

**PART 305—RULES OF PRACTICE IN
INFORMAL NONPUBLIC INVESTIGATIONS**

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AUTHORITY: 49 U.S.C. chapters 401, 417, 461; 5 U.S.C. 555, 556.

SOURCE: Docket No. 82, 50 FR 2421, Jan. 16, 1985, unless otherwise noted.

§ 305.1 Applicability.

The provisions of this part shall govern informal nonpublic investigations, as distinguished from formal investigations and adjudicatory proceedings, undertaken by the Office of the Assistant General Counsel for Aviation Enforcement and Proceedings with a view to obtaining information from any person. While the Department seeks and encourages voluntary cooperation and believes that it is in the best interest of all parties concerned, it will utilize the procedures provided by this part to compel the disclosure of information by any person where DOT wishes to determine whether such person, or any other person, has been or is violating any provisions of Title IV or sections 101(3), 1002, 1003, or 1108(b) of the Act, or any rule, regulation, order, certificate, permit, or letter or registration issued pursuant thereto by DOT and when the information appears to be relevant to the matter under investigation. This part shall not apply to employees or records of other agencies of the U.S. Government, the District of Columbia, or the several States and their political subdivisions.

§ 305.2 Definition.

For the purpose of, and as used in this part, the term *investigation* means a non-adjudicatory, informal nonpublic investigation for the purpose of determining whether formal enforcement

action should be instituted with respect to alleged violations of law.

§§ 305.3-305.4 [Reserved]

§ 305.5 Initiation of investigation.

An investigation may be initiated by order of the Department. Attorneys of the Office of the Assistant General Counsel for Aviation Enforcement and Proceedings shall conduct such investigations pursuant to the provisions of this part and they shall be designated Investigation Attorneys. Investigation Attorneys, administrative law judges and the DOT decisionmaker are hereby authorized to exercise and perform their duties and functions under this part in accordance with the provisions of the Act and the rules and regulations of the Department.

§ 305.6 Appearance of witnesses.

Witnesses may be required to appear before any administrative law judge for the purpose of receiving their testimony or receiving from them documents or other data relating to any subject under investigation. Such testimony shall be mechanically or stenographically recorded, and a transcript thereof shall be made and incorporated in the record of the investigation.

§ 305.7 Issuance of investigation subpoenas.

(a) The Deputy General Counsel, the DOT decisionmaker, the chief administrative law judge or the administrative law judge designated to preside at the reception of evidence, may issue a subpoena directing the person named therein to appear before a designated administrative law judge at a designated time and place to testify or to produce documentary evidence relating to any matter under investigation, or both. Each such subpoena shall briefly advise the person required to testify or submit documentary evidence of the purpose and scope of the investigation, and a copy of the order initiating the investigation shall be attached to the subpoena.

(b) Witnesses subpoenaed to appear shall be paid the fees and mileage prescribed in § 302.7 of the Rules of Practice (14 CFR 302.7). Service of such subpoenas shall be made in accordance with

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the provisions of § 302.27(c) of the Rules of Practice (14 CFR 302.27(c)).

[Docket No. 82, 50 FR 2421, Jan. 16, 1985, as amended at 65 FR 6456, Feb. 9, 2000]

§ 305.8 [Reserved]

§ 305.9 Rights of witnesses.

Any person required to testify or to submit documentary evidence shall be entitled to procure, on payment of lawfully prescribed costs, a copy of any document produced by such person and of his or her own testimony as stenographically reported. Any person compelled to testify or to produce documentary evidence may be accompanied, represented, and advised by counsel.

§ 305.10 Nonpublic character of proceedings.

Investigations shall be attended only by the witnesses and their counsel, the administrative law judge, the Investigation Attorney, other DOT personnel concerned with the conduct of the proceeding and the official stenographer. All orders initiating investigations, motions to quash or modify investigation subpoenas, orders disposing of such motions, documents, and transcripts of testimony shall be part of the record in the investigation. Unless DOT determines otherwise, all orders initiating investigations which do not disclose the identity of the particular persons of firms under investigation shall be published in the FEDERAL REGISTER. Except as otherwise required by law, the remainder of the record of such proceedings shall constitute internal DOT documents which shall not be available to the general public. The use of such records in DOT proceedings subject to part 302 of the Rules of Practice shall be governed by §§ 302.25(g) and 302.12 and by the law of evidence applicable to DOT proceedings.

[Docket No. 82, 50 FR 2421, Jan. 16, 1985, as amended at 65 FR 6456, Feb. 9, 2000]

§ 305.11 Procedures after investigation.

Upon completion of the investigation, where the Deputy General Counsel, determines that no corrective action is warranted, the investigation will be closed, and any documentary

evidence obtained in the investigation will be returned to the persons who produced it. Where remedial action is indicated by the investigation, the Deputy General Counsel will proceed pursuant to subpart D of part 302 of the Rules of Practice or will take such other action as may be appropriate.

[Docket No. 82, 50 FR 2421, Jan. 16, 1985, as amended at 65 FR 6456, Feb. 9, 2000]

§ 305.12 Motions to quash or modify an investigation subpoena.

Any person upon whom an investigation subpoena is served may, within seven (7) days after such service or at any time prior to the return date thereof, whichever is earlier, file a motion to quash or modify such subpoena with the administrative law judge who issued such subpoena, or in the event the administrative law judge is not available, with the chief administrative law judge for action by himself or herself or by the DOT decisionmaker. Such motions shall be made in writing in conformity with Rules 3 and 4 of the Rules of Practice (part 302 of this subchapter); shall state with particularity the grounds therefor and the relief sought; shall be accompanied by the evidence relied upon and all such factual matter shall be verified in accordance with the provisions of Rule 4(b) of the aforesaid Rules of Practice. Written memoranda or briefs may be filed with the motions, stating the points and authorities relied upon. No oral argument will be heard on such motions unless the chief administrative law judge, the administrative law judge or the DOT decisionmaker directs otherwise. A subpoena will be quashed or modified if the evidence whose production is required is not reasonably relevant to the matter under investigation, or the demand made does not describe with sufficient particularity the information sought, or the subpoena is unlawful or unduly burdensome. The filing of a motion to quash or modify an investigation subpoena shall stay the return date of such subpoena until such motion is granted or denied. The DOT decisionmaker may at any time review, upon his or her own initiative, the ruling of an administrative law judge or the chief administrative law