seeks:

(A) To submit written evidence without hearing; or

(B) An informal hearing; or

(C) A formal hearing.

(2) [Reserved]

[70 FR 28481, May 18, 2005]

§ 386.15 [Reserved]

§ 386.16 Action on replies to the Notice of Claim.

(a) Requests to submit written evidence without a hearing. Where respondent has elected to submit written evidence in accordance with §386.14(d)(1)(iii)(A):

(1) Agency Counsel must serve all written evidence and argument in support of the Notice of Claim no later than 60 days following service of respondent’s reply. The written evidence and argument must be served on the Assistant Administrator in accordance with §§386.6 and 386.7. The submission must include all pleadings, notices, and other filings in the case to date.
(2) Respondent will, not later than 45 days following service of Agency Counsel’s written evidence and argument, serve its written evidence and argument on the Assistant Administrator in accordance with §§ 386.6 and 386.7.

(3) Agency Counsel may file a written response to respondent’s submission. Any such submission must be filed within 20 days of service of respondent’s submission.

(4) All written evidence submitted by the parties must conform to the requirements of § 386.49.

(5) Following submission of evidence and argument as outlined in this section, the Assistant Administrator may issue a Final Agency Order and order based on the evidence and arguments submitted, or may issue any other order as may be necessary to adjudicate the matter.

(b) Requests for hearing. (1) If a request for a formal or informal hearing has been filed, the Assistant Administrator will determine whether there exists a dispute of a material fact at issue in the matter. If so, the matter will be set for hearing in accordance with respondent’s reply. If it is determined that there does not exist a dispute of a material fact at issue in the matter, the Assistant Administrator may issue a decision based on the written record, or may request the submission of further evidence or argument.

(2) If a respondent requests a formal or informal hearing in its reply, the Field Administrator must serve upon the Assistant Administrator and respondent a notice of consent or objection with a basis to the request within 60 days of service of respondent’s reply. Failure to serve an objection within the time allotted may result in referral of the matter to hearing.

(3) Requests for formal hearing. Following the filing of an objection with basis, the Field Administrator must serve a motion for Final Agency Order pursuant to § 386.36, unless otherwise directed by the Assistant Administrator. The motion must set forth the reasons why the Field Administrator is entitled to judgment as a matter of law. Respondent must, within 45 days of service of the motion for Final Agency Order, submit and serve a response to the Field Administrator’s motion.

After reviewing the record, the Assistant Administrator will either set the matter for hearing by referral to the Office of Hearings or issue a Final Agency Order based upon the submissions.

(4) Requests for informal hearing. (1) If the Field Administrator objects with basis to a request for an informal hearing, he/she must serve the objection, a copy of the Notice of Claim, and a copy of respondent’s reply, on the respondent and Assistant Administrator, pursuant to paragraph (b)(2) of this section. Based upon the Notice of Claim, the reply, and the objection with basis, the Assistant Administrator will issue an order granting or denying the request for informal hearing.

(A) Informal hearing granted. If the request for informal hearing is granted by the Assistant Administrator, a Hearing Officer will be assigned to hear the matter and will set forth the date, time and location for hearing. No further motions will be entertained, and no discovery will be allowed. At hearing, all parties may present evidence, written and oral, to the Hearing Officer, following which the Hearing Officer will issue a report to the Assistant Administrator containing findings of fact and recommending a disposition of the matter. The report will serve as the sole record of the proceedings. The Assistant Administrator may issue a Final Agency Order adopting the report, or issue other such orders as he/she may deem appropriate. By participating in an informal hearing, respondent waives its right to a formal hearing.

(B) Informal hearing denied. If the request for informal hearing is denied, the Field Administrator must serve a motion for Final Agency Order pursuant to § 386.36, unless otherwise directed by the Assistant Administrator. The motion must set forth the reasons why the Field Administrator is entitled to judgment as a matter of law. Respondent must, within 45 days of service of the motion for Final Agency Order, submit and serve a response to the Field Administrator’s motion. After reviewing the record, the Assistant Administrator will set the matter for formal hearing by referral to the Office of Hearings, or will issue a Final
$386.17 Intervention.

After the matter is called for hearing and before the date set for the hearing, any person may petition for leave to intervene. The petition for leave to intervene must be filed with the administrative law judge at least 30 days prior to the date set for the hearing. The petition must set forth the reasons why the petitioner alleges he/she is entitled to intervene. The petition must be served on all parties in accordance with § 386.31. Any party may file a response within 10 days of service of the petition. The administrative law judge shall then determine whether to permit or deny the petition. The petition will be allowed if the administrative law judge determines that the final decision could directly and adversely affect the petitioner or the class he/she represents, and if the petitioner may contribute materially to the disposition of the proceedings and his/her interest is not adequately represented by existing parties. Once admitted, a petitioner is a party for the purpose of all subsequent proceedings.

$386.18 Payment of the claim.

(a) Payment of the full amount claimed may be made at any time before issuance of a Final Agency Order. After the issuance of a Final Agency Order, claims are subject to interest, penalties, and administrative charges in accordance with 31 U.S.C. 3717; 49 CFR part 89; and 31 CFR 901.9.

(b) If respondent elects to pay the full amount as its response to the Notice of Claim, payment must be served upon the Field Administrator at the Service Center designated in the Notice of Claim within 30 days following service of the Notice of Claim. No written reply is necessary if respondent elects the payment option during the 30-day reply period. Failure to serve full payment within 30 days of service of the Notice of Claim when this option has been chosen may constitute a default and may result in the Notice of Claim, including the civil penalty assessed by the Notice of Claim, becoming the Final Agency Order in the proceeding pursuant to § 386.14(c).

(c) Unless objected to in writing, submitted at the time of payment, payment of the full amount in response to the Notice of Claim constitutes an admission by the respondent of all facts alleged in the Notice of Claim. Payment waives respondent's opportunity to further contest the claim, and will result in the Final Agency Order, without opportunity to appeal, as the Final Agency Order.
the violations cited in the Notice of Claim or notice of violation.

(3) A settlement agreement accepted and approved by the Assistant Administrator or Administrative Law Judge is a Final Agency Order which is binding on all parties according to its terms. Consent to a settlement agreement which has not yet been approved by the Assistant Administrator or Administrative Law Judge may not be withdrawn for a period of 30 days.

(b) Civil penalty proceedings not before agency decisionmaker. When the parties have agreed to a settlement at any time prior to the case coming before the Agency decisionmaker, the parties may execute an appropriate agreement 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 will enter an order in accordance with its terms. The settlement agreement becomes the Final Agency Order upon 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 Assistant 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]

Subpart D—General Rules and Hearings

§ 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 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.
§ 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.

(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.

§ 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.
§ 386.38 Scope of discovery.

(a) Unless otherwise limited by order of the Assistant Administrator or, in cases that have been called for a hearing, the administrative law judge, in accordance with these rules, the parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the proceeding, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter.

(b) It is not ground for objection that information sought will not be admissible at the hearing if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

(c) A party may obtain discovery of documents and tangible things otherwise discoverable under paragraph (a) of this section and prepared in anticipation of or for the hearing by or for another party’s representative (including his or her attorney, consultant, surety, indemnitor, insurer, or agent) only upon a showing that the party seeking discovery has substantial need of the materials in the preparation of his or her case and that he or she is unable without undue hardship to obtain the substantial equivalent of the materials by other means. In ordering discovery of such materials when the required showing has been made, the Assistant Administrator or the administrative law judge shall protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party concerning the proceeding.

§ 386.40 Supplementation of responses.

A party who has responded to a request for discovery with a response that was complete when made is under no duty to supplement his/her response to include information thereafter acquired, except as follows:

(a) A party is under a duty to supplement timely his/her response with respect to any question directly addressed to:

(1) The identity and location of persons having knowledge of discoverable matters; and

(2) The identity of each person expected to be called as an expert witness at the hearing, the subject matter on which he or she is expected to testify and the substance of his or her testimony.

(b) A party is under a duty to amend timely a prior response if he or she later obtains information upon the basis of which:

(1) he or she knows the response was incorrect when made; or

(2) he or she knows that the response though correct when made is no longer true and the circumstances are such that a failure to amend the response is in substance a knowing concealment.

(c) A duty to supplement responses may be imposed by order of the Assistant Administrator or the administrative law judge or agreement of the parties.

§ 386.39 Protective orders.

Upon motion by a party or other person from whom discovery is sought, and for good cause shown, the Assistant Administrator or the administrative law judge, if one has been appointed, may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following:

(a) The discovery not be had; (b) The discovery may be had only on specified terms and conditions, including a designation of the time or place; (c) The discovery may be had only by a method of discovery other than that selected by the party seeking discovery; (d) Certain matters not relevant may not be inquired into, or that the scope of discovery be limited to certain matters; (e) Discovery be conducted with no one present except persons designated by the Assistant Administrator or the administrative law judge; or (f) A trade secret or other confidential research, development, or commercial information may not be disclosed or be disclosed only in a designated way.
§ 386.41 Stipulations regarding discovery.

Unless otherwise ordered, a written stipulation entered into by all the parties and filed with the Assistant Administrator or the administrative law judge, if one has been appointed, may:

(a) Provide that depositions be taken before any person, at any time or place, upon sufficient notice, and in any manner, and when so taken may be used like other depositions, and

(b) Modify the procedures provided by these rules for other methods of discovery.

§ 386.42 Written interrogatories to parties.

(a) Without leave, any party may serve upon any other party written interrogatories to be answered by the party to whom the interrogatories are directed; or, if that party is a public or private corporation or partnership or association or governmental agency, by any officer or agent, who will furnish the information available to that party.

(b) The maximum number of interrogatories served will not exceed 30, including all subparts, unless the Assistant Administrator or Administrative Law Judge permits a larger number on motion and for good cause shown. Other interrogatories may be added without leave, so long as the total number of approved and additional interrogatories does not exceed 30.

(c) Each interrogatory shall be answered separately and fully in writing under oath unless it is objected to, in which event the grounds for objection shall be stated and signed by the party, or counsel for the party, if represented, making the response. The party to whom the interrogatories are directed shall serve the answers and any objections within 30 days after the service of the interrogatories, or within such shortened or longer period as the Assistant Administrator or the Administrative Law Judge may allow.

(d) Motions to compel may be made in accordance with § 386.45.

(e) A notice of discovery must be served on the Assistant Administrator or, in cases that have been referred to the Office of Hearings, on the Administrative Law Judge. A copy of the interrogatories, answers, and all related pleadings must be served on all parties to the proceeding.

(f) An interrogatory otherwise proper is not necessarily objectionable merely because an answer to the interrogatory involves an opinion or contention that relates to fact or the application of law to fact, but the Assistant Administrator or Administrative Law Judge may order that such an interrogatory need not be answered until after designated discovery has been completed or until a prehearing conference or other later time.

[70 FR 28483, May 18, 2005]

§ 386.43 Production of documents and other evidence; entry upon land for inspection and other purposes; and physical and mental examination.

(a) Any party may serve on any other party a request to:

(1) Produce and permit the party making the request, or a person acting on his or her behalf, to inspect and copy any designated documents, or to inspect and copy, test, or sample any tangible things which are in the possession, custody, or control of the party upon whom the request is served; or

(2) Permit entry upon designated land or other property in the possession or control of the party upon whom the request is served for the purpose of inspection and measuring, photographing, testing, or for other purposes as stated in paragraph (a)(1) of this section.

(3) Submit to a physical or mental examination by a physician.

(b) The request may be served on any party without leave of the Assistant Administrator or administrative law judge.

(c) The request shall:

(1) Set forth the items to be inspected either by individual item or category;

(2) Describe each item or category with reasonable particularity;

(3) Specify a reasonable time, place, and manner of making the inspection and performing the related acts;

(4) Specify the time, place, manner, conditions, and scope of the physical or mental examination and the person or persons by whom it is to be made. A report of examining physician shall be

[70 FR 28483, May 18, 2005]
made in accordance with Rule 35(b) of the Federal Rules of Civil Procedure, title 28, U.S. Code, as amended.

(d) The party upon whom the request is served shall serve on the party submitting the request a written response within 30 days after service of the request.

(e) The response shall state, with respect to each item or category:
   (1) That inspection and related activities will be permitted as requested; or
   (2) That objection is made in whole or in part, in which case the reasons for objection shall be stated.

(f) A copy of each request for production and each written response shall be served on all parties and filed with the Assistant Administrator or the administrative law judge, if one has been appointed.

§ 386.44 Request for admissions.

(a) Request for admission. (1) Any party may serve upon any other party a request for admission of any relevant matter or the authenticity of any relevant document. Copies of any document about which an admission is requested must accompany the request.

   (2) Each matter for which an admission is requested shall be separately set forth and numbered. The matter is admitted unless within 15 days after service of the request, the party to whom the request is directed serves upon the party requesting the admission a written answer signed by the party or his/her attorney.

   (3) Each answer must specify whether the party admits or denies the matter. If the matter cannot be admitted or denied, the party shall set out in detail the reasons.

   (4) A party may not issue a denial or fail to answer on the ground that he/she lacks knowledge unless he/she has made reasonable inquiry to ascertain information sufficient to allow him/her to admit or deny.

   (5) A party may file an objection to a request for admission within 10 days after service. Such motion shall be filed with the administrative law judge if one has been appointed, otherwise it shall be filed with the Assistant Administrator. An objection must explain in detail the reasons the party should not answer. A reply to the objection may be served by the party requesting the admission within 10 days after service of the objection. It is not sufficient ground for objection to claim that the matter about which an admission is requested presents an issue of fact for hearing.

   (b) Effect of admission. Any matter admitted is conclusively established unless the Assistant Administrator or administrative law judge permits withdrawal or amendment. Any admission under this rule is for the purpose of the pending action only and may not be used in any other proceeding.

   (c) If a party refuses to admit a matter or the authenticity of a document which is later proved, the party requesting the admission may move for an award of expenses incurred in making the proof. Such a motion shall be granted unless there was a good reason for failure to admit.

§ 386.45 Motion to compel discovery.

(a) If a deponent fails to answer a question propounded or a party upon whom a request is made pursuant to §§386.42 through 386.44, or a party upon whom interrogatories are served fails to respond adequately or objects to the request, or any part thereof, or fails to permit inspection as requested, the discovering party may move the Assistant Administrator or the administrative law judge, if one has been appointed, for an order compelling a response or inspection in accordance with the request.

(b) The motion shall set forth:
   (1) The nature of the questions or request;
   (2) The response or objections of the party upon whom the request was served; and
   (3) Arguments in support of the motion.

(c) For purposes of this section, an evasive answer or incomplete answer or response shall be treated as a failure to answer or respond.

(d) In ruling on a motion made pursuant to this section, the Assistant Administrator or the administrative law judge, if one has been appointed, may make and enter a protective order such as he or she is authorized to enter on a motion made pursuant to §386.39(a).
§ 386.46 Depositions.

(a) When, how, and by whom taken. (1) The deposition of any witness may be taken at reasonable times subsequent to the appointment of an Administrative Law Judge. Prior to referral to the Office of Hearings, a party may petition the Assistant Administrator, in accordance with §386.37, for leave to conduct a deposition based on good cause shown.

(2) Depositions may be taken by oral examination or upon written interrogatories before any person having power to administer oaths.

(3) The parties may stipulate in writing or the Administrative Law Judge may upon motion order that a deposition be taken by telephone or other remote electronic means.

(4) If a subpoena duces tecum is to be served on the person to be examined, the designation of the materials to be produced as set forth in the subpoena shall be attached to, or included in, the notice.

(5) If the deposition is to be recorded by videotape or audiotape, the notice shall specify the method of recording.

(b) Application. Any party desiring to take the deposition of a witness must indicate to the witness and all other parties the time when, the place where, and the name and post office address of the person before whom the deposition is to be taken; the name and address of each witness; and the subject matter concerning which each such witness is expected to testify.

(c) Notice. A party desiring to take a deposition must give notice to the witness and all other parties. Notice must be in writing. Notice of the deposition must be given not less than 20 days from when the deposition is to be taken if the deposition is to be held within the continental United States and not less than 30 days from when the deposition is to be taken if the deposition is to be held elsewhere, unless a shorter time is agreed to by the parties or by leave of the Assistant Administrator or Administrative Law Judge by motion for good cause shown.

(d) Depositions upon written questions. Within 14 days after the notice and written questions are served, a party may serve cross-questions upon all other parties. Within 7 days after being served with cross-questions, a party may serve redirect questions upon all other parties. Within 7 days after being served with redirect questions, a party may serve recross questions upon all other parties. The Assistant Administrator or Administrative Law Judge may enlarge or shorten the time for cause shown.

(e) Taking and receiving in evidence. Each witness testifying upon deposition must be sworn, and any other party must be given the right to cross-examine. The questions propounded and the answers to them, together with all objections made, must be reduced to writing; read by or to, and subscribed by the witness; and certified by the person administering the oath. The person who took the deposition must seal the deposition transcript in an envelope and file it in accordance with §386.7. Subject to objections to the questions and answers as were noted at the time of taking the deposition and which would have been valid if the witness were personally present and testifying, the deposition may be read and offered in evidence by the party taking it as against any party who was present or represented at the taking of the deposition or who had due notice of it.

(f) Witness limit. No party may seek deposition testimony of more than five witnesses without leave of the Agency decisionmaker for good cause shown. Individual depositions are not to exceed 8 hours for any one witness.

(g) Motion to terminate or limit examination. During the taking of a deposition, a party or deponent may request suspension of the deposition on grounds of bad faith in the conduct of the examination, oppression of a deponent or party or improper questions propounded. The deposition will then be adjourned. The objecting party or deponent must, however, immediately move for a ruling on his or her objections to the deposition conduct or proceedings before the Assistant Administrator or Administrative Law Judge, who then may limit the scope or manner of the taking of the deposition.

[70 FR 28484, May 18, 2005]
§ 386.47 Use of deposition at hearings.

(a) Generally. At the hearing, any part or all of a deposition, so far as admissible under the rules of evidence, may be used against any party who was present or represented at the taking of the deposition or who had due notice thereof in accordance with any one of the following provisions:

(1) Any deposition may be used by any party for the purpose of contradicting or impeaching the testimony of the deponent as a witness.

(2) The deposition of expert witnesses, particularly the deposition of physicians, may be used by any party for any purpose, unless the Assistant Administrator or administrative law judge rules that such use would be unfair or a violation of due process.

(3) The deposition of a party or of anyone who at the time of taking the deposition was an officer, director, or duly authorized agent of a public or private organization, partnership, or association which is a party, may be used by any other party for any purpose.

(4) The deposition of a witness, whether or not a party, may be used by any party for any purpose if the presiding officer finds:
   (i) That the witness is dead; or
   (ii) That the witness is out of the United States or more than 100 miles from the place of hearing unless it appears that the absence of the witness was procured by the party offering the deposition; or
   (iii) That the witness is unable to attend to testify because of age, sickness, infirmity, or imprisonment; or
   (iv) That the party offering the deposition has been unable to procure the attendance of the witness by subpoena; or
   (v) Upon application and notice, that such exceptional circumstances exist as to make it desirable, in the interest of justice and with due regard to the importance of presenting the testimony of witnesses orally in open hearing, to allow the deposition to be used.

(5) If only part of a deposition is offered in evidence by a party, any other party may require him or her to introduce all of it which is relevant to the part introduced, and any party may introduce any other parts.

(b) Objections to admissibility. Except as provided in this paragraph, objection may be made at the hearing to receiving in evidence any deposition or part thereof for any reason which would require the exclusion of the evidence if the witness were then present and testifying.

(1) Objections to the competency of a witness or to the competency, relevancy or materiality of testimony are not waived by failure to make them before or during the taking of the deposition, unless the ground of the objection is one which might have been obviated or removed if presented at that time.

(2) Errors and irregularities occurring at the oral examination in the manner of taking the deposition, in the form of the questions or answers, in the oath or affirmation, or in the conduct of parties and errors of any kind which might be obviated, removed, or cured if promptly presented, are waived unless reasonable objection thereto is made at the taking of the deposition.

(3) Objections to the form or written interrogatories are waived unless served in writing upon the party propounding them.

(c) Effect of taking using depositions. A party shall not be deemed to make a person his or her own witness for any purpose by taking his or her deposition. The introduction in evidence of the deposition or any part thereof for any purpose other than that of contradicting or impeaching the deponent makes the deponent the witness of the party introducing the deposition, but this shall not apply to the use by any other party of a deposition as described in paragraph (a)(2) of this section. At the hearing, any party may rebut any relevant evidence contained in a deposition whether introduced by him or her or by any other party.

§ 386.48 Medical records and physicians’ reports.

In cases involving the physical qualifications of drivers, copies of all physicians’ reports, test results, and other medical records that a party intends to rely upon shall be served on all other parties at least 30 days prior to the date set for a hearing. Except as waived by the Director, Office of Truck
§ 386.49 Form of written evidence.

All written evidence should be submitted in the following forms:

(a) A written statement of a person having personal knowledge of the facts alleged, or

(b) Documentary evidence in the form of exhibits attached to a written statement identifying the exhibit and giving its source.

[70 FR 28484, May 18, 2005]

§ 386.51 Amendment and withdrawal of pleadings.

(a) Except in instances covered by other rules, anytime more than 15 days prior to the hearing, a party may amend his/her pleadings by serving the amended pleading on the Assistant Administrator or the administrative law judge, if one has been appointed, and on all parties. Within 15 days prior to the hearing, an amendment shall be allowed only at the discretion of the administrative law judge. When an amended pleading is filed, other parties may file a response and objection within 10 days.

(b) A party may withdraw his/her pleading any time more than 15 days prior to the hearing by serving a notice of withdrawal on the Assistant Administrator or the Administrative Law Judge. Within 15 days prior to the hearing a withdrawal may be made only at the discretion of the Assistant Administrator or the Administrative Law Judge. The withdrawal will be granted absent a finding that the withdrawal will result in injustice, prejudice, or irreparable harm to the non-moving party, or is otherwise contrary to the public interest.

[50 FR 40306, Oct. 2, 1985, as amended at 70 FR 28484, May 18, 2005]

§ 386.52 Appeals from interlocutory rulings.

(a) General. Unless otherwise provided in this subpart, a party may not appeal a ruling or decision of the Assistant Administrator to the Assistant Administrator until the Assistant Administrator's decision has been entered on the record. A decision or order of the Assistant Administrator on the interlocutory appeal does not constitute a Final Agency Order for the purposes of judicial review under §386.67.

(b) Interlocutory appeal for cause. If a party files a written request for an interlocutory appeal for cause with the Administrative Law Judge, or orally requests an interlocutory appeal for cause, the proceedings are stayed until the Administrative Law Judge issues a decision on the request. If the Administrative Law Judge grants the request, the proceedings are stayed until the Assistant Administrator issues a decision on the interlocutory appeal. The Administrative Law Judge must grant an interlocutory appeal for cause if a party shows that delay of the appeal would be detrimental to the public interest or would result in undue prejudice to any party.

(c) [Reserved]

(d) Procedure. A party must file a notice of interlocutory appeal, with any supporting documents, with the Assistant Administrator, and serve copies on each party and the Administrative Law Judge, not later than 10 days after the Administrative Law Judge's oral decision has been served. A party must file a reply brief, if any, with the Assistant Administrator and serve a copy of the reply brief on each party, not later than 10 days after service of the appeal brief. The Assistant Administrator will render a decision on the interlocutory appeal, within a reasonable time after receipt of the interlocutory appeal.

(e) The Assistant Administrator may reject frivolous, repetitive, or dilatory appeals, and may issue an order precluding one or more parties from making further interlocutory appeals, and may order such further relief as required.

[70 FR 28484, May 18, 2005]

§ 386.53 Subpoenas, witness fees.

(a) Applications for the issuance of subpoenas must be submitted to the Assistant Administrator, or in cases that have been called for a hearing, to
the administrative law judge. The application must show the general relevance and reasonable scope of the evidence sought. Any person served with a subpoena may, within 7 days after service, file a motion to quash or modify. The motion must be filed with the official who approved the subpoena. The filing of a motion shall stay the effect of the subpoena until a decision is reached.

(b) Witnesses shall be entitled to the same fees and mileage as are paid witnesses in the courts of the United States. The fees shall be paid by the party at whose instance the witness is subpoenaed or appears.

(c) Paragraph (a) of this section shall not apply to the Administrator or employees of the FMCSA or to the production of documents in their custody. Applications for the attendance of such persons or the production of such documents at a hearing shall be made to the Assistant Administrator or administrative law judge, if one is appointed, and shall set forth the need for such evidence and its relevancy.

§ 386.54 Administrative Law Judge.

(a) Powers of an Administrative Law Judge. The Administrative Law Judge may take any action and may prescribe all necessary rules and regulations to govern the conduct of the proceedings to ensure a fair and impartial hearing, and to avoid delay in the disposition of the proceedings. In accordance with the rules in this subchapter, an Administrative Law Judge may do the following:

(1) Give notice of and hold prehearing conferences and hearings.
(2) Administer oaths and affirmations.
(3) Issue subpoenas authorized by law.
(4) Rule on offers of proof.
(5) Receive relevant and material evidence.
(6) Regulate the course of the administrative adjudication in accordance with the rules of this subchapter and the Administrative Procedure Act.
(7) Hold conferences to settle or simplify the issues by consent of the parties.
(8) Dispose of procedural motions and requests, except motions that under this part are made directly to the Assistant Administrator.
(9) Issue orders permitting inspection and examination of lands, buildings, equipment, and any other physical thing and the copying of any document.
(10) Make findings of fact and conclusions of law, and issue decisions.

(b) Limitations on the power of the Administrative Law Judge. The Administrative Law Judge is bound by the procedural requirements of this part and the precedent opinions of the Agency. This section does not preclude an Administrative Law Judge from barring a person from a specific proceeding based on a finding of obstreperous or disruptive behavior in that proceeding.

(c) Disqualification. The Administrative Law Judge may disqualify himself or herself at any time, either at the request of any party or upon his or her own initiative. Assignments of Administrative Law Judges are made by the Chief Administrative Law Judge upon the request of the Assistant Administrator. Any request for a change in such assignment, including disqualification, will be considered only for good cause which would unduly prejudice the proceeding.

[70 FR 28485, May 18, 2005]

§ 386.55 Prehearing conferences.

(a) Convening. At any time before the hearing begins, the administrative law judge, on his/her own motion or on motion by a party, may direct the parties or their counsel to participate with him/her in a prehearing conference to consider the following:

(1) Simplification and clarification of the issues;
(2) Necessity or desirability of amending pleadings;
(3) Stipulations as to the facts and the contents and authenticity of documents;
(4) Issuance of and responses to subpoenas;
(5) Taking of depositions and the use of depositions in the proceedings;
(6) Orders for discovery, inspection and examination of premises, production of documents and other physical objects, and responses to such orders;

(7) Disclosure of the names and addresses of witnesses and the exchange of documents intended to be offered in evidence; and

(8) Any other matter that will tend to simplify the issues or expedite the proceedings.

(b) Order. The administrative law judge shall issue an order which recites the matters discussed, the agreements reached, and the rulings made at the prehearing conference. The order shall be served on the parties and filed in the record of the proceedings.

§ 386.56 Hearings.

(a) As soon as practicable after his/her appointment, the administrative law judge shall issue an order setting the date, time, and place for the hearing. The order shall be served on the parties and become a part of the record of the proceedings. The order may be amended for good cause shown.

(b) Conduct of hearing. The administrative law judge presides over the hearing. Hearings are open to the public unless the administrative law judge orders otherwise.

(c) Evidence. Except as otherwise provided in these rules and the Administrative Procedure Act, 5 U.S.C. 551 et seq., the Federal Rules of Evidence shall be followed.

(d) Information obtained by investigation. Any document, physical exhibit, or other material obtained by the Administration in an investigation under its statutory authority may be disclosed by the Administration during the proceeding and may be offered in evidence by counsel for the Administration.

(e) Record. The hearing shall be stenographically transcribed and reported. The transcript, exhibits, and other documents filed in the proceedings shall constitute the official record of the proceedings. A copy of the transcript and exhibits will be made available to any person upon payment of prescribed costs.

§ 386.57 Proposed findings of fact, conclusions of law.

The administrative law judge shall afford the parties reasonable opportunity to submit proposed findings of fact, conclusions of law, and supporting reasons therefor. If the administrative law judge orders written proposals and arguments, each proposed finding must include a citation to the specific portion of the record relied on to support it. Written submissions, if any, must be served within the time period set by the administrative law judge.

§ 386.58 Burden of proof.

(a) Enforcement cases. The burden of proof shall be on the Administration in enforcement cases.

(b) Conflict of medical opinion. The burden of proof in cases arising under §391.47 of this chapter shall be on the party petitioning for review under §386.13(a).

Subpart E—Decision

§ 386.61 Decision.

(a) Administrative Law Judge. After receiving the proposed findings of fact, conclusions of law, and arguments of the parties, the administrative law judge shall issue a decision. If the proposed findings of fact, conclusions of law, and arguments were oral, he/she may issue an oral decision. The decision of the administrative law judge becomes the final decision of the Assistant Administrator 45 days after it is served unless a petition or motion for review is filed under §386.62. The decision shall be served on all parties and on the Assistant Administrator.

(b) Hearing Officer. The Hearing Officer will prepare a report to the Assistant Administrator containing findings of fact and recommended disposition of the matter within 45 days after the conclusion of the hearing. The Assistant Administrator will issue a Final Agency Order adopting the report, or may make other such determinations as appropriate. The Assistant Administrator's decision to adopt a Hearing Officer's report may be reviewed in accordance with §386.64.

[50 FR 40306, Oct. 2, 1985, as amended at 70 FR 28485, May 18, 2005]
§ 386.62 Review of administrative law judge's decision.

(a) All petitions to review must be accompanied by exceptions and briefs. Each petition must set out in detail objections to the initial decision and shall state whether such objections are related to alleged errors of law or fact. It shall also state the relief requested. Failure to object to any error in the initial decision shall waive the right to allege such error in subsequent proceedings.

(b) Reply briefs may be filed within 30 days after service of the appeal brief.

(c) No other briefs shall be permitted except upon request of the Assistant Administrator.

(d) Copies of all briefs must be served on all parties.

(e) No oral argument will be permitted except on order of the Assistant Administrator.

§ 386.63 Decision on review.

Upon review of a decision, the Assistant Administrator may adopt, modify, or set aside the administrative law judge's findings of fact and conclusions of law. He/she may also remand proceedings to the administrative law judge with instructions for such further proceedings as he/she deems appropriate. If not remanded, the Assistant Administrator shall issue a final order disposing of the proceedings, and serve it on all parties.

§ 386.64 Reconsideration.

(a) Within 20 days following service of the Final Agency Order, any party may petition the Assistant Administrator for reconsideration of the order. If a civil penalty was imposed, the filing of a petition for reconsideration stays the entire action, unless the Assistant Administrator orders otherwise.

(b) In the event a Notice of Default and Final Agency Order is issued by the Field Administrator as a result of the respondent's failure to reply in accordance with §386.14(a), the only issue that will be considered upon reconsideration is whether a default has occurred under §386.14(c). The Final Agency Order may be vacated where a respondent can demonstrate excusable neglect, a meritorious defense, or due diligence in seeking relief.

(c) Either party may serve an answer to a petition for reconsideration within 30 days of the service date of the petition.

(d) Following the close of the 30-day period, the Assistant Administrator will rule on the petition.

(e) The ruling on the petition will be the Final Agency Order. A petition for reconsideration of the Assistant Administrator's ruling will not be permitted.

[70 FR 28485, May 18, 2005]

§ 386.65 Failure to comply with final order.

If, within 30 days of receipt of a final agency order issued under this part, the respondent does not submit in writing his/her acceptance of the terms of an order directing compliance, or, where appropriate, pay a civil penalty, or file an appeal under §386.67, the case may be referred to the Attorney General with a request that an action be brought in the appropriate United States District Court to enforce the terms of a compliance order or collect the civil penalty.

§ 386.66 Motions for rehearing or for modification.

(a) No motion for rehearing or for modification of an order shall be entertained for 1 year following the date the Assistant Administrator’s order goes into effect. After 1 year, any party may file a motion with the Assistant Administrator requesting a rehearing or modification of the order. The motion must contain the following:

(1) A copy of the order about which the change is requested;

(2) A statement of the changed circumstances justifying the request; and

(3) Copies of all evidence intended to be relied on by the party submitting the motion.

(b) Upon receipt of the motion, the Assistant Administrator may make a decision denying the motion or modifying the order in whole or in part. He/she may also, prior to making his/her decision, order such other proceedings
under these rules as he/she deems necessary and may request additional information from the party making the motion.

§ 386.67 Judicial review.

(a) Any party to the underlying proceeding, who, after an administrative adjudication, is adversely affected by a Final Agency Order issued under 49 U.S.C. 521 may, within 30 days of service of the Final Agency Order, petition for review of the order in the United States Court of Appeals in the circuit where the violation is alleged to have occurred, or where the violator has its principal place of business or residence, or in the United States Court of Appeals for the District of Columbia Circuit.

(b) Judicial review will be based on a determination of whether the findings and conclusions in the Final Agency Order were supported by substantial evidence or were otherwise not in accordance with law. No objection that has not been raised before the Agency will be considered by the court, unless reasonable grounds existed for failure or neglect to do so. The commencement of proceedings under this section will not, unless ordered by the court, operate as a stay of the Final Agency Order of the Agency.

[70 FR 28485, May 18, 2005]

Subpart F—Injunctions and Imminent Hazards

§ 386.71 Injunctions.

Whenever it is determined that a person has engaged, or is about to engage, in any act or practice constituting a violation of section 31502 of title 49, United States Code; of the Motor Carrier Safety Act of 1984; of the Hazardous Materials Transportation Act; or any regulation or order issued under that section or those Acts for which the Federal Motor Carrier Safety Administrator exercises enforcement responsibility, the Chief Counsel may request the United States Attorney General to bring an action in the appropriate United States District Court for such relief as is necessary or appropriate, including mandatory or prohibitive injunctive relief, interim equitable relief, and punitive damages, as provided by section 213(c) of the Motor Carrier Safety Act of 1984 and section 111(a) of the Hazardous Materials Transportation Act (49 U.S.C. 507(c) 5122).

[70 FR 28485, May 18, 2005]

§ 386.72 Imminent hazard.

(a) Whenever it is determined that an imminent hazard exists as a result of the transportation by motor vehicle of a particular hazardous material, the Chief Counsel or Deputy Chief Counsel of the FMCSA may bring, or request the United States Attorney General to bring, an action in the appropriate United States District Court for an order suspending or restricting the transportation by motor vehicle of the hazardous material or for such other order as is necessary to eliminate or ameliorate the imminent hazard, as provided by 49 U.S.C. 5122. In this paragraph, "imminent hazard" means the existence of a condition that presents a substantial likelihood that death, serious illness, severe personal injury, or a substantial endangerment to health, property, or the environment may occur before a notice of investigation proceeding, or other administrative hearing or formal proceeding, to abate the risk of harm can be completed.

(b)(1) Whenever it is determined that a violation of 49 U.S.C. 31502 or the Motor Carrier Safety Act of 1984, as amended, or the Commercial Motor Vehicle Safety Act of 1986, as amended, or a regulation issued under such section or Acts, or a combination of such violations, poses an imminent hazard to safety, the Director of the Office of Enforcement and Compliance or a Division Administrator, or his or her delegate, shall order:

(i) A commercial motor vehicle or employee operating such vehicle out-of-service, or order an employer to cease all or part of the employer's commercial motor vehicle operations, as provided by 49 U.S.C. 521(b)(5);

(ii) An intermodal equipment provider's specific vehicle or equipment out-of-service, or order an intermodal equipment provider to cease all or part of its operations, as provided by 49 U.S.C. 521(b)(3) and 49 U.S.C. 31151(a)(3)(I).
(2) In making any such order, no restrictions shall be imposed on any vehicle, terminal or facility, employee, employer or intermodal equipment provider beyond that required to abate the hazard.

(3) In this paragraph (b), *imminent hazard* means any condition of vehicle, intermodal equipment, or commercial motor vehicle operations that substantially increases the likelihood of serious injury or death if not discontinued immediately.

(4) Upon the issuance of an order under paragraph (b)(1) of this section, the motor carrier employer, intermodal equipment provider or driver employee shall comply immediately with such order. Opportunity for review shall be provided in accordance with 5 U.S.C. 554, except that such review shall occur not later than 10 days after issuance of such order, as provided by section 213(b) of the Motor Carrier Safety Act of 1984 (49 U.S.C. 521(b)(5)). An order to an employer or intermodal equipment provider to cease all or part of its operations shall not prevent vehicles in transit at the time the order is served from proceeding to their immediate destinations, unless any such vehicle or its driver is specifically ordered out-of-service forthwith. However, vehicles and drivers proceeding to their immediate destination shall be subject to compliance upon arrival.

(5) For purposes of this section, the term *immediate destination* is the next scheduled stop of the vehicle already in motion where the cargo on board can be safely secured.

(6) Failure to comply immediately with an order issued under this section shall subject the motor carrier employer, intermodal equipment provider, or driver to penalties prescribed in subpart G of this part.

§ 386.82 Civil penalties for violations of notices and orders.

(a) Additional civil penalties are chargeable for violations of notices and orders which are issued under civil forfeiture proceedings pursuant to 49 U.S.C. 521(b). These notices and orders are as follows:

(1) Notice to abate—§ 386.11(b)(2) and (c)(1)(iv);

(2) Notice to post—§ 386.11(b)(3);

(3) Final order—§ 386.14, § 386.17, § 386.22, and § 386.61; and

(4) Out-of-service order—§ 386.72(b)(1).

(b) A schedule of these additional penalties is provided in the appendix A.
§ 386.83 Sanction for failure to pay civil penalties or abide by payment plan; operation in interstate commerce prohibited.

(a)(1) General rule. (i) A CMV owner or operator that fails to pay a civil penalty in full within 90 days after the date specified for payment by FMCSA’s final agency order, is prohibited from operating in interstate commerce starting on the next (i.e., the 91st) day. The prohibition continues until the FMCSA has received full payment of the penalty.

(ii) An intermodal equipment provider that fails to pay a civil penalty in full within 90 days after the date specified for payment by FMCSA’s final agency order, is prohibited from tendering intermodal equipment to motor carriers for operation in interstate commerce starting on the next (i.e., the 91st) day. The prohibition continues until the FMCSA has received full payment of the penalty.

(b) Show cause proceeding. (1) FMCSA will notify a CMV owner or operator, or intermodal equipment provider, in writing if it has not received payment within 45 days after the date specified for payment by the final agency order or the date of a missed installment payment. The notice will include a warning that failure to pay the entire penalty within 90 days after payment was due, will result in the CMV owner or operator, or an intermodal equipment provider, being prohibited from operating in interstate commerce.

(2) The notice will order the CMV owner or operator, or intermodal equipment provider, to show cause why it should not be prohibited from operating in interstate commerce on the 91st day after the date specified for payment. The prohibition may be avoided only by submitting to the Chief Safety Officer:

(i) Evidence that the respondent has paid the entire amount due; or

(ii) Evidence that the respondent has filed for bankruptcy under chapter 11, title 11, United States Code. Respondents in bankruptcy must also submit the information required by paragraph (d) of this section.

(c) A CMV owner or operator, or intermodal equipment provider, that fails to pay the full outstanding balance of its civil penalty within 90 days after the date of the missed installment payment, is prohibited from operating in interstate commerce on the next (i.e., the 91st) day. The prohibition continues until the FMCSA has received full payment of the entire penalty.

(3) Appeals to Federal Court. If the CMV owner or operator, or intermodal equipment provider, appeals the final agency order to a Federal Circuit Court of Appeals, the terms and payment due date of the final agency order are not stayed unless the Court so directs.

(b) Show cause proceeding. (1) FMCSA will notify a CMV owner or operator, or intermodal equipment provider, in writing if it has not received payment within 45 days after the date specified for payment by the final agency order or the date of a missed installment payment. The notice will include a warning that failure to pay the entire penalty within 90 days after payment was due, will result in the CMV owner or operator, or an intermodal equipment provider, being prohibited from operating in interstate commerce.

(2) The notice will order the CMV owner or operator, or intermodal equipment provider, to show cause why it should not be prohibited from operating in interstate commerce on the 91st day after the date specified for payment. The prohibition may be avoided only by submitting to the Chief Safety Officer:

(i) Evidence that the respondent has paid the entire amount due; or

(ii) Evidence that the respondent has filed for bankruptcy under chapter 11, title 11, United States Code. Respondents in bankruptcy must also submit the information required by paragraph (d) of this section.

(3) The notice will be delivered by certified mail or commercial express service. If the principal place of business of a CMV owner or operator, or an intermodal equipment provider, is in a foreign country, the notice will be delivered to the designated agent of the CMV owner or operator or intermodal equipment provider.

(c) A CMV owner or operator, or intermodal equipment provider, that
§ 386.84 Sanction for failure to pay civil penalties or abide by payment plan; suspension or revocation of registration.

(a)(1) General rule. The registration of a broker, freight forwarder, or for-hire motor carrier that fails to pay a civil penalty in full within 90 days after the date specified for payment by the FMCSA’s final agency order, will be suspended starting on the next (i.e., the 91st) day. The suspension continues until the FMCSA has received full payment of the penalty.

(2) Civil penalties paid in installments. The FMCSA Service Center may allow a respondent broker, freight forwarder, or for-hire motor carrier to pay a civil penalty in installments. If the respondent fails to make an installment payment on schedule, the payment plan is void and the entire debt is payable immediately. The registration of a respondent that fails to pay the remainder of its civil penalty in full within 90 days after the date of the missed installment payment, is suspended on the next (i.e., the 91st) day. The suspension continues until the FMCSA has received full payment of entire penalty.

(3) Appeals to Federal Court. If the respondent broker, freight forwarder, or for-hire motor carrier appeals the final agency order to a Federal Circuit Court of Appeals, the terms and payment due date of the final agency order are not stayed unless the Court so directs.

(b) Show Cause Proceeding. (1) The FMCSA will notify a respondent broker, freight forwarder, or for-hire motor carrier in writing if it has not received payment within 45 days after the date specified for payment by the final agency order or the date of a missed installment payment. The notice will include a warning that failure to pay the entire penalty within 90 days after payment was due, will result in the suspension of the respondent’s registration.

(2) The notice will order the respondent to show cause why its registration should not be suspended on the 91st day after the date specified for payment. The prohibition may be avoided only by submitting to the Chief Safety Officer:

(i) Evidence that the respondent has paid the entire amount due; or

(ii) Evidence that the respondent has filed for bankruptcy under chapter 11, title 11, United States Code. Respondents in bankruptcy must also submit the information required by paragraph (d) of this section.

(3) The notice will be delivered by certified mail or commercial express service. If a respondent’s principal place of business is in a foreign country, it will be delivered to the respondent’s designated agent.

(c) The registration of a broker, freight forwarder or for-hire motor carrier that continues to operate in interstate commerce in violation of this section after its registration has been suspended may be revoked after an additional notice and opportunity for a proceeding in accordance with 49 U.S.C. 13905(c). Additional sanctions may be imposed under paragraph IV (h) of appendix A to part 386.

(d) This section does not apply to any person who is unable to pay a civil penalty because the person is a debtor in a case under chapter 11 of title 11, United States Code. Brokers, freight forwarders, or for-hire motor carriers in bankruptcy proceedings under chapter 11 must provide the following information in their response to the FMCSA:

(1) The chapter of the Bankruptcy Code under which the bankruptcy proceeding is filed (i.e., chapter 7 or 11);

(2) The bankruptcy case number;

(3) The court in which the bankruptcy proceeding was filed; and

(4) Any other information requested by the agency to determine a debtor’s bankruptcy status.

(1) The chapter of the Bankruptcy Code under which the bankruptcy proceeding is filed (i.e., chapter 7 or 11);
(2) The bankruptcy case number;
(3) The court in which the bankruptcy proceeding was filed; and
(4) Any other information requested by the agency to determine a debtor’s bankruptcy status.

[65 FR 78428, Dec. 15, 2000]

APPENDIX A TO PART 386—PENALTY SCHEDULE; VIOLATIONS OF NOTICES AND ORDERS

I. Notice To Abate

Violation—Failure to cease violations of the regulations in the time prescribed in the notice. (The time within to comply with a notice to abate shall not begin to run with respect to contested violations, i.e., where there are material issues in dispute under §386.14, until such time as the violation has been established.)

Penalty reinstatement of any deferred assessment or payment of a penalty or portion thereof.

II. [Reserved]

III. Final Order

Violation—Failure to comply with Final Agency Order.

Penalty—Automatic reinstatement of any penalty previously reduced or held in abeyance and restoration of the full amount assessed in the Notice of Claim less any payments previously made.

IV. Out-of-Service Order

a. Violation—Operation of a commercial vehicle by a driver during the period the driver was placed out of service.

Penalty—Up to $2,100 per violation.

(For purposes of this violation, the term “driver” means an operator of a commercial motor vehicle, including an independent contractor who, while in the course of operating a commercial motor vehicle, is employed or used by another person.)

b. Violation—Requiring or permitting a driver to operate a commercial vehicle during the period the driver was placed out of service.

Penalty—Up to $16,000 per violation.

(This violation applies to motor carriers, including an independent contractor who is not a “driver,” as defined under paragraph IVa above.)

c. Violation—Operation of a commercial motor vehicle or intermodal equipment by a driver after the vehicle or intermodal equipment was placed out-of-service and before the required repairs are made.

Penalty—$2,100 each time the vehicle or intermodal equipment is so operated.

(This violation applies to drivers as defined in IVa above.)

d. Violation—Requiring or permitting the operation of a commercial motor vehicle or intermodal equipment placed out-of-service before the required repairs are made.

Penalty—Up to $16,000 each time the vehicle or intermodal equipment is so operated after notice of the defect is received.

(This violation applies to intermodal equipment providers and motor carriers, including an independent owner-operator who is not a “driver,” as defined in IVa above.)

e. Violation—Failure to return written certification of correction as required by the out-of-service order.

Penalty—Up to $750 per violation.

f. Violation—Knowingly falsifies written certification of correction required by the out-of-service order.

Penalty—Considered the same as the violations described in paragraphs IVc and IVd above, and subject to the same penalties.

NOTE: Falsification of certification may also result in criminal prosecution under 18 U.S.C. 1001.

g. Violation—Operating in violation of an order issued under §386.72(b) to cease all or part of the employer’s commercial motor vehicle operations or to cease all or part of an intermodal equipment provider’s operations, i.e., failure to cease operations as ordered.

Penalty—Up to $16,000 per day the operation continues after the effective date and time of the order to cease.

h. Violation—Conducting operations during a period of suspension under §386.83 or §386.84 for failure to pay penalties.

Penalty—Up to $11,000 for each day that operations are conducted during the suspension period.


APPENDIX B TO PART 386—PENALTY SCHEDULE; VIOLATIONS AND MONETARY PENALTIES


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penalty provided by law within the jurisdiction of the Federal agency " * * " and to publish that regulation in the Federal Register. Pursuant to that authority, the inflation-adjusted civil penalties listed in paragraphs (a) through (h) of this appendix supersede the corresponding civil penalty amounts listed in title 49, United States Code.

What are the types of violations and maximum monetary penalties?

(a) Violations of the Federal Motor Carrier Safety Regulations (FMCSRs):

(1) Recordkeeping. A person or entity that fails to prepare or maintain a record required by parts 40, 382, 385, and 390-99 of this subchapter, or prepares or maintains a record that is incomplete, inaccurate, or false, is subject to a maximum civil penalty of $1,000 for each day the violation continues, up to $10,000.

(2) Knowing falsification of records. A person or entity that knowingly falsifies, destroys, mutilates, or changes a report or record required by parts 382, 385, and 390-99 of this subchapter, knowingly makes or causes to be made a false or incomplete record about an operation or business fact or transaction, or knowingly makes, prepares, or preserves a record in violation of a regulation or order of the Secretary is subject to a maximum civil penalty of $10,000 if such action misrepresents a fact that constitutes a violation other than a reporting or recordkeeping violation.

(3) Non-recordkeeping violations. A person or entity that violates parts 382, 385, or 390-99 of this subchapter, except a recordkeeping requirement, is subject to a civil penalty not to exceed $11,000 for each violation.

(4) Non-recordkeeping violations by drivers. A driver who violates parts 382, 385, and 390-99 of this subchapter, except a recordkeeping violation, is subject to a civil penalty not to exceed $2,750.

(5) Violation of 49 CFR 392.5. A driver placed out of service for 24 hours for violating the alcohol prohibitions of 49 CFR 392.5(a) or (b) who drives during that period is subject to a civil penalty not to exceed $3,750 for each violation.

(b) Commercial driver’s license (CDL) violations. Any person who violates 49 CFR part 383, subparts B, C, E, F, G, or H is subject to a civil penalty of $3,750.

(c) Special penalties pertaining to violations of out-of-service orders by CDL-holders. A CDL-holder who knowingly violates an out-of-service order is subject to a civil penalty of not less than $2,100 nor more than $3,750. An employer of a CDL-holder who knowingly allows, requires, permits, or authorizes that employee to operate a CMV during any period in which the CDL-holder is subject to an out-of-service order, is subject to a civil penalty of not less than $3,750 or more than $16,000.

(d) Financial responsibility violations. A motor carrier that fails to maintain the levels of financial responsibility prescribed by Part 387 of this subchapter is subject to a maximum civil penalty of $16,000 for each violation. Each day of a continuing violation constitutes a separate offense.

(e) Violations of the Hazardous Materials Regulations (HMRs) and Safety Permitting Regulations found in subpart E of Part 383. This paragraph applies to violations by motor carriers, drivers, shippers and other persons who transport hazardous materials on the highway in commercial motor vehicles or cause hazardous materials to be so transported.

(1) All knowing violations of 49 U.S.C. chapter 51 or orders or regulations issued under the authority of that chapter applicable to the transportation or shipment of hazardous materials by commercial motor vehicle on highways are subject to a civil penalty of not less than $250 nor more than $50,000 for each violation. Each day of a continuing violation constitutes a separate offense.

(2) All knowing violations of 49 U.S.C. chapter 51 or orders or regulations issued under the authority of that chapter applicable to training related to the transportation or shipment of hazardous materials by commercial motor vehicle on highways are subject to a civil penalty of not less than $450 and not more than $50,000 for each violation.

(3) All knowing violations of 49 U.S.C. chapter 51 or orders, regulations, or exemptions issued under the authority of that chapter applicable to the manufacture, fabrication, marking, maintenance, reconditioning, repair, or testing of a packaging or container that is represented, marked, certified, or sold as being qualified for use in the transportation or shipment of hazardous materials by commercial motor vehicle on highways are subject to a civil penalty of not less than $250 and not more than $50,000 for each violation.

(4) Whenever regulations issued under the authority of 49 U.S.C. chapter 51 require compliance with the FMCSRs while transporting hazardous materials, any violations of the FMCSRs will be considered a violation of the HMRs and subject to a civil penalty of not less than $250 and not more than $50,000.

(5) If any violation subject to the civil penalties set out in paragraphs (e)(1) through (4) of this appendix results in death, serious illness, or severe injury to any person or in substantial destruction of property, the civil penalty may be increased to not more than $105,000 for each offense.

(1) Operating after being declared unfit by assignment of a final “unsatisfactory” safety rating. (1) A motor carrier operating a commercial motor vehicle in interstate commerce (except owners or operators of commercial motor vehicles designed or used to transport
Violations of the commercial regulations (CRs). Penalties for violations of the CRs are specified in 49 U.S.C. Chapter 149. These penalties relate to transportation subject to the Secretary’s jurisdiction under 49 U.S.C. Chapter 135. Unless otherwise noted, a separate violation occurs for each day the violation continues.

(1) A person who fails to make a report, to specifically, completely, and truthfully answer a question, or to make, prepare, or preserve a record in the form and manner prescribed under 49 U.S.C. 13901 is liable for a minimum penalty of $650 per violation.

(2) A person who operates a commercial motor vehicle designed or used to transport hazardous materials for which placarding of a motor vehicle is required under regulations prescribed under 49 U.S.C. Chapter 51 is subject, after being placed out of service because of receiving a final “unsatisfactory” safety rating, to a civil penalty of not more than $11,000 (49 CFR 385.13). Each day the transportation continues in violation of a final “unsatisfactory” safety rating constitutes a separate offense.

(3) A person who operates as a motor carrier transportation subject to jurisdiction under 49 U.S.C. Chapter 135, or who assists or permits another person to get that transportation at less than the rate in effect under 49 U.S.C. 13702 commits a violation for which the penalty is equal to three times the value of other consideration accepted or received as a rebate or offset and three times the value of other consideration accepted or received as a rebate or offset for the six-year period before the action is begun.

(4) A person who operates as a foreign motor carrier or foreign motor private carrier in violation of the registration requirements of 49 U.S.C. 13901 is liable for a minimum penalty of $650 per violation.

(5) A person who operates as a foreign motor carrier or foreign motor private carrier without authority, before the implementation of the land transportation provisions of the North American Free Trade Agreement, outside the boundaries of a commercial zone along the United States-Mexico border is liable for a maximum penalty of $11,000 for an intentional violation and a maximum penalty of $32,500 for a pattern of intentional violations.

(6) A person who operates as a motor carrier or broker for the transportation of hazardous wastes in violation of the registration provisions of 49 U.S.C. 13901 is liable for a maximum penalty of $22,000 per violation.

(7) A motor carrier or freight forwarder of household goods, or their receiver or trustee, that does not comply with any regulation relating to the protection of individual shippers is liable for a minimum penalty of $1,100 per violation.

(8) A person—

(1) Who falsifies, or authorizes an agent or other person to falsify, documents used in the transportation of household goods by motor carrier or freight forwarder to evidence the weight of a shipment or

(ii) Who charges for services which are not performed or are not reasonably necessary in the safe and adequate movement of the shipment is liable for a maximum penalty of $2,200 for the first violation and $6,500 for each subsequent violation.

(9) A person who knowingly accepts or receives from a carrier a rebate or offset against the rate specified in a tariff required under 49 U.S.C. 13702 for the transportation of property delivered to the carrier commits a violation for which the penalty is equal to three times the amount accepted as a rebate or offset and three times the value of other consideration accepted or received as a rebate or offset for the six-year period before the action is begun.

(10) A person who offers, gives, solicits, or receives transportation of property by a carrier at a different rate than the rate in effect under 49 U.S.C. 13702 is liable for a minimum penalty of $110,000 per violation. When acting in the scope of his/her employment, the acts or omissions of a person acting for or employed by a carrier or shipper are considered to be the acts and omissions of that carrier or shipper, as well as that person.

(11) Any person who offers, gives, solicits, or receives a rebate or concession related to motor carrier transportation subject to jurisdiction under subchapter I of 49 U.S.C. Chapter 135, or who assists or permits another person to get that transportation at less than the rate in effect under 49 U.S.C. 13702, commits a violation for which the penalty is $200 for the first violation and $275 for each subsequent violation.

(12) A freight forwarder, its officer, agent, or employee, that assists or willingly permits a person to get service under 49 U.S.C. 13351 at less than the rate in effect under 49 U.S.C. 13702 commits a violation for which the penalty is up to $650 for the first violation and up to $2,200 for each subsequent violation.

(13) A person who gets or attempts to get service from a freight forwarder under 49 U.S.C. 13351 at less than the rate in effect under 49 U.S.C. 13702 commits a violation for which the penalty is up to $650 for the first
violation and up to $2,200 for each subsequent violation.

(14) A person who knowingly authorizes, consents to, or permits a violation of 49 U.S.C. 14902 and 14903 to loading and unloading motor vehicles or who knowingly violates subsection (a) of 49 U.S.C. 14103 is liable for a penalty of not more than $11,000 per violation.

(15) A person, or an officer, employee, or agent of that person, who tries to evade regulation under Part B of Subtitle IV, Title 49, U.S.C., or an officer, agent, or employee of that person, is liable for a maximum penalty of $6,500 per violation if it does not make the report, does not completely and truthfully answer the question within 30 days from the date the Secretary requires the answer, does not make or preserve the record in the form and manner prescribed, falsifies, destroys, or changes the report or record, files a false report or record, makes a false or incomplete entry in the record about a business related fact, or prepares or preserves a record in violation of a regulation or order of the Secretary.

(16) A person required to make a report to the Secretary, answer a question, or make, prepare, or preserve a record under Part B of Subtitle IV, Title 49, U.S.C., or an officer, agent, or employee of that person, is liable for a maximum penalty of $6,500 per violation if it does not make the report, does not completely and truthfully answer the question within 30 days from the date the Secretary requires the answer, does not make or preserve the record in the form and manner prescribed, falsifies, destroys, or changes the report or record, files a false report or record, makes a false or incomplete entry in the record about a business related fact, or prepares or preserves a record in violation of a regulation or order of the Secretary.

(17) A motor carrier, water carrier, freight forwarder, or broker, or their officer, receiver, trustee, lessee, employee, or other person authorized to receive information from them, who discloses information identified in 49 U.S.C. 14908 without the permission of the shipper or consignee is liable for a maximum penalty of $2,200.

(18) A person who violates a provision of Part B, Subtitle IV, Title 49, U.S.C., or a regulation or order under Part B, or who violates a condition of registration related to transportation that is subject to jurisdiction under subchapter I or III of Chapter 115, or who violates a condition of registration of a foreign motor carrier or foreign motor private carrier under section 13902, is liable for a penalty of $650 for each violation if another penalty is not provided in 49 U.S.C. Chapter 149.

(19) A violation of Part B, Subtitle IV, Title 49, U.S.C., committed by a director, officer, receiver, trustee, lessee, agent, or employee of a carrier that is a corporation is also a violation by the corporation to which the penalties of Chapter 149 apply. Acts and omissions of individuals acting in the scope of their employment with a carrier are considered to be the actions and omissions of the carrier as well as the individual.

(20) In a proceeding begun under 49 U.S.C. 14902 or 14903, the rate that a carrier publishes, files, or participates in under section 13702 is conclusive proof against the carrier, its officers, and agents that it is the legal rate for the transportation or service. Departing, or offering to depart, from that published or filed rate is a violation of 49 U.S.C. 14902 and 14903.

(21) A person—
(i) Who knowingly and willfully fails, in violation of a contract, to deliver to, or unload at, the destination of a shipment of household goods in interstate commerce for which charges have been estimated by the motor carrier transporting such goods, and for which the shipper has tendered a payment in accordance with part 375, subpart G of this chapter, is liable for a civil penalty of not less than $10,000 for each violation. Each day of a continuing violation constitutes a separate offense.
(ii) Who is a carrier or broker and is found to be subject to the civil penalties in paragraph (i) of this appendix may also have his or her carrier and/or broker registration suspended for not less than 12 months and not more than 36 months under 49 U.S.C. chapter 139. Such suspension of a carrier or broker shall extend to and include any carrier or broker having the same ownership or operational control as the suspended carrier or broker.

(22) A broker for transportation of household goods who makes an estimate of the cost of transporting any such goods before entering into an agreement with a motor carrier to provide transportation of household goods subject to FMCSA jurisdiction is liable to the United States for a civil penalty of not less than $10,000 for each violation.

(23) A person who provides transportation of household goods subject to jurisdiction under 49 U.S.C. chapter 135, subchapter I, or provides broker services for such transportation, without being registered under 49 U.S.C. chapter 139 to provide such transportation or services as a motor carrier or broker, as the case may be, is liable to the United States for a civil penalty of not less than $25,000 for each violation.

(h) Copying of records and access to equipment, lands, and buildings. A person subject to 49 U.S.C. chapter 51 or a motor carrier, broker, freight forwarder, or owner or operator of a commercial motor vehicle subject to part B of subpart VI of title 49 U.S.C. who fails to allow promptly, upon demand, the Federal Motor Carrier Safety Administration or an employee designated by the Federal Motor Carrier Safety Administration to inspect and copy any record or inspect and examine equipment, lands, buildings, and other property, in accordance with 49 U.S.C. 504(c), 5121(c), and 14122(b), is subject to a civil penalty of not more than $1,000 for each offense. Each day of a continuing violation constitutes a separate offense, except that
the total of all civil penalties against any violator for all offenses related to a single violation shall not exceed $10,000.


PART 387—MINIMUM LEVELS OF FINANCIAL RESPONSIBILITY FOR MOTOR CARRIERS

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