

**Federal Motor Carrier Safety Administration, DOT**

**§ 386.48**

Administrator or Administrative Law Judge, who then may limit the scope or manner of the taking of the deposition.

**§ 386.47 Use of deposition at hearings.**

(a) *Generally.* At the hearing, any part or all of a deposition, so far as admissible under the rules of evidence, may be used against any party who was present or represented at the taking of the deposition or who had due notice thereof in accordance with any one of the following provisions:

(1) Any deposition may be used by any party for the purpose of contradicting or impeaching the testimony of the deponent as a witness.

(2) The deposition of expert witnesses, particularly the deposition of physicians, may be used by any party for any purpose, unless the Assistant Administrator or administrative law judge rules that such use would be unfair or a violation of due process.

(3) The deposition of a party or of anyone who at the time of taking the deposition was an officer, director, or duly authorized agent of a public or private organization, partnership, or association which is a party, may be used by any other party for any purpose.

(4) The deposition of a witness, whether or not a party, may be used by any party for any purpose if the presiding officer finds:

(i) That the witness is dead; or

(ii) That the witness is out of the United States or more than 100 miles from the place of hearing unless it appears that the absence of the witness was procured by the party offering the deposition; or

(iii) That the witness is unable to attend to testify because of age, sickness, infirmity, or imprisonment; or

(iv) That the party offering the deposition has been unable to procure the attendance of the witness by subpoena; or

(v) Upon application and notice, that such exceptional circumstances exist as to make it desirable, in the interest of justice and with due regard to the importance of presenting the testimony of witnesses orally in open hearing, to allow the deposition to be used.

(5) If only part of a deposition is offered in evidence by a party, any other party may require him or her to intro-

duce all of it which is relevant to the part introduced, and any party may introduce any other parts.

(b) *Objections to admissibility.* Except as provided in this paragraph, objection may be made at the hearing to receiving in evidence any deposition or part thereof for any reason which would require the exclusion of the evidence if the witness were then present and testifying.

(1) Objections to the competency of a witness or to the competency, relevancy or materiality of testimony are not waived by failure to make them before or during the taking of the deposition, unless the ground of the objection is one which might have been obviated or removed if presented at that time.

(2) Errors and irregularities occurring at the oral examination in the manner of taking the deposition, in the form of the questions or answers, in the oath or affirmation, or in the conduct of parties and errors of any kind which might be obviated, removed, or cured if promptly presented, are waived unless reasonable objection thereto is made at the taking of the deposition.

(3) Objections to the form or written interrogatories are waived unless served in writing upon the party propounding them.

(c) *Effect of taking using depositions.* A party shall not be deemed to make a person his or her own witness for any purpose by taking his or her deposition. The introduction in evidence of the deposition or any part thereof for any purpose other than that of contradicting or impeaching the deponent makes the deponent the witness of the party introducing the deposition, but this shall not apply to the use by any other party of a deposition as described in paragraph (a)(2) of this section. At the hearing, any party may rebut any relevant evidence contained in a deposition whether introduced by him or her or by any other party.

**§ 386.48 Medical records and physicians' reports.**

In cases involving the physical qualifications of drivers, copies of all physicians' reports, test results, and other medical records that a party intends to rely upon shall be served on all other parties at least 30 days prior to the

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date set for a hearing. Except as waived by the Director, Office of Truck and Bus Standards and Operations, reports, test results and medical records not served under this rule shall be excluded from evidence at any hearing.

[50 FR 40306, Oct. 2, 1985, as amended at 53 FR 2036, Jan. 26, 1988; 65 FR 7756, Feb. 16, 2000]

**§ 386.49 Form of written evidence.**

All written evidence shall be submitted in the following forms:

- (a) An affidavit of a person having personal knowledge of the facts alleged, or
- (b) Documentary evidence in the form of exhibits attached to an affidavit identifying the exhibit and giving its source.

EFFECTIVE DATE NOTE: At 70 FR 28484, May 18, 2005, § 386.49 was revised, effective November 14, 2005. For the convenience of the user, the revised text is set forth as follows:

**§ 386.49 Form of written evidence.**

All written evidence should be submitted in the following forms:

- (a) A written statement of a person having personal knowledge of the facts alleged, or
- (b) Documentary evidence in the form of exhibits attached to a written statement identifying the exhibit and giving its source.

**§ 386.50 Appearances and rights of witnesses.**

EFFECTIVE DATE NOTE: At 70 FR 28484, May 18, 2005, § 386.50 was removed, effective November 14, 2005.

(a) Any party to a proceeding may appear and be heard in person or by attorney. A regular employee of a party who appears on behalf of the party may be required by the administrative law judge to show his or her authority to so appear.

(b) Any person submits data or evidence in a proceeding governed by this part may, upon timely request and payment of costs, procure a copy of any document submitted by him/her or of any transcript. Original documents, data or evidence may be retained upon permission of the administrative law judge or Assistant Administrator upon substitution of copy therefor.

**§ 386.51 Amendment and withdrawal of pleadings.**

(a) Except in instances covered by other rules, anytime more than 15 days

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prior to the hearing, a party may amend his/her pleadings by serving the amended pleading on the Assistant Administrator or the administrative law judge, if one has been appointed, and on all parties. Within 15 days prior to the hearing, an amendment shall be allowed only at the discretion of the Administrative law judge. When an amended pleading is filed, other parties may file a response and objection within 10 days.

(b) A party may withdraw his/her pleading only on approval of the administrative law judge or Assistant Administrator.

EFFECTIVE DATE NOTE: At 70 FR 28484, May 18, 2005, § 386.51 was amended by revising paragraph (b), effective November 14, 2005. For the convenience of the user, the revised text is set forth as follows:

**§ 386.51 Amendment and withdrawal of pleadings.**

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(b) A party may withdraw his/her pleading any time more than 15 days prior to the hearing by serving a notice of withdrawal on the Assistant Administrator or the Administrative Law Judge. Within 15 days prior to the hearing a withdrawal may be made only at the discretion of the Assistant Administrator or the Administrative Law Judge. The withdrawal will be granted absent a finding that the withdrawal will result in injustice, prejudice, or irreparable harm to the non-moving party, or is otherwise contrary to the public interest.

**§ 386.52 Appeals from interlocutory rulings.**

Rulings of the administrative law judge may not be appealed to the Assistant Administrator prior to his/her consideration of the entire proceeding except under exceptional circumstances and with the consent of the administrative law judge. In deciding whether to allow appeals, the administrative law judge shall determine whether the appeal is necessary to prevent undue prejudice to a party or to prevent substantial detriment to the public interest.

EFFECTIVE DATE NOTE: At 70 FR 28484, May 18, 2005, § 386.52 was revised, effective November 14, 2005. For the convenience of the user, the revised text is set forth as follows: