



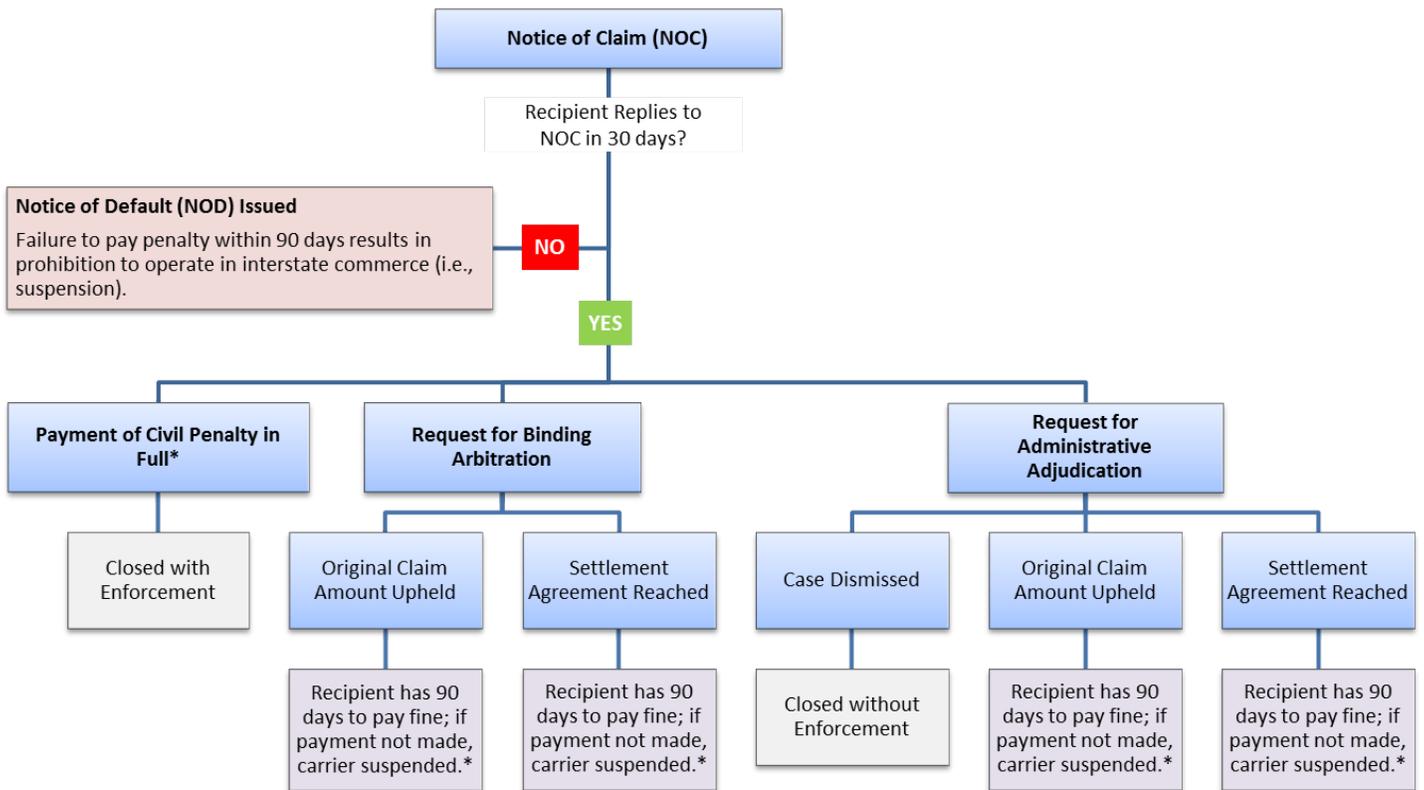
# Analysis of FMCSA Civil Penalty Enforcement Cases, 2010–14

## INTRODUCTION

The Federal Motor Carrier Safety Administration (FMCSA) is responsible for ensuring that all truck and bus companies, drivers and other entities regulated by the U.S. Department of Transportation (USDOT) comply with all Federal Motor Carrier Safety Regulations (FMCSRs). These entities can be subject to FMCSA enforcement action taken in conjunction with compliance reviews, complaint investigations, terminal

audits, roadside inspections, or other actions. These enforcement cases may result in the issuance of civil penalties (fines). This analysis brief provides an overview of the civil penalty process and an analysis of FMCSA’s civil penalty data from January 2010 through December 2014, in terms of claimed, settled, and suspended dollar amounts; violations associated with these penalties; and the time required for the Agency to process such cases. Figure 1 provides an overview of the civil penalty process followed by FMCSA.

**FIGURE 1 – Process Diagram**  
**FMCSA’s Civil Penalty Processes.**



\*NOC recipients may request a payment installment plan for full and settled amounts.

## BACKGROUND

When assessing a civil penalty for a motor carrier or driver violation, FMCSA issues a notice of claim (NOC). To determine the amount of the claim in the NOC, FMCSA uses its Uniform Fine Assessment (UFA) software, which takes into consideration all statutory factors, regulatory requirements, and administrative policies. When determining the amount claimed for each violation, UFA considers the nature, extent, gravity, and circumstances of the violation; the degree of culpability; prior offenses; the effect on the carrier's or driver's ability to continue business upon assessment of the penalty; and other matters as required in the interest of public safety and justice.

When FMCSA issues a NOC, the recipient has 30 days to file a reply. As outlined in Part 386.14 of the FMCSRs, the reply must be a payment of the civil penalty in full, a request for binding arbitration, or a request for administrative adjudication if the respondent contests the claim.<sup>1</sup> All payments of civil penalties from NOCs issued by FMCSA go to the U.S. Treasury.

When a NOC recipient does not reply or pay the civil penalty, the FMCSA Field Administrator may issue a notice of default (NOD) and final Agency order. The default constitutes an admission of all facts alleged in the NOC and a waiver of the respondent's opportunity to contest the claim. The registration of a broker, freight forwarder, or motor carrier that fails to pay a civil penalty in full within 90 days after the date specified for payment by FMCSA's final Agency order will be suspended starting on the next (i.e., the 91st) day. The suspension continues until FMCSA has received full payment of the penalty.

## SETTLEMENT AGREEMENTS AND SUSPENSIONS

NOCs are sometimes settled for an amount less than the claimed amount determined by UFA. When negotiations produce an agreement on the amount or terms of payment of a civil penalty or the terms and conditions of a final Agency order, a settlement agreement is drawn and signed by the respondent and the FMCSA Field Administrator or his/her designee. This reduction to the claimed amount is known as the "settled amount." (In the following analysis, if there is no settlement agreement, the claimed amount and settled amount are the same.)

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<sup>1</sup> Replies may include a request for a payment installment plan (for original or settled amounts).

In some instances, a portion of the civil penalty may be suspended. The suspended amount represents the part of the settled amount that the violator does not have to pay to the Government because the violator has agreed to spend money to mitigate compliance deficiencies. This amount is contingent on the violator altering behavior (as per the settlement agreement) to improve safety or increase compliance with certain regulations. The settled amount minus the suspended amount determines the amount that violators are required to pay in full to the Agency to close the enforcement case. If the carrier does not comply with the settlement agreement, then the suspended portion of the civil penalty is reinstated.

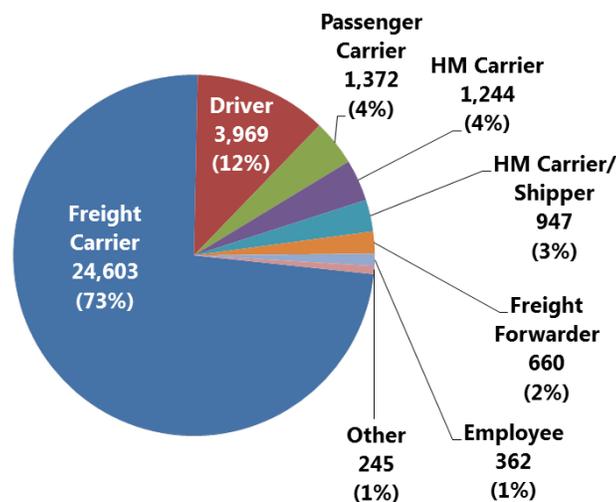
## FINDINGS

The following findings are based on data from FMCSA's Enforcement Management Information System (EMIS). The cases analyzed are those resulting in issuance of NOCs that were "closed with enforcement" between January 1, 2010, and December 31, 2014.

During this timeframe, 33,402 cases were closed with enforcement. Freight carriers made up the vast majority of the enforcement cases: 24,603 cases, or 73 percent of the total. Driver enforcement cases made up another 12 percent, and passenger carriers and hazardous materials (HM) carriers each accounted for 4 percent. HM carrier/shippers, freight forwarders, and employees made up another 6 percent. The remaining 1 percent consisted of cargo tank facilities, shippers, brokers, and drug testing consortiums (see Figure 2).

The total amount claimed over the 5 years was \$153,880,433, and the total settled amount was \$151,465,179, giving a settled-to-claimed ratio of 98.4 percent (see Table 1). This suggests that the vast majority of claims are settled for the original claimed amount; in fact, in 32,858 of the 33,402 total NOCs (also 98.4 percent) the settled amount equaled the claimed amount. The mean, or average, claimed and settled amount per case was \$4,607 and \$4,535, respectively; however, these averages were influenced by one very large claim of \$3,876,000 from a special investigation of a cargo tank facility. Therefore, the median value of \$2,000 for both claims and settlements gives a better indication of the typical NOC amount, particularly since the mode (i.e., most often recorded amount) for both is also \$2,000.

**FIGURE 2 – Pie Chart**  
**Entities subject to enforcement, 2010–14.**



Source: FMCSA: EMIS, September 5, 2015.

**TABLE 1 – Notices of Claims**  
**Amounts claimed and settled for cases closed with enforcement, 2010–14.**

Measure	Claimed	Settled
<b>Total (33,402 Cases)</b>	<b>\$153,880,433</b>	<b>\$151,465,179</b>
Mean	\$4,607	\$4,535
Median	\$2,000	\$2,000
Mode	\$2,000	\$2,000
Maximum	\$3,876,000	\$3,876,000
Minimum	\$100	\$0

Source: FMCSA: EMIS, September 5, 2015.

**TABLE 2 – Stages of Enforcement Cases**  
**Number of days to complete the stages of an enforcement case, 2010–14.**

Stage of Case (33,402 Cases)	Mean	Median	Mode	Maximum
Investigation Completed to NOC Served	25	15	7	1,231
NOC Served to Case Closed	174	77	66	5,172
Investigation Completed to Case Closed	200	113	42	5,229

Source: FMCSA: EMIS, September 5, 2015.

About 22 percent (7,299) of the 33,402 enforcement cases involved a suspension of a portion of the claim. For the cases with a suspension, the total settlement amount was \$57,578,832, and the total amount

suspended was \$21,717,023; thus, 37.7 percent of the total settlement amount was suspended. The mean amount suspended was \$2,975, and the median amount suspended was \$870. This disparity is once again the result of a single large suspension amount (i.e., \$3,376,000 for the claim mentioned earlier against a cargo tank facility). Thus, the median is a better representation of the typical suspension amount. There were 888 cases with a suspension where the settlement amount was paid in full, indicating that the claimant did not comply with the terms of the settlement agreement. This represents 12.2 percent of the cases with suspensions.

The EMIS database captures information on the dates when an investigation is completed, when an NOC is served, and when the enforcement case is closed. For cases closed between 2010 and 2014, the mean time between the investigation being completed and the NOC being served was 25 days (see Table 2).

However, this average was influenced by some cases that took an inordinate amount of time; therefore, the median of 15 days is likely more representative of the time it takes to get from “investigation complete” to “NOC served.” The mean time between “NOC served” and “case closed” was 174 days. This average, too, was influenced by cases with inordinately lengthy completion times. The median time from “NOC served” to “case closed” was 77 days, and the most often reported amount of time (i.e., the mode) was 66 days. These latter two values are more representative of the typical time it would take. The mean amount of time it took to get from “investigation complete” to “case closed,” was 200 days. The median time, however, was 113 days, or slightly less than 4 months, which is a little more than half the average time.

The FMCSRs, described in 49 CFR Parts 300–399, and Hazardous Materials regulations in 49 CFR Parts 171–177, delineate violations that can be assessed against a motor carrier or one of its drivers. This data analysis includes an examination of the types of violations, by part, associated with NOCs. As shown in Figure 3 (page 4), the 13 most frequent violation categories from January 2010 through December 2014 were:

- Part 382: Controlled Substances and Alcohol Use and Testing.
- Part 395: Hours of Service of Drivers.
- Part 396: Inspection, Repair, and Maintenance of Vehicles.

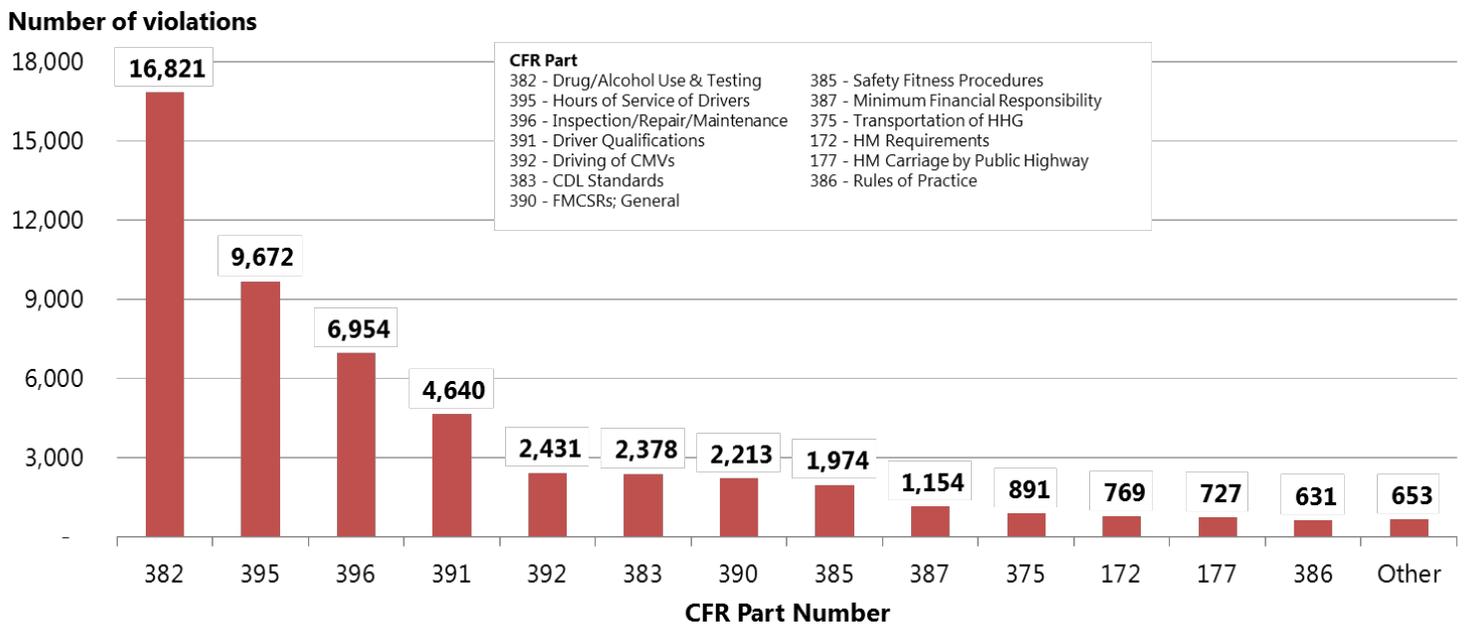
- Part 391: Qualifications of Drivers and Longer Combination Vehicle Driver Instructors.
- Part 392: Driving of CMVs.
- Part 383: Commercial Driver’s License Standards; Requirements and Penalties.
- Part 390: FMCSRs; General.
- Part 385: Safety Fitness Procedures.
- Part 387: Minimum Financial Responsibility.
- Part 375: Transportation of Household Goods (HHG).
- Part 172: Hazardous Materials Requirements.
- Part 177: Hazardous Materials Carriage by Public Highway.
- Part 386: Rules of Practice.

Together, Part 382 (32 percent) and Part 395 (18 percent) account for 50 percent of all violations found. The three most frequently violated parts concern different groups: Part 382 pertains to carriers, Part 395 is associated with drivers, and Part 396 is related to vehicles.

Figure 4 (page 5) shows the median amounts of settlements by part. Mean amounts (not shown in the figure) for several of the parts are considerably higher, due to the effect of a few very high settlement amounts (i.e., outliers) on the average. Therefore, the median is generally a more realistic measure of the typical settlement amount. For example, Part 392 (driving of CMVs) had the highest mean settlement amount of any of the parts, at \$6,047 per NOC, but a median of \$1,950, which is approximately one-third the size of the mean. The maximum settlement for Part 392 was \$175,000, for violation of Part 392.9a(a)(1)—operating without the required operating authority under 14901(d)(3) to transport HHG. Part 392 includes violations with statutory minimums, such as \$25,000 for passenger carriers that operate without authority, and \$25,000 for operating without the required operating authority under 14901(d)(3) to transport household goods.

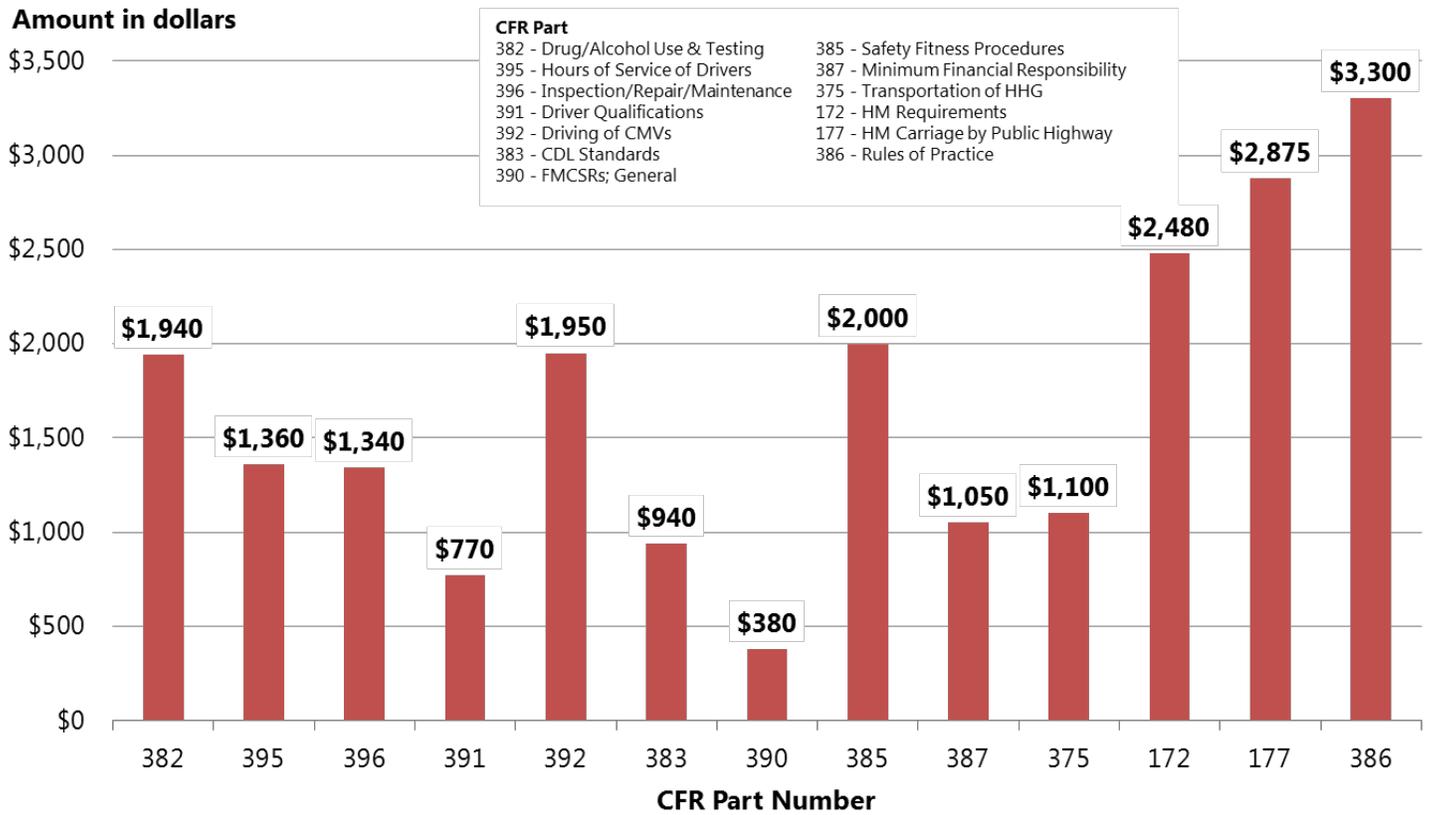
To read the complete analysis, visit: [http://ntl.bts.gov/lib/60000/60400/60456/15-016\\_Civil\\_Penalties\\_Analysis\\_2010-2014-FINAL-508C.pdf](http://ntl.bts.gov/lib/60000/60400/60456/15-016_Civil_Penalties_Analysis_2010-2014-FINAL-508C.pdf).

**FIGURE 3 – Bar Graph**  
**Number of violations from notices of claims, by CFR part, 2010–14.**



Source: FMCSA: EMIS, September 5, 2015

**FIGURE 4 – Bar Graph**  
**Median settled amounts, by CFR part, 2010–14.**



Source: FMCSA: EMIS, September 5, 2015