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## 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 FMCSA, 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 Agency Decisionmaker 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 FMCSRs, HMRs, or FMCCRs. 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.

[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; 78 FR 58481, Sept. 24, 2013; 86 FR 57071, Oct. 14, 2021]

### § 386.12 Complaints.

(a) *Complaint of substantial violation.* (1) Any person alleging that a substantial violation of any regulation issued under the Motor Carrier Safety Act of 1984 is occurring or has occurred must file a written complaint with FMCSA stating the substance of the alleged substantial violation no later than 90

days after the event. The written complaint, including the information below, must be filed with the National Consumer Complaint Database at *http://nccdb.fmcsa.dot.gov or any FMCSA Division Administrator*. The Agency will refer the complaint to the Division Administrator who the Agency believes is best able to handle the complaint. Information on filing a written complaint may be obtained by calling 1–888–DOT–SAFT (1–888–368–7238). 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:

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

(ii) 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

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

(2) Upon the filing of a complaint of a substantial violation under paragraph (a)(1) of this section, the Division Administrator shall determine whether the complaint is non-frivolous and meets the requirements of paragraph (a)(1) of this section. If the Division Administrator determines the complaint is non-frivolous and meets the requirements of paragraph (a)(1), the Division Administrator shall investigate the complaint. The complainant shall be timely notified of findings resulting from the investigation. The Division Administrator shall not be required to conduct separate investigations of duplicative complaints. If the Division Administrator determines the complaint is frivolous or does not meet the requirements of paragraph (a)(1), the Division Administrator shall dismiss the complaint and notify the complainant in writing of the reasons for the dismissal.

(3) Notwithstanding the provisions of 5 U.S.C. 552, the Division 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 Division Administrator shall take every practical means within the Division Administrator's authority to ensure that the complainant is not subject to coercion, harassment, intimidation, disciplinary action, discrimination, or financial loss as a result of such disclosure.

(b) *Complaint of harassment.* (1) A driver alleging a violation of § 390.36(b)(1) of this subchapter (harassment) must file a written complaint with FMCSA stating the substance of the alleged harassment by a motor carrier no later than 90 days after the event. The written complaint, including the information described below, must be filed with the National Consumer Complaint Database at *http://nccdb.fmcsa.dot.gov* or the FMCSA Division Administrator for the State where the driver is employed. The Agency may refer a complaint to another Division Administrator who the Agency believes is best able to handle the complaint. Information on filing a written complaint may be obtained by calling 1–888–DOT–SAFT (1–888–368–7238). Each complaint must be signed by the driver and must contain:

(i) The driver's name, address, and telephone number;

(ii) The name and address of the motor carrier allegedly harassing the driver; and

(iii) A concise but complete statement of the facts relied upon to substantiate each allegation of harassment, including:

(A) How the ELD or other technology used in combination with and not separable from the ELD was used to contribute to harassment;

(B) The date of the alleged action; and

(C) How the motor carrier's action violated either § 392.3 or part 395.

Each complaint may include any supporting evidence that will assist the Division Administrator in determining the merits of the complaint.

(2) Upon the filing of a complaint of a violation under paragraph (b)(1) of this section, the appropriate Division Administrator shall determine whether the complaint is non-frivolous and meets the requirements of paragraph (b)(1) of this section.

(i) If the Division Administrator determines the complaint is non-frivolous and meets the requirements of paragraph (b)(1) of this section, the Division Administrator shall investigate the complaint. The complaining driver shall be timely notified of findings resulting from the investigation. The Division Administrator shall not be required to conduct separate investigations of duplicative complaints.

(ii) If the Division Administrator determines the complaint is frivolous or does not meet the requirements of paragraph (b)(1) of this section, the Division Administrator shall dismiss the complaint and notify the complainant in writing of the reasons for the dismissal.

(3) Because prosecution of harassment in violation of § 390.36(b)(1) of this subchapter will require disclosure of the driver's identity, the Agency shall take every practical means within its authority to ensure that the driver is not subject to coercion, harassment, intimidation, disciplinary action, discrimination, or financial loss as a result of the disclosure. This will include notification that 49 U.S.C. 31105 includes broad employee protections and that retaliation for filing a harassment complaint may subject the motor carrier to enforcement action by the Occupational Safety and Health Administration.

(c) *Complaint of coercion.* (1) A driver alleging a violation of § 390.6(a)(1) or (2) of this subchapter must file a written complaint with FMCSA stating the substance of the alleged coercion no later than 90 days after the event. The written complaint, including the information described below, must be filed with the National Consumer Complaint Database at *http://nccdb.fmcsa.dot.gov* or the FMCSA Division Administrator for the State where the driver is employed. The Agency may refer a complaint to another Division Administrator who the Agency believes is best able to handle the complaint. Information on filing a written complaint may be obtained by calling 1–888–DOT–SAFT (1–888–368–7238). Each complaint must be signed by the driver and must contain:

(i) The driver's name, address, and telephone number;

(ii) The name and address of the person allegedly coercing the driver;

(iii) The provisions of the regulations that the driver alleges he or she was coerced to violate; and

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

(2) *Action on complaint of coercion.* Upon the filing of a complaint of coercion under paragraph (c)(1) of this section, the appropriate Division Administrator shall determine whether the complaint is non-frivolous and meets the requirements of paragraph (c)(1).

(i) If the Division Administrator determines that the complaint is non-frivolous and meets the requirements of paragraph (c)(1) of this section, the Division Administrator shall investigate the complaint. The complaining driver shall be timely notified of findings resulting from such investigation. The Division Administrator shall not be required to conduct separate investigations of duplicative complaints.

(ii) If the Division Administrator determines the complaint is frivolous or does not meet the requirements of paragraph (c)(1) of this section, the Division Administrator shall dismiss the complaint and notify the driver in writing of the reasons for the dismissal.

(3) *Protection of complainants.* Because prosecution of coercion in violation of § 390.6 of this subchapter will require disclosure of the driver's identity, the Agency shall take every practical means within its authority to ensure that the driver is not subject to coercion, harassment, intimidation, disciplinary action, discrimination, or financial loss as a result of the disclosure. This will include notification that 49 U.S.C. 31105 includes broad employee protections and that retaliation for filing a coercion complaint may subject the alleged coercer to enforcement action by the Occupational Safety and Health Administration.

[80 FR 78381, Dec. 16, 2015, as amended at 88 FR 80182, Nov. 17, 2023]