

(h) The fact that a deposition is taken and filed in a proceeding as provided in this section does not constitute a determination that it is admissible in evidence or that it may be used in the proceeding. Only such part or the whole of a deposition as is received in evidence shall constitute a part of the record in such proceeding upon which a decision may be based.

**§ 302.27 Rights of witnesses; attendance fees and mileage.**

(a) Any person appearing as a witness in any proceeding governed by this part, whether in response to a subpoena or by request or permission of the Department, may be accompanied, represented, and advised by counsel and may be examined by that counsel after other questioning.

(b) Any person who submits data or evidence in a proceeding governed by this part, whether in response to a subpoena or by request or permission of the Department, may retain, or, on payment of lawfully prescribed costs, procure, a copy of any document so submitted or a copy of any transcript made of such testimony.

(c) No person whose attendance at a hearing or whose deposition is to be taken shall be obliged to respond to a subpoena unless upon a service of the subpoena he or she is tendered attendance fees and mileage by the party at whose instance he or she is called in accordance with the requirements of paragraphs (c)(1) and (2) of this section; *Provided*, That a witness summoned at the instance of the Department or one of its employees, or a salaried employee of the United States summoned to testify as to matters related to his or her public employment, need not be tendered such fees or mileage at that time.

(1) Witnesses who are not salaried employees of the United States, or such employees summoned to testify on matters not related to their public employment, shall be paid the same per diem, subsistence, and mileage fees paid to witnesses for like service in the courts of the United States that are in effect at the time of travel; *Provided*, That no employee, officer, or attorney of an air carrier who travels under the free or reduced rate provisions of sec-

tion 41511 of the Statute shall be entitled to any fees or mileage; *And provided further*, That such fees and mileage shall not be applicable for witnesses summoned to testify in Alaska, and that, in Alaska, where permitted by section 41511 of the Statute, the witness may, at his or her option, accept a pass for travel by air. Such witnesses shall be furnished appropriate forms and instructions for the submission of claims for attendance fees, subsistence, and mileage from the Government before the close of the proceedings that they are required to attend. Only persons summoned by subpoena shall be entitled to claim attendance fees, subsistence, or mileage from the Government.

(2) Witnesses who are salaried employees of the United States and who are summoned to testify on matters relating to their public employment, irrespective of at whose instance they are summoned, shall be paid in accordance with applicable Government regulations.

**§ 302.28 Transcripts of hearings.**

(a) Hearings shall be recorded and transcribed under supervision of the administrative law judge, by a reporting firm under contract with the Department. Copies of the transcript that may, at the discretion of the administrative law judge, be furnished by use of electronic media in addition to the official copy, shall be supplied to the parties to the proceeding by said reporting firm, at the contract price for copies.

(b) The administrative law judge shall determine whether "ordinary transcript" or "daily transcript" (as those terms are defined in the contract) will be necessary and required for the proper conduct of the proceeding and the Department will pay the reporting firm the cost of reporting its proceedings at the contract price for such type of transcript. If the administrative law judge has determined that ordinary transcript is adequate, and has notified the parties of such determination (in the notice of hearings, or otherwise), then any party may request reconsideration of such determination and that daily transcript be

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required. In determining what is necessary and required for the proper conduct of the proceeding, the administrative law judge shall consider, among other things:

(1) The nature of the proceeding itself;

(2) The DOT decisionmaker's needs as well as the reasonable needs of the parties;

(3) The cost to the Department; and

(4) The requirements of a fair hearing.

(c) If the administrative law judge has determined that ordinary transcript is adequate, or, upon reconsideration, has adhered to such determination, then any party may request the reporting firm to provide daily transcript. In that case, pursuant to its contract with the Department, the reporting firm will be obligated to furnish to the Department daily transcript upon the agreement by the requesting party to pay to the reporting firm an amount equal to the difference between the contract prices for ordinary transcript and daily transcript, provided that the requesting party makes such agreement with the reporting firm at least twenty-four (24) hours in advance of the date for which such transcript is requested.

(d) Any party may obtain from the Office of the Assistant Secretary for Administration, the name and address of the private reporting company with which the Department currently has a contract for transcripts and copies, as well as the contract prices then in effect for such services.

(e) Copies of transcripts ordered by parties other than the Department shall be prepared for delivery to the requesting person at the reporting firm's place of business, within the stated time for the type of transcript ordered. The requesting party and the reporting firm may agree upon some other form or means of delivery (mail, messenger, electronic media, etc.) and the reporting firm may charge for such special service, provided that such charge shall not exceed the reasonable cost of such service.

(f) Changes in the official transcript may be made only when they involve errors affecting substance. A motion to correct a transcript shall be filed with

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Department of Transportation Dockets, within ten (10) days after receipt of the completed transcript by the Department. If no objections to the motion are filed within ten (10) days thereafter, the transcript may, upon the approval of the administrative law judge, be changed to reflect such corrections. If objections are received, the motion and objections shall be submitted to the official reporter by the administrative law judge together with a request for a comparison of the transcript with the reporter's record of the hearing. After receipt of the report of the official reporter an order shall be entered by the administrative law judge settling the record and ruling on the motion.

#### § 302.29 Argument before the administrative law judge.

(a) The administrative law judge shall give the parties to the proceeding adequate opportunity during the course of the hearing for the presentation of arguments in support of or in opposition to motions, and objections and exceptions to rulings of the administrative law judge.

(b) When, in the opinion of the administrative law judge, the volume of the evidence or the importance or complexity of the issues involved warrants, he or she may, either on his or her own motion or at the request of a party, permit the presentation of oral argument, and may impose such time limits on the argument as he or she may determine appropriate. Such argument shall be transcribed and bound with the transcript of testimony and will be available to the Department decisionmaker for consideration in deciding the case.

#### § 302.30 Briefs to the administrative law judge.

Within such limited time after the close of the reception of evidence fixed by the administrative law judge, any party may, upon request and under such conditions as the administrative law judge may prescribe, file for his or her consideration briefs which may include proposed findings of fact and conclusions of law that shall contain exact references to the record and authorities relied upon.