

(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.

[50 FR 40306, Oct. 2, 1985, as amended at 53 FR 2036, Jan. 26, 1988; 56 FR 10182, Mar. 11, 1991; 65 FR 7756, Feb. 16, 2000; 70 FR 28480, May 18, 2005]

§ 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 the paragraph (a), 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.

[50 FR 40306, Oct. 2, 1985, as amended at 70 FR 28481, May 18, 2005]

§ 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

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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 30 days after the time to submit the reply or petition to review has expired, unless the Assistant Administrator orders otherwise.

(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 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.