

**Federal Motor Carrier Safety Administration, DOT**

**§ 386.5**

If contesting the allegations, the reply must also set forth all known affirmative defenses and factors in mitigation of the claim.

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*Secretary* means the Secretary of Transportation.

*Submission of written evidence without hearing* means the submission of written evidence and legal argument to the Agency decisionmaker, or his/her representative, in lieu of a formal or informal hearing.

**§ 386.3 Separation of functions.**

EFFECTIVE DATE NOTE: At 70 FR 28479, May 18, 2005, §§ 386.3 was added, effective November 14, 2005.

(a) Civil penalty proceedings will be prosecuted by Agency Counsel who represent the Field Administrator. In Notices of Violation, the Field Administrator will be represented by Agency Counsel.

(b) An Agency employee, including those listed in paragraph (c) of this section, engaged in the performance of investigative or prosecutorial functions in a civil penalty proceeding may not, in that case or a factually related case, discuss or communicate the facts or issues involved with the Agency decisionmaker, Administrative Law Judge, Hearing Officer or others listed in paragraph (d) of this section, except as counsel or a witness in the public proceedings. This prohibition also includes the staff of those covered by this section.

(c) The Deputy Chief Counsel, Assistant Chief Counsel for Enforcement and Litigation, and attorneys in the Enforcement and Litigation Division serve as enforcement counsel in the prosecution of all cases brought under this part.

(d) The Chief Counsel, the Special Counsel to the Chief Counsel, and attorneys serving as Adjudications Counsel advise the Agency decisionmaker regarding all cases brought under this Part.

(e) Nothing in this part shall preclude agency decisionmakers or anyone advising an agency decisionmaker from taking part in a determination to launch an investigation or issue a complaint, or similar preliminary decision.

**§ 386.4 Appearances and rights of parties.**

EFFECTIVE DATE NOTE: At 70 FR 28479, May 18, 2005, §§ 386.4 was added, effective November 14, 2005.

(a) A party may appear in person, by counsel, or by other representative, as the party elects, in a proceeding under this subpart.

(b) A person representing a party must file a notice of appearance in the proceeding, in the manner provided in § 386.7 of this subpart. The notice of appearance must list the name, address, telephone number, and facsimile number of the person designated to represent the party. A copy of the notice of appearance must be served on each party, in the manner provided in § 386.6 of this subpart. The notice of appearance must be filed and served before the representative can participate in the proceeding. Any changes in an attorney or representative's contact information must be served and filed according to §§ 386.6 and 386.7 in a timely manner.

(c) A separate notice of appearance must be filed by a representative in each case. Blanket appearances on behalf of a party will not be accepted.

**§ 386.5 Form of filings and extensions of time.**

EFFECTIVE DATE NOTE: At 70 FR 28479, May 18, 2005, §§ 386.5 was added, effective November 14, 2005.

(a) *Form.* Each document must be typewritten or legibly handwritten.

(b) *Contents.* Unless otherwise specified in this part, each document must contain a short, plain statement of the facts on which the person's case rests and a brief statement of the action requested in the document. Except by prior order, all contents will be made publicly available.

(c) *Length.* Except for the Notice of Claim and reply, motions, briefs, and other filings may not exceed 20 pages except as permitted by Order following a motion to exceed the page limitation based upon good cause shown. Exhibits or attachments in support of the relevant filing are not included in the page limit.

(d) *Paper and margins.* Filed documents must be printed on 8½" by 11"