

**§ 386.49**

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: