
29 C.F.R. § 102.31

Issuance of subpoenas; petitions to revoke subpoenas; rulings on claim of privilege against self-incrimination; subpoena enforcement proceedings; right to inspect or copy data.

- (a) The Board or any Board Member will, on the written application of any party, issue subpoenas requiring the attendance and testimony of witnesses and the production of any evidence, including books, records, correspondence, electronic data, or documents, in their possession or under their control. The Executive Secretary has the authority to sign and issue any such subpoenas on behalf of the Board or any Board Member. Applications for subpoenas, if filed before the hearing opens, must be filed with the Regional Director. Applications for subpoenas filed during the hearing must be filed with the Administrative Law Judge. Either the Regional Director or the Administrative Law Judge, as the case may be, will grant the application on behalf of the Board or any Member. Applications for subpoenas may be made *ex parte*. The subpoena must show on its face the name and address of the party at whose request the subpoena was issued.
- (b) Any person served with a subpoena, whether *ad testificandum* or *duces tecum*, if that person does not intend to comply with the subpoena, must, within 5 business days after the date of service of the subpoena, petition in writing to revoke the subpoena. The date of service for purposes of computing the time for filing a petition to revoke is the date the subpoena is received. All petitions to revoke subpoenas must be served on the party at whose request the subpoena was issued. A petition to revoke, if made prior to the hearing, must be filed with the Regional Director and the Regional Director will refer the petition to the Administrative Law Judge or the Board for ruling. Petitions to revoke subpoenas filed during the hearing must be filed with the Administrative Law Judge. Petitions to revoke subpoenas filed in response to a subpoena issued upon request of the Agency's Contempt, Compliance, and Special Litigation Branch must be filed with that Branch, which will refer the petition to the Board for ruling. Notice of the filing of petitions to revoke will be promptly given by the Regional Director, the Administrative Law Judge, or the Contempt, Compliance and Special Litigation Branch, as the case may be, to the party at whose request the subpoena was issued. The Administrative Law Judge or the Board, as the case may be, will revoke the subpoena if in their opinion the evidence whose production is required does not relate to any matter under investigation or in question in the proceedings or the subpoena does not describe with sufficient particularity the evidence whose production is required, or if for any other reason sufficient in law the subpoena is otherwise invalid. The Administrative Law Judge or the Board, as the case may be, will make a simple statement of procedural or other grounds for the ruling on the petition to revoke. The petition to revoke any opposition to the petition, response to the opposition, and ruling on the petition will not become part of the official record except upon the request of the party aggrieved by the ruling, at an appropriate time in a formal proceeding rather than at the investigative stage of the proceeding.

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