

§ 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.

[70 FR 28484, May 18, 2005]

§ 386.51 Amendment and withdrawal of pleadings.

(a) Except in instances covered by other rules, any time more than 15 days 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 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.

[50 FR 40306, Oct. 2, 1985, as amended at 70 FR 28484, May 18, 2005; 78 FR 58481, Sept. 24, 2013]

§ 386.52 Appeals from interlocutory rulings.

(a) *General.* Unless otherwise provided in this subpart, a party may not appeal a ruling or decision of the Administrative Law Judge to the Assistant Administrator until the Administrative Law Judge's decision has been entered on the record. A decision or order of the Assistant Administrator on the interlocutory appeal does not constitute a Final Agency Order for

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.

(c) [Reserved]

(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.