

§ 386.53

the purposes of judicial review under § 386.67.

(b) *Interlocutory appeal for cause.* If a party files a written request for an interlocutory appeal for cause with the Administrative Law Judge, or orally requests an interlocutory appeal for cause, the proceedings are stayed until the Administrative Law Judge issues a decision on the request. If the Administrative Law Judge grants the request, the proceedings are stayed until the Assistant Administrator issues a decision on the interlocutory appeal. The Administrative Law Judge must grant an interlocutory appeal for cause if a party shows that delay of the appeal would be detrimental to the public interest or would result in undue prejudice to any party.

(d) *Procedure.* A party must file a notice of interlocutory appeal, with any supporting documents, with the Assistant Administrator, and serve copies on each party and the Administrative Law Judge, not later than 10 days after the Administrative Law Judge's oral decision has been issued, or a written decision has been served. A party must file a reply brief, if any, with the Assistant Administrator and serve a copy of the reply brief on each party, not later than 10 days after service of the appeal brief. The Assistant Administrator will render a decision on the interlocutory appeal, within a reasonable time after receipt of the interlocutory appeal.

(e) The Assistant Administrator may reject frivolous, repetitive, or dilatory appeals, and may issue an order precluding one or more parties from making further interlocutory appeals, and may order such further relief as required.

[70 FR 28484, May 18, 2005]

§ 386.53 Subpoenas, witness fees.

(a) Applications for the issuance of subpoenas must be submitted to the Assistant Administrator, or in cases that have been called for a hearing, to the administrative law judge. The application must show the general relevance and reasonable scope of the evidence sought. Any person served with a subpoena may, within 7 days after service, file a motion to quash or modify. The motion must be filed with the official who approved the subpoena. The

49 CFR Ch. III (10-1-07 Edition)

filing of a motion shall stay the effect of the subpoena until a decision is reached.

(b) Witnesses shall be entitled to the same fees and mileage as are paid witnesses in the courts of the United States. The fees shall be paid by the party at whose instance the witness is subpoenaed or appears.

(c) Paragraph (a) of this section shall not apply to the Administrator or employees of the FMCSA or to the production of documents in their custody. Applications for the attendance of such persons or the production of such documents at a hearing shall be made to the Assistant Administrator or administrative law judge, if one is appointed, and shall set forth the need for such evidence and its relevancy.

§ 386.54 Administrative Law Judge.

(a) *Powers of an Administrative Law Judge.* The Administrative Law Judge may take any action and may prescribe all necessary rules and regulations to govern the conduct of the proceedings to ensure a fair and impartial hearing, and to avoid delay in the disposition of the proceedings. In accordance with the rules in this subchapter, an Administrative Law Judge may do the following:

(1) Give notice of and hold prehearing conferences and hearings.

(2) Administer oaths and affirmations.

(3) Issue subpoenas authorized by law.

(4) Rule on offers of proof.

(5) Receive relevant and material evidence.

(6) Regulate the course of the administrative adjudication in accordance with the rules of this subchapter and the Administrative Procedure Act.

(7) Hold conferences to settle or simplify the issues by consent of the parties.

(8) Dispose of procedural motions and requests, except motions that under this part are made directly to the Assistant Administrator.

(9) Issue orders permitting inspection and examination of lands, buildings, equipment, and any other physical thing and the copying of any document.