

§ 386.1

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

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

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

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

Subpart A—Scope of Rules; Definitions

§ 386.1 Scope of rules in this part.

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

[65 FR 78427, Dec. 15, 2000]

§ 386.2 Definitions.

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

Administration means the Federal Motor Carrier Safety Administration.

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

Assistant Administrator means the Assistant Administrator of the Federal

49 CFR Ch. III (10–1–02 Edition)

Motor Carrier Safety Administration. The Assistant Administrator is the Chief Safety Officer of the agency pursuant to 49 U.S.C. 113(d). Decisions of the Assistant Administrator in motor carrier, broker, freight forwarder, and hazardous materials proceedings under this part are administratively final.

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

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

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

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

Compliance Order means a written direction to a respondent under this part requiring the performance of certain acts which, based upon the findings in

the proceeding, are considered necessary to bring respondent into compliance with the regulations found to have been violated.

Consent Order means a compliance order which has been agreed to by respondent in the settlement of a civil forfeiture proceeding.

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

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

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

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

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

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

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

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

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

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

Subpart B—Commencement of Proceedings, Pleadings

§ 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) *Civil forfeitures.* These proceedings are commenced by the issuance of a Claim Letter or a Notice of Investigation.

(1) Each claim letter must contain the following:

(i) A statement of the provisions of law alleged to have been violated;

(ii) A brief statement of the facts constituting each violation;

(iii) Notice of the amount being claimed, and notice of the maximum amount authorized to be claimed under the statute;