made to such a central point, it shall include the identification number(s) of each affected grant.

[Order No. 1416–90, 55 FR 21690, 21696, May 25, 1990]

PART 68—RULES OF PRACTICE AND PROCEDURE FOR ADMINISTRATIVE HEARINGS BEFORE ADMINISTRATIVE LAW JUDGES IN CASES INVOLVING ALLEGATIONS OF UNLAWFUL EMPLOYMENT OF ALIENS AND UNFAIR IMMIGRATION-RELATED EMPLOYMENT PRACTICES

Sec.

AUTHORITY: 5 U.S.C. 301, 554; 8 U.S.C. 1103, 1324a, 1324b, and 1324c.

§ 68.1 Scope of rules.

These rules of practice are applicable to adjudicatory proceedings before Administrative Law Judges of the Executive Office for Immigration Review, United States Department of Justice, with regard to unlawful employment cases under section 274A of the INA, unfair immigration-related employment practice cases under section 274B of the INA, and document fraud cases under section 274C of the INA. Such proceedings shall be conducted expeditiously and the parties shall make every effort at each stage of a proceeding to avoid delay. To the extent that these rules may be inconsistent with a rule of special application as provided by statute, executive order, or regulation, the latter is controlling. The Rules of Civil Procedure for the District Courts of the United States may be used as a general guideline in any situation not provided for or controlled by these rules, the Administrative Procedure Act, or by any other applicable statute, executive order, or regulation.

[Order No. 1534–91, 56 FR 50053, Oct. 3, 1991]

§ 68.2 Definitions.

For purposes of these rules:

(a) *Adjudicatory proceeding* means a judicial-type proceeding leading to the formulation of a final order;

(b) *Administrative Law Judge* means an Administrative Law Judge appointed

pursuant to the provisions of 5 U.S.C. 3105;

(c) *Administrative Procedure Act* means those provisions of the Administrative Procedure Act, as codified, which are contained in 5 U.S.C. 551 through 559;

(d) *Chief Administrative Hearing Officer* or an official who has been designated to act as the Chief Administrative Hearing Officer, is the official who, under the Director, Executive Office for Immigration Review, generally administers the Administrative Law Judge program, and exercises administrative supervision over Administrative Law Judges and others assigned to the Office of the Chief Administrative Hearing Officer, and who, in accordance with sections 274A(e)(7) and 274C(d)(4) of the INA, exercises discretionary authority to review the decisions and orders of Administrative Law Judges adjudicated under sections 274A and 274C of the INA;

(e) *Commencement of Proceeding* is the filing of a complaint with the Office of the Chief Administrative Hearing Officer;

(f) *Complainant* means the Immigration and Naturalization Service in cases arising under section 274A and 274C of the INA. In cases arising under section 274B of the INA, ''complainant'' means the Special Counsel (as defined in §68.2(p)), and also includes the person or entity who has filed a charge with the Special Counsel, or, in private actions, an individual or private organization;

(g) *Complaint* means the formal document initiating proceedings;

(h) *Consent order* means any written document containing a specified remedy or other relief agreed to by all parties and entered as an Order by the Administrative Law Judge;

(i) *Entry* as used in section 274B(i)(1) of the INA and §68.2(k) means the date the Administrative Law Judge signs the order;

(j) *Hearing* means that part of a proceeding which involves the submission of evidence, either by oral presentation or written submission;

(k) *Issued* as used in section 274A(e)(8) and section 274C(d)(5) of the INA means thirty (30) days subsequent to the entry of an order or, if the Chief Administrative Hearing Officer vacates or modifies the order, the date the Chief Administrative Hearing Officer signs such vacation or modification.

(l) *Motion* means an oral or written request, made by a person a party, for some action by an Administrative Law Judge;

(m) *Order* means the whole or any part of a final procedural or substantive disposition of a matter by the Administrative Law Judge;

(n) *Ordinary mail* refers to the mail service provided by the United States Postal Service using only standard postage fees, exclusive of special systems, electronic transfers, and other means which have the effect of providing expedited service;

(o) *Party* includes all persons or entities named or admitted as a complainant, respondent, or intervenor in a proceeding; or, any person filing a charge with the Special Counsel under 274B, resulting in the filing of a complaint, concerning an unfair immigration-related employment practice;

(p) *Pleading* means the complaint, motions, the answer thereto, any supplement or amendment thereto, and reply that may be permitted to any answer, supplement or amendment submitted to the Administrative Law Judge or when no judge is assigned the Chief Administrative Hearing Officer;

(q) *Prohibition of indemnity bond cases* means cases under 274A(g) of the INA in which a person or entity requires, as a prerequisite to the hiring, recruiting or referring of any individual for employment in the United States, that the individual post a bond or security, pay or agree to pay an amount or otherwise provide a financial guarantee or indemnity against any potential liability arising under 274A as a result of the hiring, recruiting, or referring of the individual;

(r) *Unfair immigration-related employment practice cases* means cases involving allegations under section 274B of the INA with respect to:

(1) The hiring, or recruitment or referral for a fee, of an individual for employment, or the discharging of an individual from employment, by a person or other entity:

(i) Because of such individual's national origin, or

(ii) In the case of a protected individual, as defined in section 274B(a)(3) of the INA, because of such individual's citizenship status,

(2) The use, by a person or other entity, of intimidation, threats, coercion, or retaliation against an individual for the purposes described in section 274B(a)(5) of the INA; or

(3) A person or other entity's request, for purposes of satisfying the requirements of section 274a(b) of the INA, for more or different documents than are required under such section or refusing to honor documents tendered that on their face reasonably appear to be genuine and to relate to the individual.

(s) *Special Counsel* means the Special Counsel for Immigration-Related Unfair Employment Practices appointed by the President under section 274B of the INA, or his or her designee;

(t) *Unlawful employment cases* means cases involving knowingly hiring, recruiting or referring for a fee, or continued employment of certain aliens and cases involving failure to comply with verification requirements in violation of section 274A of the INA;

[54 FR 48596, Nov. 24, 1989, as amended by Order No. 1534–91, 56 FR 50053, Oct. 3, 1991; Order No. 1635–92, 57 FR 57671, Dec. 7, 1992; Order No. 1905–94, 59 FR 41243, Aug. 11, 1994]

§ 68.3 Service of complaint, notice of hearing, written orders, and decisions.

(a) Service of complaint, notice of hearing, written orders and decisions shall be made by the Office of the Chief Administrative Hearing Officer or the Administrative Law Judge to whom the case is assigned either:

(1) By delivering a copy to the individual party, partner of a party, officer of a corporate party, registered agent for service of process of a corporate party, or attorney of record of a party; or

(2) By leaving a copy at the principal office, place of business, or residence of a party; or

(3) By mailing to the last known address of such individual, partner, officer, or attorney.

(b) Service of complaint and notice of hearing is complete upon receipt by addressee.

(c) In circumstances where the Office of the Chief Administrative Hearing Officer or the Administrative Law Judge encounter difficulty with perfecting service the Chief Administrative Hearing Officer or the Administrative Law Judge may direct that a party execute service of process.

[54 FR 48596, Nov. 24, 1989, as amended by Order No. 1635–92, 57 FR 57672, Dec. 7, 1992]

§ 68.4 Complaints regarding unfair immigration-related employment practices.

(a) *Generally.* An individual must file a charge with the Special Counsel within one hundred and eighty (180) days of the date of the alleged unfair immigration-related employment practice.

(b) The Special Counsel shall, within one hundred and twenty (120) days of the date of receipt of the charge:

(1) Determine whether there is a reasonable cause to believe the charge is true and whether to bring a complaint respecting the charge with the Chief Administrative Hearing Officer within the 120-day period; or,

(2) Notify the party within the 120-day period that the Special Counsel will not file a complaint with the Chief Administrative Hearing Officer within the 120-day period.

(c) The charging individual may file a complaint directly with the Chief Administrative Hearing Officer within ninety (90) days after the date of receipt of notice that the Special Counsel will not be filing a complaint within the 120-day period. However, the Special Counsel's failure to file a complaint within the 120-day period will not affect the right of the Special Counsel to investigate the charge or bring a complaint within the 90-day period.

[Order No. 1534–91, 56 FR 50053, Oct. 3, 1991]

§ 68.5 Notice of date, time, and place of hearing.

(a) *Generally.* The Administrative Law Judge to whom the case is assigned shall notify the parties of a date, time, and place set for hearing thereon or for a prehearing conference, or both within thirty (30) days of receipt of respondent's answer to the complaint.

(b) *Place of hearing.* In section 274B cases, pursuant to section 554 of title 5, United States Code, due regard shall be given to the convenience of the parties and the witnesses in selecting a place for a hearing. Sections 274A(e)(3)(B) and 274C(d)(2)(B) of the INA require that hearings be held at the nearest practicable place to the place where the person or entity resides or to the place where the alleged violation occurred.

[54 FR 48596, Nov. 24, 1989. Redesignated and amended by Order No. 1534–91, 56 FR 50053, 50054, Oct. 3, 1991; Order No. 1635–92, 57 FR 57672, Dec. 7, 1992]

§68.6 Service and filing of documents.

(a) *Generally.* An original and four copies of the complaint shall be filed with the Chief Administrative Hearing Officer. An original and two copies of all other pleadings, including any attachments, shall be filed with the Chief Administrative Hearing Officer by the parties presenting the pleadings until an Administrative Law Judge is assigned to a case. Thereafter, all pleadings shall be delivered or mailed for filing to the Administrative Law Judge assigned to the case, and shall be accompanied by a certification indicating service to all parties of record. When a party is represented by an attorney, service shall be made upon the attorney. Service of any document upon any party may be made by personal delivery or by mailing a copy to the last known address. The person serving the document shall certify to the manner and date of service.

(b) The parties shall not file requests for discovery, answers or responses thereto with the Administrative Law Judge; however, the Administrative Law Judge may, upon motion of a party or on his/her own initiative, order that such requests for discovery, answers or responses thereto be filed.

[54 FR 48596, Nov. 24, 1989. Redesignated and amended by Order No. 1534–91, 56 FR 50053, 50054, Oct. 3, 1991; Order No. 1635–92, 57 FR 57672, Dec. 7, 1992]

§68.7 Form of pleadings.

(a) Every pleading shall contain a caption setting forth the statutory provision under which the proceeding is instituted, the title of the proceeding, the docket number assigned by the Office of the Chief Administrative Hearing Officer, the names of all parties (or after the complaint, at least the first party named as a complainant or respondent), and a designation of the type of pleading (e.g., complaint, motion to dismiss, etc.). The pleading shall be signed, dated, and shall contain the address and telephone number of the party or person representing the party. The pleading shall be on standard size (8½×11) paper and should also be typewritten when possible.

(b) A complaint filed pursuant to section 274A, 274B or 274C of the INA shall contain the following:

(1) A clear and concise statement of facts, upon which an assertion of jurisdiction is predicated;

(2) The names and addresses of the respondents, agents and/or their representatives who have been alleged to have committed the violation;

(3) The alleged violations of law, with a clear and concise statement of facts for each violation alleged to have occurred; and,

(4) A short statement containing the remedies and/or sanctions sought to be imposed against the respondent.

(5) Be accompanied by a statement identifying the party or parties to be served by the Office of the Chief Administrative Hearing Officer with notice of the complaint pursuant to §68.3 of this part;

(c) Complaints filed pursuant to sections 274A and 274C of the INA shall be signed by an attorney and shall be accompanied by a copy of the Notice of Intent to Fine and Request for Hearing. Complaints filed pursuant to section 274B of the INA shall be accompanied by a copy of the charge, previously filed with the Special Counsel pursuant to section 274B(b)(1), and a copy of the Special Counsel's letter of determination regarding the charges.

(d) Illegible documents, whether handwritten, typewritten, photocopied, or otherwise, will not be accepted. Papers may be reproduced by any duplicating process, provided that all copies are clear and legible.

(e) All documents presented by a party in a proceeding must be in the

English language or, if in a foreign language, accompanied by a certified translation.

[54 FR 48596, Nov. 24, 1989. Redesignated and amended by Order No. 1534–91, 56 FR 50053, 50054, Oct. 3, 1991]

§ 68.8 Time computations.

(a) *Generally.* In computing any period of time under these rules or in an order issued hereunder, the time begins with the day following the act, event, or default, and includes the last day of the period unless it is Saturday, Sunday, or legal holiday observed by the Federal Government in which case the time period includes the next business day. When the period of time prescribed is seven (7) days or less, intermediate Saturdays, Sundays, and holidays shall be excluded in the computation.

(b) Computation of time for filing by mail. Pleadings are not deemed filed until received by the Office of the Chief Administrative Hearing Officer or Administrative Law Judge assigned to the case.

(c) Computation of time for service by mail.

(1) Service of all pleadings other than complaints is deemed effective at the time of mailing; and

(2) Whenever a party has the right or is required to take some action within a prescribed period after the service upon such party of a pleading, notice, or other document (other than a complaint or a subpoena) and the pleading, notice, or document is served by ordinary mail, five (5) days shall be added to the prescribed period unless the compliance date is otherwise specified by the Chief Administrative Hearing Officer or the Administrative Law Judge.

[54 FR 48596, Nov. 24, 1989. Redesignated and amended by Order No. 1534–91, 56 FR 50053, 50054, Oct. 3, 1991; Order No. 1635–92, 57 FR 57672, Dec. 7, 1992]

§ 68.9 Responsive pleadings—answer.

(a) *Time for answer.* Within thirty (30) days after the service of a complaint, each respondent shall file an answer.

(b) *Default.* Failure of the respondent to file an answer within the time provided shall be deemed to constitute a waiver of his/her right to appear and contest the allegations of the complaint. The Administrative Law Judge may enter a judgment by default.

(c) *Answer.* Any respondent contesting any material fact alleged in a complaint, or contending that the amount of a proposed penalty or award is excessive or inappropriate, or contending that he/she is entitled to judgment as a matter of law, shall file an answer in writing. The answer shall include:

(1) A statement that the respondent admits, denies, or does not have and is unable to obtain sufficient information to admit or deny each allegation; a statement of lack of information shall have the effect of a denial; any allegation not expressly denied shall be deemed to be admitted; and

(2) A statement of the facts supporting each affirmative defense.

(d) Complainants may file a reply responding to each affirmative defense asserted.

(e) *Amendments and supplemental pleadings.* If and whenever a determination of a controversy on the merits will be facilitated thereby, the Administrative Law Judge may, upon such conditions as are necessary to avoid prejudicing the public interest and the rights of the parties, allow appropriate amendments to complaints and other pleadings at any time prior to the issuance of the Administrative Law Judge's final order based on the complaint. When issues not raised by the pleadings are reasonably within the scope of the original complaint and are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings, and such amendments may be made as necessary to make the pleading conform to the evidence. The Administrative Law Judge may, upon reasonable notice and such terms as are just, permit supplemental pleadings setting forth transactions, occurrences, or events which have happened or new law promulgated since the date of the pleadings and which are relevant to any of the issues involved.

[54 FR 48596, Nov. 24, 1989. Redesignated by Order No. 1534–91, 56 FR 50053, Oct. 3, 1991]

§68.10 Motion to dismiss for failure to state a claim upon which relief can be granted.

The respondent, without waiving the right to offer evidence in the event that the motion is not granted, may move for a dismissal of the complaint on the ground that the complainant has failed to state a claim upon which relief can be granted. If the Administrative Law Judge determines that the complainant has failed to state such a claim, the Administrative Law Judge may dismiss the complaint. The filing of a motion to dismiss does not affect the time period for filing an answer.

[Order No. 1534–91, 56 FR 50054, Oct. 3, 1991]

§68.11 Motions and requests.

(a) *Generally.* The Chief Administrative Hearing Officer is authorized to act on non-adjudicatory matters relating to a proceeding prior to the appointment of an Administrative Law Judge. After the complaint is referred to an Administrative Law Judge, any application for an order or any other request shall be made by motion which shall be made in writing unless the Administrative Law Judge in the course of an oral hearing consents to accept such motion orally. The motion or request shall state with particularity the grounds therefor, and shall set forth the relief or order sought. Motions or requests made during the course of any oral hearing or appearance before an Administrative Law Judge shall be stated orally and made part of the transcript. Whether a motion is made orally or in writing, all parties shall be given reasonable opportunity to respond or to object to the motion or request.

(b) *Responses to motions.* Within ten (10) days after a written motion is served, or within such other period as the Administrative Law Judge may fix, any party to the proceeding may file a response in support of, or in opposition to, the motion, accompanied by such affidavits or other evidence upon which he/she desires to rely. Unless the Administrative Law Judge provides otherwise, no reply to a response, counter-response to a reply, or any further responsive document shall be filed.

(c) *Oral arguments or briefs.* No oral argument will be heard on motions unless the Administrative Law Judge otherwise directs. Written memoranda or briefs may be filed with motions or answers to motions, stating the points and authorities relied upon in support of the position taken.

[54 FR 48596, Nov. 24, 1989. Redesignated by Order No. 1534–91, 56 FR 50053, Oct. 3, 1991]

§68.12 Prehearing statements.

(a) At any time prior to the commencement of the hearing, the Administrative Law Judge may order any party to file a prehearing statement of position.

(b) A prehearing statement shall state the name of the party or parties on whose behalf it is presented and shall briefly set forth the following matters, unless otherwise ordered by the Administrative Law Judge:

(1) Issues involved in the proceedings;

(2) Facts stipulated to together with a statement that the party or parties have communicated or conferred in a good faith effort to reach stipulation to the fullest extent possible;

(3) Facts in dispute;

(4) Witnesses, except to the extent that disclosure would be privileged, and exhibits by which disputed facts will be litigated;

(5) A brief statement of applicable law;

(6) The conclusions to be drawn;

(7) The estimated time required for presentation of the party's or parties' case; and

(8) Any appropriate comments, suggestions, or information which might assist the parties or the Administrative Law Judge in preparing for the hearing or otherwise aid in the disposition of the proceeding.

[54 FR 48596, Nov. 24, 1989. Redesignated by Order No. 1534–91, 56 FR 50053, Oct. 3, 1991]

§68.13 Conferences.

(a) *Purpose and scope.* (1) Upon motion of a party or in the Administrative Law Judge's discretion, the judge may direct the parties or their counsel to participate in a prehearing conference at any reasonable time prior to the hearing, or in a conference during

the course of the hearing, when the Administrative Law Judge finds that the proceeding would be expedited by such a conference. Prehearing conferences normally shall be conducted by conference telephonic communication unless, in the opinion of the Administrative Law Judge, such method would be impractical, or when such conferences can be conducted in a more expeditious or effective manner by correspondence or personal appearance. Reasonable notice of the time, place, and manner of the prehearing conference shall be given.

(2) At the conference, the following matters may be considered:

(i) The simplification of issues;

(ii) The necessity of amendments to pleadings;

(iii) The possibility of obtaining stipulations of facts and of the authenticity, accuracy, and admissibility of documents, which will avoid unnecessary proof;

(iv) The limitations on the number of expert or other witnesses;

(v) Negotiation, compromise, or settlement of issues;

(vi) The exchange of copies of proposed exhibits;

(vii) The identification of documents or matters of which official notice may be requested;

(viii) A schedule to be followed by the parties for completion of the actions decided at the conference; and

(ix) Such other matters, including the disposition of pending motions, as may expedite and aid in the disposition of the proceeding.

(b) *Reporting.* A verbatim record of the conference will not be kept unless directed by the Administrative Law Judge.

(c) *Order.* Actions taken as a result of a conference shall be reduced to a written order, unless the Administrative Law Judge concludes that a stenographic report shall suffice, or, if the conference takes place within seven (7) days of the beginning of the hearing, the Administrative Law Judge elects to make a statement on the record at the hearing summarizing the actions taken.

[54 FR 48596, Nov. 24, 1989. Redesignated by Order No. 1534–91, 56 FR 50053, Oct. 3, 1991]

§ 68.14 Consent findings or dismissal.

(a) *Submission.* Where the parties or their authorized representatives or their counsel have entered into a proposed settlement agreement, they shall:

(1) Submit to the presiding Administrative Law Judge:

(i) The proposed agreement containing consent findings; and

(ii) A proposed decision and order; or

(2) Notify the Administrative Law Judge that the parties have reached a full settlement and have agreed to dismissal of the action. Dismissal of the action shall be subject to the approval of the Administrative Law Judge.

(b) *Content.* Any agreement containing consent findings and a proposed decision and order disposing of a proceeding or any part thereof shall also provide:

(1) That the decision and order based on consent findings shall have the same force and effect as a decision and order made after full hearing;

(2) That the entire record on which any decision and order may be based shall consist solely of the complaint, notice of hearing, and any other such pleadings and documents as the Administrative Law Judge shall specify;

(3) A waiver of any further procedural steps before the Administrative Law Judge; and

(4) A waiver of any right to challenge or contest the validity of the decision and order entered into in accordance with the agreement.

(c) *Disposition.* In the event an agreement containing consent findings and a proposed decision and order is submitted, the Administrative Law Judge, within thirty (30) days or as soon as practicable thereafter, may, if satisfied with its timeliness, form, and substance, accept such agreement by issuing a decision and order based upon the agreed findings. In his or her discretion, the Administrative Law Judge may conduct a hearing to determine the fairness of the agreement, consent findings, and proposed decision and order.

[54 FR 48596, Nov. 24, 1989. Redesignated and amended by Order No. 1534–91, 56 FR 50053, 50054, Oct. 3, 1991]

§68.15 Intervenor in unfair immigration-related employment cases.

The Special Counsel, or any other interested person or private organization, other than an officer of the Immigration and Naturalization Service, may petition to intervene as a party in unfair immigration-related employment cases. The Administrative Law Judge, in his or her discretion, may grant or deny such a petition.

[Order No. 1534–91, 56 FR 50054, Oct. 3, 1991]

§68.16 Consolidation of hearings.

When two or more hearings are to be held, and the same or substantially similar evidence is relevant and material to the matters at issue at each such hearing, the Administrative Law Judge assigned may, upon motion by any party, or on his or her own motion, order that a consolidated hearing be conducted. Where consolidated hearings are held, a single record of the proceedings may be made and the evidence introduced in one matter may be considered as introduced in the others, and a separate or joint decision shall be made at the discretion of the Administrative Law Judge.

[54 FR 48596, Nov. 24, 1989. Redesignated by Order No. 1534–91, 56 FR 50053, Oct. 3, 1991]

§68.17 Amicus curiae.

A brief of an amicus curiae may be filed by leave of the Administrative Law Judge upon motion or petition of the amicus curiae. The amicus curiae shall not participate in any way in the conduct of the hearing, including the presentation of evidence and the examination of witnesses.

[54 FR 48596, Nov. 24, 1989. Redesignated by Order No. 1534–91, 56 FR 50053, Oct. 3, 1991]

§68.18 Discovery—general provisions.

(a) *General.* Parties may obtain discovery by one or more of the following methods: depositions upon oral examination or written questions; written interrogatories; production of documents or things, or permission to enter upon land or other property, for inspection and other purposes; physical and mental examinations; and requests for admissions. The frequency or extent of these methods may be limited by the Administrative Law Judge upon his/her own initiative or pursuant to a motion under subdivision (c).

(b) *Scope of discovery.* Unless otherwise limited by order of the Administrative Law Judge in accordance with these rules, the parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the proceeding, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things, and the identity and location of persons having knowledge of any discoverable matter.

(c) *Protective orders.* Upon motion by a party or the person from whom discovery is sought, and for good cause shown, the Administrative Law Judge may make any order which justice requires to protect a party or person from annoyance, harassment, embarrassment, oppression, or undue burden or expense, including one or more of the following:

(1) The discovery not be had;

(2) The discovery may be had only on specified terms and conditions, including a designation of the time, amount, duration, or place;

(3) The discovery may be had only by a method of discovery other than that selected by the party seeking discovery; or

(4) Certain matters not relevant may not be inquired into, or that the scope of discovery be limited to certain matters.

(d) *Supplementation of responses.* A party who has responded to a request for discovery with a response that was complete when made is under no duty to supplement his/her response to include information thereafter acquired, except as follows:

(1) A party is under a duty to supplement timely his/her response with respect to any question directly addressed to:

(i) The identity and location of persons having knowledge of discoverable matters; and

(ii) The identity of each person expected to be called as an expert witness at the hearing, the subject matter on which he/she is expected to testify, and the substance of his/her testimony.

(2) A party is under a duty to amend timely a prior response if he/she later obtains information upon the basis of which:

(i) He/she knows the response was incorrect when made; or

(ii) He/she knows that the response, though correct when made, is no longer true and the circumstances are such that a failure to amend the response is in substance a knowing concealment.

(3) A duty to supplement responses may be imposed by order of the Administrative Law Judge upon motion of a party or agreement of the parties.

[54 FR 48596, Nov. 24, 1989. Redesignated by Order No. 1534–91, 56 FR 50053, Oct. 3, 1991]

§ 68.19 Written interrogatories to parties.

(a) Any party may serve upon any other party written interrogatories to be answered in writing by the party served, or if the party served is a public or private corporation or a partnership or association or governmental agency, by any authorized officer or agent, who shall furnish such information as is available to the party. A copy of the interrogatories shall be served on all parties to the proceeding.

(b) Each interrogatory shall be answered separately and fully in writing under oath or affirmation, unless it is objected to, in which event the reasons of objection shall be stated in lieu of an answer. The answers and objections shall be signed by the person making them. The party upon whom the interrogatories were served shall serve a copy of the answer or objections upon all parties to the proceeding within thirty (30) days after service of the interrogatories, or within such shorter or longer period as the Administrative Law Judge upon motion may allow.

(c) An interrogatory otherwise proper is not necessarily objectionable merely because an answer to the interrogatory involves an opinion or contention that relates to fact or the application of law to fact, but the Administrative Law Judge may upon motion order that such an interrogatory need not be answered until after designated discovery has been completed or until a prehearing conference or other later time.

(d) A person or entity upon whom interrogatories are served may respond by the submission of business records, indicating to which interrogatory the documents respond, if they are sufficient to answer said interrogatories.

[54 FR 48596, Nov. 24, 1989. Redesignated by Order No. 1534–91, 56 FR 50053, Oct. 3, 1991]

§ 68.20 Production of documents, things, and inspection of land.

(a) Any party may serve on any other party a request to:

(1) Produce and permit the party making the request, or a person acting on his/her behalf, to inspect and copy any designated documents or things or to inspect land, in the possession, custody, or control of the party upon whom the request is served; and

(2) Permit the party making the request, or a person acting on his/her behalf, to enter the premises of the party upon whom the request is served to accomplish the purposes stated in paragraph (1) of this section.

(b) The request may be served on any party without leave of the Administrative Law Judge.

(c) The request shall:

(1) Set forth the items to be inspected either by individual item or by category;

(2) Describe each item or category with reasonable particularity; and

(3) Specify a reasonable time, place, and manner of making the inspection and performing the related acts.

(d) The party upon whom the request is served shall serve on the party submitting the request a written response within thirty (30) days after service of the request.

(e) The response shall state, with respect to each item or category:

(1) That inspection and related activities will be permitted as requested; or

(2) That objection is made in whole or in part, in which case the reasons for objection shall be stated.

(f) A copy of each request for production and each written response shall be served on all parties.

[54 FR 48596, Nov. 24, 1989. Redesignated by Order No. 1534–91, 56 FR 50053, Oct. 3, 1991]

§ 68.21 Admissions.

(a) A party may serve upon any other party a written request for the admission, for purposes of the pending action

only, of the genuineness and authenticity of any relevant document described in or attached to the request, or for the admission of the truth of any specified relevant matter of fact.

(b) Each matter of which an admission is requested is admitted unless, within thirty (30) days after service of the request or such shorter or longer time as the Administrative Law Judge may allow, the party to whom the request is directed serves on the requesting party:

(1) A written statement denying specifically the relevant matters of which an admission is requested;

(2) A written statement setting forth in detail the reasons why he/she can neither truthfully admit nor deny them; or

(3) Written objections on the ground that some or all of the matters involved are privileged or irrelevant or that the request is otherwise improper in whole or in part.

(c) An answering party may not give lack of information or knowledge as a reason for failure to admit or deny unless the party states that he/she has made reasonable inquiry and that the information known or readily obtainable by him/her is insufficient to enable the party to admit or deny.

(d) Any matter admitted under this section is conclusively established unless the Administrative Law Judge upon motion permits withdrawal or amendment of the admission.

(e) A copy of each request for admission and each written response shall be served on all parties.

[54 FR 48596, Nov. 24, 1989. Redesignated by Order No. 1534–91, 56 FR 50053, Oct. 3, 1991]

§68.22 Depositions.

(a) *When, how and by whom taken.* Depositions may be taken by oral examination or upon written interrogatories before any person having power to administer oaths. All costs involved with the taking of depositions, including the cost of a certified court reporter and the original transcripts, shall be paid by the party seeking the despositions.

(b) *Notice.* Any party desiring to take the deposition of a witness shall give notice in writing to the witness and all other parties of the time and place of the deposition, and the name and address of each witness. If documents are requested, the notice shall include a written request for the production of documents. Not less than ten (10) days written notice shall be given when the deposition is to be taken within the continental United States, and not less than twenty (20) days written notice shall be given when the deposition is to be taken elsewhere, unless otherwise permitted by the Administrative Law Judge or agreed to by the parties.

(c) *Taking and receiving in evidence.* Each witness testifying upon deposition shall testify under oath and any other party shall have the right to cross-examine. The questions propounded and the answers thereto, together with all objections made, shall be reduced to writing, certified by the person administering the oath, read by or to, and subscribed by the witness unless the witness and the parties by stipulation waive such signature.

(d) *Motion to terminate or limit examination.* During the taking of a deposition, a party or deponent may request suspension of the deposition on grounds of bad faith in the conduct of the examination, oppression of a deponent or party or improper questions propounded. The deposition will then be adjourned. However, the objecting party or deponent must immediately move the Administrative Law Judge for a ruling on his/her objections to the deposition conduct or proceedings.

[54 FR 48596, Nov. 24, 1989. Redesignated by Order No. 1534–91, 56 FR 50053, Oct. 3, 1991]

§68.23 Motion to compel response to discovery; sanctions.

(a) If a deponent fails to answer a question propounded, or a party upon whom a discovery request is made pursuant to §§68.18 through 68.22, fails to respond adequately or objects to the request or to any part thereof, or fails to permit inspection as requested, the discovering party may move the Administrative Law Judge for an order compelling a response or inspection in accordance with the request. A party who has taken a deposition or has requested admissions or has served interrogatories may move to determine the sufficiency of the answers or objections

thereto. Unless the objecting party sustains his or her burden of showing that the objection is justified, the Administrative Law Judge may order that an answer be served. If the Administrative Law Judge determines that an answer does not comply with the requirements of these rules, he or she may order either that the matter is admitted or that an amended answer be served.

(b) The motion shall set forth:

(1) The nature of the questions or request;

(2) The response or objections of the party upon whom the request was served; and

(3) Arguments in support of the motion.

(c) If a party, an officer or an agent of a party, or a witness, fails to comply with an order, including, but not limited to, an order for the taking of a deposition, the production of documents, the answering of interrogatories, a response to a request for admissions, or any other order of the Administrative Law Judge, the Administrative Law Judge, may, for the purposes of permitting resolution of the relevant issues and disposition of the proceeding and to avoid unnecessary delay, take the following actions:

(1) Infer and conclude that the admission, testimony, documents, or other evidence would have been adverse to the non-complying party;

(2) Rule that for the purposes of the proceeding the matter or matters concerning which the order was issued be taken as established adversely to the non-complying party;

(3) Rule that the non-complying party may not introduce into evidence or otherwise rely upon testimony by such party, officer or agent, or the documents or other evidence, in support of or in opposition to any claim or defense;

(4) Rule that the non-complying party may not be heard to object to introduction and use of secondary evidence to show what the withheld admission, testimony, documents, or other evidence would have shown;

(5) Rule that a pleading, or part of a pleading, or a motion or other submission by the non-complying party, concerning which the order was issued, be stricken, or that a decision of the proceeding be rendered against the non-complying party, or both;

(6) In the case of failure to comply with a subpoena, the Administrative Law Judge may also take the action provided in § 68.25(e) of this part; and

(7) In ruling on a motion made pursuant to this section, the Administrative Law Judge may make and enter a protective order such as he or she is authorized to enter on a motion made pursuant to § 68.42 of this part.

[54 FR 48596, Nov. 24, 1989. Redesignated by Order No. 1534–91, 56 FR 50053, 50054, Oct. 3, 1991, as amended by Order No. 1635–92, 57 FR 57672, Dec. 7, 1992]

§ 68.24 Use of depositions at hearings.

(a) *Generally.* At the hearing, any part or all of a deposition, so far as admissible, may be used against any party who was present or represented at the taking of the deposition or who had due notice thereof, in accordance with any one of the following provisions:

(1) Any deposition may be used by any party for the prupose of contradicting or impeaching the testimony of the deponent as a witness;

(2) The deposition of an expert witness may be used by any party for any purpose, unless the Administrative Law Judge rules that such use would be unfair or a violation of due process;

(3) The deposition of a party or of anyone who at the time of taking the deposition was an officer, director, or duly authorized agent of a public or private corporation, partnership, or association which is a party, may be used by any other party for any purpose;

(4) The deposition of a witness, whether or not a party, may be used by any party for any purpose if the Administrative Law Judge finds:

(i) That the witness is dead; or

(ii) That the witness is out of the United States or more than 100 miles from the place of hearing unless it appears that the absence of the witness was procured by the party offering the deposition; or

(iii) That the witness is unable to attend to testify because of age, sickness, infirmity, or imprisonment; or

(iv) That the party offering the deposition has been unable to procure the

attendance of the witness by subpoena; or

(v) Upon application and notice, that such exceptional circumstances exist to make it desirable, in the interest of justice and with due regard to the importance of presenting the testimony of witnesses orally in open hearing, to allow the deposition to be used;

(5) If only part of a deposition is offered in evidence by a party, any other party may require him/her to introduce all of it which is relevant to the part introduced, and any party may introduce any other parts; and

(6) Substitution of parties does not affect the right to use depositions previously taken; and, when a proceeding in any hearing has been dismissed and another proceeding involving the parties or their representatives or successors in interest has been brought (or commenced), all depositions lawfully taken and duly filed in the former proceeding may be used in the latter if originally taken therefor.

(b) *Objections to admissibility*. Except as provided in this paragraph, objections may be made at the hearing to receiving in evidence any deposition or part thereof for any reason which would require the exclusion of the evidence if the witness were then present and testifying.

(1) Objections to the competency of a witness or to the competency, relevancy, or materiality of testimony are not waived by failure to make them before or during the taking of the deposition, unless the ground of the objection is one which might have been obviated or removed if presented at that time.

(2) Errors and irregularities occurring at the oral examination in the manner of taking the deposition, in the form of the questions or answers, in the oath or affirmation, or in the conduct of parties and errors of any kind which might be obviated, removed, or cured if promptly presented, are waived unless reasonable objection thereto is made at the taking of the deposition.

[54 FR 48596, Nov. 24, 1989. Redesignated by Order No. 1534–91, 56 FR 50053, Oct. 3, 1991]

§68.25 Subpoenas.

(a) An Administrative Law Judge, upon his or her own initiative or upon request of an individual or entity before a complaint is filed or by a party once a complaint has been filed, may issue subpoenas as authorized by statute, either prior to or subsequent to the filing of a complaint. Such subpoena may require attendance and testimony of witnesses and production of things including, but not limited to, papers, books, documents, records, correspondence, or tangible things in their possession and under their control and access to such things for the purposes of examination and copying. A subpoena may be served by overnight courier service or overnight mail, certified mail, or by any person who is not less than 18 years of age. A witness, other than a witness subpoenaed on behalf of the Federal Government, may not be required to attend a deposition or hearing unless the mileage and witness fee applicable to witnesses in courts of the United States for each date of attendance is paid in advance of the date of the proceeding. Mileage and witness fees need not be paid to a witness at the time of service of the subpoena if the witness is subpoenaed by the Federal Government.

(b) The subpoena shall identify the person or things subpoenaed, the person to whom it is returnable and the place, date, and time at which it is returnable; or the subpoena shall identify the nature of the evidence to be examined and copied, and the date and time when access is requested. Where a nonparty is subpoenaed, the requestor of the subpoena must give notice to all parties, or if no complaint has been filed, then notice shall be given to individuals or entities who have been charged with an unfair immigration-related employment practice under section 274B of the INA, the individual initiating the alleged unfair immigration-related employment practice, and the Office of Special Counsel. For purposes of this subsection, the receipt of the subpoena or a copy of the subpoena shall serve as the notice.

(c) Any person served with a subpoena issued by an Administrative Law Judge who intends not to comply with it shall, within ten (10) days after the date of service of the subpoena upon such person or within such other time the Administrative Law Judge deems

appropriate, petition the Administrative Law Judge to revoke or modify the subpoena. A copy of the petition shall be served on all parties. If a complaint has not been filed in the matter, a copy of the petition shall be served on the individual or entity that requested the subpoena. The petition shall separately identify each portion of the subpoena with which the petitioner does not intend to comply and shall state, with respect to each such portion, the grounds upon which the petitioner relies. A copy of the subpoena shall be attached to the petition. Within eight (8) days after receipt of the petition, the individual or entity that applied for the subpoena may respond to such petition, and the Administrative Law Judge shall then make a final determination upon the petition. The Administrative Law Judge shall cause a copy of the final determination of the petition to be served upon all parties, or, if a complaint has not been filed, upon the individuals or entities requesting and responding to the subpoena.

(d) A party shall have standing to challenge a subpoena issued to a nonparty if the party can claim a personal right or privilege in the discovery sought.

(e) Failure to comply. Upon the failure of any person to comply with an order to testify or a subpoena issued under this section, the Administrative Law Judge may, where authorized by law, apply through appropriate counsel to the appropriate district court of the United States for an order requiring compliance with the order or subpoena.

[Order No. 1534–91, 56 FR 50055, Oct. 3, 1991, as amended by Order No. 1635–92, 57 FR 57672, Dec. 7, 1992]

§ 68.26 Designation of Administrative Law Judge.

Hearings shall be held before an Administrative Law Judge appointed under 5 U.S.C. 3105 and assigned to the Department of Justice. The presiding judge in any case shall be designated by the Chief Administrative Hearing Officer. The Chief Administrative Hearing Officer may reassign a case previously assigned to an Administrative Law Judge to promote administrative efficiency. In unfair immigration-related employment practice cases, only Administrative Law Judges specially designated by the Attorney General as having special training respecting employment discrimination may be chosen by the Chief Administrative Hearing Officer to preside.

[54 FR 48596, Nov. 24, 1989. Redesignated by Order No. 1534–91, 56 FR 50053, Oct. 3, 1991, as amended by Order No. 1635–92, 57 FR 57672, Dec. 7, 1992]

§ 68.27 Continuances.

(a) *When granted.* Continuances will only be granted in cases of prior judicial commitments or undue hardship, or a showing of other good cause.

(b) *Time limit for requesting.* Except for good cause arising thereafter, requests for continuances must be filed not later than fourteen (14) days prior to the date set for hearing.

(c) *How filed.* Motions for continuances shall be in writing, unless made during the prehearing conference or hearing. Copies shall be served on all parties. Any motions for continuances filed less than fourteen (14) days of the date of the scheduled proceeding shall, in addition to the written request, be telephonically communicated to the Administrative Law Judge or a member of his/her staff and to all other parties.

(d) *Ruling.* Time permitting, the Administrative Law Judge shall issue a written order in advance of the scheduled proceeding date which either allows or denies the request. Otherwise, the ruling made orally by telephonic communication to the party requesting same who shall be responsible for telephonically notifying all other parties. Oral orders shall be confirmed in writing by the Administrative Law Judge.

[54 FR 48596, Nov. 24, 1989. Redesignated by Order No. 1534–91, 56 FR 50053, Oct. 3, 1991]

§ 68.28 Authority of Administrative Law Judge.

(a) *General powers.* In any proceeding under this part, the Administrative Law Judge shall have all appropriate powers necessary to conduct fair and impartial hearings, including, but not limited to, the following:

(1) Conduct formal hearings in accordance with the provisions of the Administrative Procedure Act and of this part;

(2) Administer oaths and examine witnesses;

(3) Compel the production of documents and appearance of witnesses in control of the parties;

(4) Compel the appearance of witnesses by the issuance of subpoenas as authorized by law;

(5) Issue decisions and orders;

(6) Take any action authorized by the Administrative Procedure Act;

(7) Exercise, for the purpose of the hearing and in regulating the conduct of the proceeding, such powers vested in the Attorney General as are necessary and appropriate therefore; and

(8) Take other appropriate measures necessary to enable him or her to discharge the duties of the office.

(b) *Enforcement.* If any person in proceedings before an Administrative Law Judge disobeys or resists any lawful order or process, or misbehaves during a hearing or so near the place thereof as to obstruct the same, or neglects to produce, after having been ordered to do so, any pertinent book, paper, or document, or refuses to appear after having been subpoenaed, or upon appearing refuses to take the oath as a witness, or after having taken the oath refuses to be examined according to law, the Administrative Law Judge responsible for the adjudication may, where authorized by statute or law, apply through appropriate counsel to the Federal District Court having jurisdiction in the place in which he/she is sitting to request appropriate remedies.

[54 FR 48596, Nov. 24, 1989. Redesignated and amended by Order No. 1534–91, 56 FR 50053, 50055, Oct. 3, 1991; Order No. 1635–92, 57 FR 57672, Dec. 7, 1992]

§68.29 Unavailability of Administrative Law Judge.

In the event the Administrative Law Judge designated to conduct the hearing becomes unavailable, the Chief Administrative Hearing Officer may designate another Administrative Law Judge for the purpose of further hearing or other appropriate action.

[54 FR 48596, Nov. 24, 1989. Redesignated by Order No. 1534–91, 56 FR 50053, Oct. 3, 1991]

§68.30 Disqualification.

(a) When an Administrative Law Judge deems himself or herself disqualified to preside in a particular proceeding, such judge shall withdraw therefrom by notice on the record directed to the Chief Administrative Hearing Officer.

(b) Whenever any party shall deem the Administrative Law Judge for any reason to be disqualified to preside, or to continue to preside, in a particular proceeding, that party shall file with the Administrative Law Judge a motion to recuse. The motion shall be supported by an affidavit setting forth the alleged grounds for disqualification. The Administrative Law Judge shall rule upon the motion.

(c) In the event of disqualification or recusal of an Administrative Law Judge as provided in paragraph (a) or (b) of this section, the Chief Administrative Hearing Officer shall refer the matter to another Administrative Law Judge for further proceedings.

[54 FR 48596, Nov. 24, 1989. Redesignated by Order No. 1534–91, 56 FR 50053, Oct. 3, 1991]

§68.31 Separation of functions.

No officer, employee, or agent of the Federal Government engaged in the performance of investigative or prosecutorial functions in connection with any proceeding shall, in that proceeding or a factually related proceeding, participate or advise in the decision of the Administrative Law Judge, except as a witness or counsel in the proceedings.

[54 FR 48596, Nov. 24, 1989. Redesignated by Order No. 1534–91, 56 FR 50053, Oct. 3, 1991]

§68.32 Expedition.

Hearings shall proceed with all reasonable speed, insofar as practicable and with due regard to the convenience of the parties.

[54 FR 48596, Nov. 24, 1989. Redesignated by Order No. 1534–91, 56 FR 50053, Oct. 3, 1991]

§68.33 Appearance and representation.

(a) *Appearances.* Any party shall have the right to appear at a hearing to examine and cross-examine witnesses,

and to introduce into the record documentary or other relevant evidence, except that the participation of any intervenor shall be limited to the extent prescribed by the Administrative Law Judge.

(b) *Representation.* (1) A party may be represented by an attorney qualified under paragraph (b)(4) of this section, at no expense to the Government.

(2) Any person compelled to testify in a proceeding in response to a subpoena may be accompanied, represented, and advised by counsel.

(3) The Department of Justice may be represented by the appropriate counsel in these proceedings.

(4) *Qualifications of attorneys.* An attorney at law who is admitted to practice before the federal courts or before the highest court of any state, the District of Columbia, or any territory or commonwealth of the United States, may practice before the Administrative Law Judges. An attorney's own representation that he/she is in good standing before any of such courts shall be sufficient proof thereof, unless otherwise ordered by the Administrative Law Judge.

(5) Except for a government attorney filing a complaint pursuant to sections 274A, 274B, or 274C of the INA, each attorney shall file a notice of appearance. Such notice shall indicate the name of the case or controversy, the case number if assigned, and the party on whose behalf the appearance is made. The notice of appearance shall be signed by the attorney, and shall be accompanied by a certification indicating that such notice was served on all parties of record. A request for a hearing signed by an attorney and filed with the Immigration and Naturalization Service pursuant to section 274A(e)(3)(A) or 274C(d)(2)(A) of the INA, and containing the same information as required by this section, shall be considered a notice of appearance on behalf of the respondent for whom the request was made.

(6) *Authority for representation.* Any individual acting in a representative capacity in any adjudicative proceeding may be required by the Administrative Law Judge to show his/her authority to act in such capacity.

(c) *Withdrawal or substitution of an attorney.* Withdrawal or substitution of an attorney may be permitted by the Administrative Law Judge upon written motion.

[54 FR 48596, Nov. 24, 1989. Redesignated and amended by Order No. 1534–91, 56 FR 50053, 50055, Oct. 3, 1991]

§ 68.34 Legal assistance.

The Office of the Chief Administrative Hearing Officer does not have authority to appoint counsel.

[54 FR 48596, Nov. 24, 1989. Redesignated by Order No. 1534–91, 56 FR 50053, Oct. 3, 1991]

§ 68.35 Standards of conduct.

(a) All persons appearing in proceedings before an Administrative Law Judge are expected to act with integrity, and in an ethical manner.

(b) The Administrative Law Judge may exclude from proceedings parties, witnesses, and their representatives for refusal to comply with directions, continued use of dilatory tactics, refusal to adhere to reasonable standards of orderly and ethical conduct, failure to act in good faith, or violation of the prohibition against ex parte communications. The Administrative Law Judge shall state in the record the cause for barring an attorney or other individual from participation in a particular proceeding. The Administrative Law Judge may suspend the proceeding for a reasonable time for the purpose of enabling a party to obtain another attorney or representative.

[54 FR 48596, Nov. 24, 1989. Redesignated by Order No. 1534–91, 56 FR 50053, Oct. 3, 1991]

§ 68.36 Ex parte communications.

(a) *General.* Except for other employees of the Executive Office for Immigration Review, the Administrative Law Judge shall not consult any person, or party, on any fact in issue unless upon notice and opportunity for all parties to participate. Communications by the Office of the Chief Administrative Hearing Officer, the assigned judge, or any party for the sole purpose of scheduling hearings, or requesting extensions of time are not considered ex parte communications, except that all other parties shall be notified of such request by the requesting party

and be given an opportunity to respond thereto.

(b) *Sanctions.* A party or participant who makes a prohibited ex parte communication, or who encourages or solicits another to make any such communication, may be subject to any appropriate sanction or sanctions, including but not limited to, exclusion from the proceedings and adverse ruling on the issue which is the subject of the prohibited communication.

[54 FR 48596, Nov. 24, 1989. Redesignated by Order No. 1534–91, 56 FR 50053, Oct. 3, 1991]

§68.37 Waiver of right to appear and failure to participate or to appear.

(a) *Waiver of right to appear.* If all parties waive in writing their right to appear before the Administrative Law Judge or to present evidence or argument personally or by representative, it shall not be necessary to give notice of and conduct an oral hearing. A waiver of the right to appear and present evidence and allegations as to facts and law shall be made in writing and filed with the Chief Administrative Hearing Officer or the Administrative Law Judge. Where such a waiver has been filed by all parties and they do not appear before the Administrative Law Judge personally or by representative, the Administrative Law Judge shall make a record of the relevant written evidence submitted by the parties, together with any pleadings they may submit with respect to the issues in the case. Such documents shall be considered as all of the evidence in the case and decision shall be based on them.

(b) *Dismissal—Abandonment by party.* A complaint or a request for hearing may be dismissed upon its abandonment by the party or parties who filed it. A party shall be deemed to have abandoned a complaint or a request for hearing if:

(1) A party or his or her representative fails to respond to orders issued by the Administrative Law Judge; or

(2) Neither the party nor his or her representative appears at the time and place fixed for the hearing and either

(i) Prior to the time for hearing, such party does not show good cause as to why neither he or she nor his or her representative can appear; or

(ii) Within ten (10) days after the time for hearing or within such other period as the Administrative Law Judge may allow, such party does not show good cause for such failure to appear.

(c) *Default—Failure to appear.* A default decision, under §68.9(b), may be entered, with prejudice, against any party failing, without good cause, to appear at a hearing.

[54 FR 48596, Nov. 24, 1989. Redesignated and amended by Order No. 1534–91, 56 FR 50053, 50056, Oct. 3, 1991; Order No. 1635–92, 57 FR 57672, Dec. 7, 1992]

§68.38 Motion for summary decision.

(a) A complainant, not less than thirty (30) days after receipt by respondent of the complaint, may move with or without supporting affidavits for summary decision on all or any part of the proceeding. Motions by any party for summary decision on all or any part of the proceeding will not be entertained within the twenty (20) days prior to any hearing, unless the Administrative Law Judge decides otherwise. Any other party, within ten (10) days after service of a motion for summary decision, may respond to the motion by serving supporting or opposing papers with affidavits, if appropriate, or countermove for summary decision. The Administrative Law Judge may set the matter for argument and/or call for submission of briefs.

(b) Any affidavits submitted with the motion shall set forth such facts as would be admissible in evidence in a proceeding subject to 5 U.S.C. 556 and 557 and shall show affirmatively that the affiant is competent to testify to the matters stated therein. When a motion for summary decision is made and supported as provided in this section, a party opposing the motion may not rest upon the mere allegations or denials of such pleading. Such response must set forth specific facts showing that there is a genuine issue of fact for the hearing.

(c) The Administrative Law Judge may enter a summary decision for either party if the pleadings, affidavits, material obtained by discovery or otherwise, or matters officially noticed show that there is no genuine issue as

to any material fact and that a party is entitled to summary decision.

(d) *Form of summary decisions.* Any final decision issued as a summary decision shall conform to the requirements for all final decisions. An initial decision and a final decision made under this paragraph shall include a statement of:

(1) Findings of fact and conclusions of law, and the reasons therefor, on all issues presented; and

(2) Any terms and conditions of the rule or order.

(e) Hearings on issue of fact. Where a genuine question of material fact is raised, the Administrative Law Judge shall, and in any other case may, set the case for an evidentiary hearing.

[54 FR 48596, Nov. 24, 1989. Redesignated and amended by Order No. 1534–91, 56 FR 50053, 50056, Oct. 3, 1991]

§ 68.39 Formal hearings.

(a) *Public.* Hearings shall be open to the public. The Administrative Law Judge may order a hearing or any part thereof closed, where to do so would be in the best interests of the parties, a witness, the public, or other affected persons. Any order closing the hearing shall set forth the reasons for the decision. Any objections thereto shall be made a part of the record.

(b) *Jurisdiction.* The Administrative Law Judge shall have jurisdiction to decide all issues of fact and related issues of law.

(c) *Rights of parties.* Every party shall have the right of timely notice and all other rights essential to a fair hearing, including, but not limited to, the right to present evidence, to conduct such cross-examination as may be necessary for a full and complete disclosure of the facts, and to be heard by objection, motion, and argument.

(d) *Rights of participation.* Every party shall have the right to make a written or oral statement of position. At the discretion of the Administrative Law Judge, participants may file proposed findings of fact, conclusions of law, and a post hearing brief.

(e) *Amendments to conform to the evidence.* When issues not raised by the request for hearing, prehearing stipulation, or prehearing order are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings. Such amendment of the pleadings as may be necessary to cause them to conform to the evidence may be made on motion of any party at any time; but failure to so amend does not affect the result of the hearing of these issues. The Administrative Law Judge may grant a continuance to enable the objecting party to meet such evidence.

[54 FR 48596, Nov. 24, 1989. Redesignated by Order No. 1534–91, 56 FR 50053, Oct. 3, 1991]

§ 68.40 Evidence.

(a) *Applicability of Federal rules of evidence.* Unless otherwise provided by statute or these rules, the Federal Rules of Evidence will be a general guide to all proceedings held pursuant to these rules.

(b) *Admissibility.* All relevant material and reliable evidence is admissible, but may be excluded if its probative value is substantially outweighed by unfair prejudice or confusion of the issues, or by considerations of undue delay, waste of time, immateriality, or needless presentation of cumulative evidence. Stipulations of fact may be introduced in evidence with respect to any issue. Every party shall have the right to present his/her case or defense by oral or documentary evidence, depositions, and duly authenticated copies of records and documents; to submit rebuttal evidence; and to conduct such reasonable cross-examination as may be required for a full and true disclosure of the facts. The Administrative Law Judge shall have the right in his/her discretion to limit the number of witnesses whose testimony may be merely cumulative and shall, as a matter of policy, not only exclude irrelevant, immaterial, or unduly repetitious evidence but shall also limit the cross-examination of witnesses to reasonable bounds so as not to prolong the hearing unnecessarily, and unduly burden the record. Material and relevant evidence shall not be excluded because it is not the best evidence, unless its authenticity is challenged, in which case reasonable time shall be given to establish its authenticity. When only portions of a document are to be relied upon, the offering party shall prepare the pertinent excerpts, adequately identified, and

shall supply copies of such excerpts, together with a statement indicating the purpose for which such materials will be offered, to the Administrative Law Judge and to the other parties. Only the excerpts, so prepared and submitted, shall be received in the record. However, the original document should be made available for examination and for use by opposing counsel for purposes of cross-examination. Compilations, charts, summaries of data, and photostatic copies of documents may be admitted in evidence if the proceedings will thereby be expedited, and if the material upon which they are based is available for examination by the parties.

(c) *Objections to evidence.* Objections to the admission or exclusion of evidence shall be in short form, stating the grounds of objections relied upon, and to the extent permitted by the Administrative Law Judge, the transcript shall include argument or debate thereon. Rulings on such objections shall be made at the time of objection or prior to the receipt of further evidence. Such ruling shall be a part of the record.

(d) *Exceptions.* Formal exceptions to the rulings of the Administrative Law Judge made during the course of the hearing are unnecessary. For all purposes for which an exception otherwise would be taken, it is sufficient that a party, at the time the ruling of the Administrative Law Judge is made or sought, makes known the action he/she desires the Administrative Law Judge to take or his/her objection to an action taken, and his/her grounds therefor.

(e) *Offers of proof.* Any offer of proof made in connection with an objection taken to any ruling of the Administrative Law Judge rejecting or excluding proffered oral testimony shall consist of a statement of the substance of the evidence which counsel contends would be adduced by such testimony, and, if the excluded evidence consists of evidence in documentary or written form or of reference to documents or records, a copy of such evidence shall be marked for identification and shall constitute the offer of proof.

[54 FR 48596, Nov. 24, 1989. Redesignated by Order No. 1534–91, 56 FR 50053, Oct. 3, 1991]

§68.41 Official notice.

Official notice may be taken of any material fact, not appearing in evidence in the record, which is among the traditional matters of judicial notice. Provided, however, that the parties shall be given adequate notice, at the hearing or by reference in the Administrative Law Judge's decision, of the matters so noticed, and shall be given adequate opportunity to show the contrary.

[54 FR 48596, Nov. 24, 1989. Redesignated by Order No. 1534–91, 56 FR 50053, Oct. 3, 1991]

§68.42 In camera and protective orders.

(a) *Privileged communications.* Upon application of any person, the Administrative Law Judge may limit discovery or introduction of evidence or issue such protective or other orders as in his/her judgment may be consistent with the objective of protecting privileged communications and of protecting data and other material the disclosure of which would unreasonably prejudice a party, witness, or third party.

(b) *Classified or sensitive matter.* (1) Without limiting the discretion of the Administrative Law Judge to give effect to any other applicable privilege, it shall be proper for the Administrative Law Judge to limit discovery or introduction of evidence or to issue such protective or other orders as in his/her judgment may be consistent with the objective of preventing undue disclosure of classified or sensitive matter. Where the Administrative Law Judge determines that information in documents containing sensitive matter should be made available to a respondent, he/she may direct the party to prepare an unclassified or nonsensitive summary or extract of the original. The summary or extract may be admitted as evidence in the record.

(2) If the Administrative Law Judge determines that this procedure is inadequate and that classified or otherwise sensitive matter must form part of the record in order to avoid prejudice to any party, he/she may advise the parties and provide opportunity for arrangements to permit a party or a representative to have access to such matter. Such arrangements may include

obtaining security clearances or giving counsel for a party access to sensitive information and documents subject to assurances against further disclosure.

[54 FR 48596, Nov. 24, 1989. Redesignated by Order No. 1534–91, 56 FR 50053, Oct. 3, 1991]

§ 68.43 Exhibits.

(a) *Identification.* All exhibits offered in evidence shall be numbered and marked with a designation identifying the party or intervenor by whom the exhibit is offered.

(b) *Exchange of exhibits.* When written exhibits are offered in evidence, one copy must be furnished to each of the parties at the hearing, and two copies to the Administrative Law Judge, unless the parties previously have been furnished with copies or the Administrative Law Judge directs otherwise. If the Administrative Law Judge has not fixed a time for the exchange of exhibits, the parties shall exchange copies of exhibits at the earliest practicable time, preferably before the hearing or, at the latest, at the commencement of the hearing.

(c) *Substitution of copies for original exhibits.* The Administrative Law Judge may permit a party to withdraw original documents offered in evidence and substitute true copies in lieu thereof.

[54 FR 48596, Nov. 24, 1989. Redesignated by Order No. 1534–91, 56 FR 50053, Oct. 3, 1991, and amended by Order No. 1635–92, 57 FR 57672, Dec. 7, 1992]

§ 68.44 Records in other proceedings.

In case any portion of the record in any other proceeding or civil or criminal action is offered in evidence, a true copy of such portion shall be presented for the record in the form of an exhibit unless the Administrative Law Judge directs otherwise.

[54 FR 48596, Nov. 24, 1989. Redesignated by Order No. 1534–91, 56 FR 50053, Oct. 3, 1991]

§ 68.45 Designation of parts of documents.

Where relevant and material matter offered in evidence is embraced in a document containing other matter not material or relevant and not intended to be put in evidence, the participant offering the same shall plainly designate the matter so offered, segregating and excluding insofar as practicable the immaterial or irrelevant parts. If other matter in such document is in such bulk or extent as would necessarily encumber the record, such document will not be received in evidence, but may be marked for identification, and if properly authenticated, the relevant and material parts thereof may be read into the record, or if the Administrative Law Judge so directs, a true copy of such matter in proper form shall be received in evidence as an exhibit, and copies shall be delivered by the participant offering the same to the other parties or their attorneys appearing at the hearing, who shall be afforded an opportunity to examine the entire document and to offer in evidence in like manner other material and relevant portions thereof.

[54 FR 48596, Nov. 24, 1989. Redesignated by Order No. 1534–91, 56 FR 50053, Oct. 3, 1991]

§ 68.46 Authenticity.

The authenticity of all documents submitted as proposed exhibits in advance of the hearing shall be deemed admitted unless written objection therto is filed prior to the hearing, except that a party will be permitted to challenge such authenticity at a later time upon a clear showing of good cause for failure to have filed such written objection.

[54 FR 48596, Nov. 24, 1989. Redesignated by Order No. 1534–91, 56 FR 50053, Oct. 3, 1991]

§ 68.47 Stipulations.

The parties may by stipulation in writing at any stage of the proceeding, or by stipulation made orally at the hearing, agree upon any pertinent facts in the processing. It is desirable that the facts be thus agreed upon so far as and whenever practicable. Stipulations may be recieved in evidence at a hearing or prior thereto, and when received in evidence, shall be binding on the parties thereto.

[54 FR 48596, Nov. 24, 1989. Redesignated by Order No. 1534–91, 56 FR 50053, Oct. 3, 1991]

§ 68.48 Record of hearings.

(a) *General.* A verbatim written record of all hearings shall be kept, except in cases where the proceedings are terminated in accordance with §68.14.

All evidence upon which the Administrative Law Judge relies for decision shall be contained in the transcript of testimony, either directly or by appropriate reference. All exhibits introduced as evidence shall be marked for identification and incorporated into the record. Transcripts may be obtained by the parties and the public from the official court reporter of record. Any fees in connection therewith shall be the responsibility of the parties.

(b) *Corrections.* Corrections to the official transcript will be permitted upon motion. Motions for correction must be submitted within ten (10) days of the receipt of the transcript by the Administrative Law Judge or such other time as may be permitted by the Administrative Law Judge. Corrections of the official transcript will be permitted only when errors of substance are involved and only upon approval of the Administrative Law Judge.

[54 FR 48596, Nov. 24, 1989. Redesignated by Order No. 1534–91, 56 FR 50053, Oct. 3, 1991, and amended by Order No. 1635–92, 57 FR 57672, Dec. 7, 1992]

§68.49 Closing the record.

(a) When there is a hearing, the record shall be closed at the conclusion of the hearing unless the Administrative Law Judge directs otherwise.

(b) If any party waives a hearing, the record shall be closed on the date set by the Administrative Law Judge as the final date for the receipt of submissions of the parties to the matter.

(c) Once the record is closed, no additional evidence shall be accepted into the record except upon a showing that new and material evidence has become available which was not readily available prior to the closing of the record. However, the Administrative Law Judge shall make part of the record any motions for attorney's fees authorized by statutes, and any supporting documentation, any determinations thereon, and any approved correction to the transcript.

[54 FR 48596, Nov. 24, 1989. Redesignated by Order No. 1534–91, 56 FR 50053, Oct. 3, 1991]

§68.50 Receipt of documents after hearing.

Documents submitted for the record after the close of the hearing will not be received in evidence except upon ruling of the Administrative Law Judge. Such documents when submitted shall be accompanied by proof that copies have been served upon all parties, who shall have an opportunity to comment thereon. Copies shall be received not later than twenty (20) days after the close of the hearing except for good cause shown, and not less than ten (10) days prior to the date set for filing briefs. Exhibit numbers should be assigned by counsel or the party.

[54 FR 48596, Nov. 24, 1989. Redesignated by Order No. 1534–91, 56 FR 50053, Oct. 3, 1991]

§68.51 Restricted access.

On his/her own motion, or on the motion of any party, the Administrative Law Judge may direct that there be a restricted access portion of the record to contain any material in the record to which public access is restricted by law or by the terms of a protective order entered in the proceedings. This portion of the record shall be placed in a separate file and clearly marked to avoid improper disclosure and to identify it as a portion of the official record in the proceedings.

[54 FR 48596, Nov. 24, 1989. Redesignated by Order No. 1534–91, 56 FR 50053, Oct. 3, 1991]

§68.52 Decision and order of the Administrative Law Judge.

(a) *Proposed decision and order.* Within twenty (20) days of filing of the transcript of the testimony, or such additional time as the Administrative Law Judge may allow, the Administrative Law Judge may require the parties to file proposed findings of fact, conclusions of law, and orders together with supporting briefs expressing the reasons for such proposals. Such proposals and brief shall be served on all parties, and shall refer to all portions of the record and to all authorities relied upon in support of each proposal.

(b) *Decision.* Unless an extension of time is given by the Chief Administrative Hearing Officer on good cause, the Administrative Law Judge shall make his/her decision within sixty (60) days

after receipt of the hearing transcript or of receipt by the Administrative Law Judge of post-hearing briefs, proposed findings of fact, and conclusions of law, if any. The decision of the Administrative Law Judge shall be based upon the whole record. It shall be supported by reliable and probative evidence. The standard of proof shall be by a preponderance of the evidence. Such decision shall be in accordance with the regulations and rulings of the statute or regulations conferring jurisdiction.

(c) *Order*—(1) *Unlawful employment of unauthorized aliens.* (i) If upon the preponderance of the evidence, the Administrative Law Judge determines that a person or entity named in the complaint has violated section 274A(a)(1)(A) or (a)(2) of the INA, the order shall require the person or entity to cease and desist from such violations and to pay a civil penalty in an amount of:

(A) Not less than $250 and not more than $2,000 for each unauthorized alien with respect to whom a violation of either such subsection occurred;

(B) Not less than $2,000 and not more than $5,000 for each unauthorized alien with respect to whom a violation of either such subsection occurred in the case of a person or entity previously subject to one order under this subparagraph; or

(C) Not less than $3,000 and not more than $10,000 for each unauthorized alien with respect to whom a violation of each such subsection occurred in the case of a person or entity previously subject to more than one order under this subparagraph.

(ii) The order may also require the respondent to comply with the requirements of section 274A(b) of the INA with respect to individuals hired (or recruited or referred for employment for a fee) during a period of up to three years; and to take such other remedial action as is appropriate.

(iii) In the case of a person or entity composed of distinct, physically separate subdivisions each of which provides separately for the hiring, recruiting, or referring for employment, without reference to the practices of, and under the control of, or common control with, another subdivision, each such subdivision shall be considered a separate person or entity.

(iv) With respect to a violation of section 274A(a)(1)(B) of the INA, the order under this subsection shall require the person or entity to pay a civil penalty in an amount of not less than $100 and not more than $1,000 for each individual with respect to whom such violation occurred. In determining the amount of the penalty, due consideration shall be given to the size of the business of the employer being charged, the good faith of the employer, the seriousness of the violation, whether or not the individual was an unauthorized alien, and the history of previous violations.

(v) *Prohibition of indemnity bonds.* If upon the preponderance of the evidence, the Administrative Law Judge determines that a person or entity has violated section 274A(g)(1) of the INA, the order shall require the person or entity to pay a civil penalty of $1,000 for each individual with respect to whom such violation occurred and require the return of any amounts received in such violation to the individual, or, if the individual cannot be located, to the general fund of the Treasury.

(vi) *Attorney fees.* A prevailing party may receive, pursuant to 5 U.S.C. 504, an award of attorney's fees in unlawful employment and indemnity bond cases arising under section 274A of the INA. Any application for attorney's fees shall be accompanied by an itemized statement from the attorney or representative, stating the actual time expended and the rate at which fees and other expenses were computed. An award of attorney's fees will not be made if the Administrative Law Judge determines that the complainant's position was substantially justified or special circumstances make the award unjust.

(2) *Unfair immigration-related employment practice cases.* (i) If, upon the preponderance of the evidence, the Administrative Law Judge determines that any person or entity named in the complaint has engaged in or is engaging in an unfair immigration-related employment practice, the order shall include a requirement that the person or entity cease and desist from such practice.

The order may also require the person or entity:

(A) To comply with the requirements of section 274A(b) of the INA with respect to individuals hired (or recruited or referred for employment for a fee) during a period of up to three years;

(B) To retain for a period of up to three years, and only for purposes consistent with section 274A(b)(5) of the INA, the name and address of each individual who applies, in person or in writing, for hiring for an existing position, or for recruiting or referring for a fee, for employment in the United States;

(C) To hire individuals directly and adversely affected, with or without back pay;

(D) To post notices to employees about their rights under this subsection and employers' obligations under section 274A;

(E) To educate all personnel involved in hiring and in complying with section 274A or 274B about the requirements of 274A or 274B;

(F) To order, in an appropriate case, the removal of a false performance review or false warning from an employee's personnel file;

(G) To order, in an appropriate case, the lifting of any restrictions on an employee's assignments, work shifts, or movements;

(H) Except as provided in paragraph (c)(2)(i)(K) of this section, to pay a civil penalty of not less than $250 and not more than $2,000 for each individual discriminated against;

(I) Except as provided in paragraph (c)(2)(i)(K) of this section, in the case of a person or entity previously subject to a single order under section 274B(g)(2) of the INA, to pay a civil penalty of not less than $2,000 and not more than $5,000 for each individual discriminated against;

(J) Except as provided in paragraph (c)(2)(i)(K) of this section, in the case of a person or entity previously subject to more than one order under section 274B(g)(2) of the INA, to pay a civil penalty of not less than $3,000 and not more than $10,000 for each individual discriminated against; and

(K) In the case of an unfair immigration-related employment practice where an individual requests more or different documents than are required under section 274A(b) or refuses to honor documents that reasonably appear to be genuine, to pay a civil penalty of not less than $100 and not more than $1,000 for each individual discriminated against or to order any of the remedies listed as paragraphs (c)(2)(i)(A) through (c)(2)(i)(G) above.

(ii) Back pay liability shall not accrue from a date more than two years prior to the date of the filing of the complaint. In no event shall back pay accrue from before November 6, 1986. Interim earnings or amounts earnable with reasonable diligence by the individual or individuals discriminated against shall operate to reduce the back pay otherwise allowable. No order shall require the hiring of an individual as an employee or the payment to an individual of any back pay, if the individual was refused employment for any reason other than discrimination on account of national origin, or citizenship status, unless it is determined that an unfair immigration-related employment practice exists under section 274B(a)(5) of the INA.

(iii) In applying paragraph (c)(2) of this section in the case of a person or entity composed of distinct, physically separate subdivisions each of which provides separately for the hiring, recruiting, or referring for employment, without reference to the practices of, and not under the control of or common control with another subdivision, each such subdivision shall be considered a separate person or entity.

(iv) If upon the preponderance of the evidence, the Administrative Law Judge determines that a person or entity named in the complaint has not engaged in and is not engaging in an unfair immigration-related employment practice, then the order shall dismiss the complaint.

(v) *Attorney fees.* The Administrative Law Judge in his or her discretion may allow a prevailing party, other than the United States, a reasonable attorney's fee, if the losing party's argument is without reasonable foundation in law and fact. Any application for attorney's fees shall be accompanied by an itemized statement from the attorney or representative, stating the actual time expended and the rate at

which fees and other expenses were computed.

(3) *Document fraud cases.* (i) If upon the preponderance of the evidence, the Administrative Law Judge determines that a person or entity has violated section 274C of the INA, the order shall include a requirement that the respondent cease and desist from such violations and to pay a civil money penalty in an amount of:

(A) Not less than $250 and not more than $2,000 for each document used, accepted or created and each instance of use, acceptance or creation, as prohibited by section 274C(a) (1) through (4) of the INA; or,

(B) In the case of a respondent previously subject to one order under subsection 274C(d)(3) of the INA, not less than $2,000 and not more than $5,000 for each document used, accepted, or created and each instance of use, acceptance or creation, as prohibited by section 274C(a) (1) through (4) of the INA.

(ii) In the case of a person or entity composed of distinct, physically separate subdivisions each of which provides separately for the hiring, recruiting, or referring for employment, without reference to the practices of, and under the control of, or common control with, another subdivision, each such subdivision shall be considered a separate person or entity.

(iii) *Attorney fees.* A prevailing party may receive, pursuant to 5 U.S.C. 504, an award of attorney's fees in document fraud cases arising under section 274C of the INA. Any application for attorney's fees shall be accompanied by an itemized statement from the attorney or representative, stating the actual time expended and the rate at which fees and other expenses were computed. An award of attorney's fees will not be made if the Administrative Law Judge determines that the complainant's position was substantially justified or special circumstances make the award unjust.

(4) *Corrections to orders.* An Administrative Law Judge may, in the interest of justice, correct any clerical mistakes or typographical errors contained in a decision and order issued in a case arising under section 274A or 274C of the INA at any time within thirty (30) days after the issuance of the decision and order. Changes other than clerical mistakes or typographical errors will be considered in cases arising under sections 274A and 274C of the INA by filing a request for review to the Chief Administrative Hearing Officer by a party under § 68.53, or the Chief Administrative Hearing Officer may exercise discretionary review to make such changes pursuant to § 68.53. In cases arising under section 274B of the INA, an Administrative Law Judge may correct any substantive, clerical, or typographical errors or mistakes in a decision and order at any time within sixty (60) days after the issuance of the decision and order.

[54 FR 48596, Nov. 24, 1989. Redesignated and amended by Order No. 1534–91, 56 FR 50053, 50056, Oct. 3, 1991; Order No. 1635–92, 57 FR 57672, Dec. 7, 1992]

§ 68.53 Administrative and judicial review.

(a) *Review of a decision and order of an Administrative Law Judge in cases arising under sections 274A and 274C of the INA.* In a case arising under sections 274A or 274C of the INA, the Chief Administrative Hearing Officer has discretionary authority, pursuant to sections 274A(e)(7) and 274C(d)(4) of the INA and 5 U.S.C. 557(b), to review the Administrative Law Judge's decision and order.

(1) A party may file with the Chief Administrative Hearing Officer a written request for review together with supporting arguments. Within thirty (30) days of the date of the Administrative Law Judge's decision and order, the Chief Administrative Hearing Officer may issue an order which modifies or vacates the Administrative Law Judge's decision and order. However, the Chief Administrative Hearing Officer is not obligated to issue an order unless the Administrative Law Judge's order is modified or vacated.

(2) If the Chief Administrative Hearing Officer issues an order which modifies or vacates the Administrative Law Judge's decision and order, the Chief Administrative Hearing Officer's decision and order becomes the final agency decision and order of the Attorney General on the date of the Chief Administrative Hearing Officer's decision and order. If the Chief Administrative

Hearing Officer does not modify or vacate the Administrative Law Judge's decision and order, then the Administrative Law Judge's decision and order becomes the final agency decision and order of the Attorney General, thirty (30) days after the date of the Administrative Law Judge's decision and order.

(3) A person or entity adversely affected by a final agency decision and order of the Attorney General respecting an assessment may file, within forty-five (45) days after the date of the Attorney General's final agency decision and order, a petition in the Court of Appeals for the appropriate circuit for review of the Attorney General's final decision and order. Failure to request review by the Chief Administrative Hearing Officer of a decision by an Administrative Law Judge shall not prevent a party from seeking judicial review.

(b) *Review of the final decision and order of an Administrative Law Judge in unlawful immigration-related employment practice cases arising under section 274B of the INA.* Any person aggrieved by an order issued under §68.52(c)(2) may, within 60 days after entry of the order, seek review of the order in the United States Court of Appeals for the circuit in which the violation is alleged to have occurred or in which the employer resides or transacts business. If an order issued under §68.52(c)(2) is not appealed, the Special Counsel (or, if the Special Counsel fails to act, the person filing the charge, other than an Immigration and Naturalization Service officer) may file a petition in the United States District Court for the district in which a violation of the order is alleged to have occurred, or in which the respondent resides or transacts business, requesting that the order be enforced.

(c) *Disposition of remaining issues following an order of the Chief Administrative Hearing Officer.* If an administrative review by the Chief Administrative Hearing Officer of an Administrative Law Judge's order does not dispose of all issues in a proceeding, the Administrative Law Judge shall, if the CAHO so directs, continue with the proceeding until the Administrative Law Judge can make a determination as to the remaining issues.

(d) *Review of an interlocutory order of an Administrative Law Judge in cases arising under section 274A and 274C of the INA.* (1) In a case arising under section 274A or 274C of the INA, the Chief Administrative Hearing Officer may, within thirty (30) days of the date of an Administrative Law Judge's interlocutory order, issue an order which modifies or vacates the interlocutory order. If the Chief Administrative Hearing Officer does not modify or vacate the interlocutory order within thirty (30) days, the Administrative Law Judge's interlocutory order is deemed adopted. The Chief Administrative Hearing Officer may review an Administrative Law Judge's interlocutory order if:

(i) The Administrative Law Judge, within five (5) days of the date of the interlocutory order, certifies the interlocutory order for review to the Chief Administrative Hearing Officer. The Administrative Law Judge may certify an interlocutory order where the Administrative Law Judge determines that the order contains an important question of law or policy on which there is substantial ground for difference of opinion; and where an immediate appeal will advance the ultimate termination of the proceeding or where subsequent review will be an inadequate remedy; or

(ii) A party's request for certification of the interlocutory order has been denied by the Administrative Law Judge, and if the Chief Administrative Hearing Officer determines that a vital public or private interest might otherwise be seriously impaired; or

(iii) The Chief Administrative Hearing Officer, upon his or her own initiative, decides that there has not been an opportunity to develop standards which can be applied in determining whether interlocutory review of a particular issue is appropriate.

(2) Interlocutory review of an Administrative Law Judge's order, with or without certification by the Administrative Law Judge, will not stay the proceeding unless the Administrative Law Judge determines that the circumstances require a postponement.

(3) Where a party requests administrative review of an interlocutory order and the Chief Administrative Hearing Officer chooses not to review

the interlocutory order, that party has not waived its ability to raise the issue(s) contained in the interlocutory order through a later appeal.

[Order No. 1534–91, 56 FR 50057, Oct. 3, 1991, as amended by Order No. 1635–92, 57 FR 57672, Dec. 7, 1992]

§ 68.54 Filing of the official record.

Upon timely receipt of notification that an appeal has been taken, a certified copy of the record will be promptly filed with the appropriate United States Court.

[Order No. 1534–91, 56 FR 50058, Oct. 3, 1991]

PART 69—NEW RESTRICTIONS ON LOBBYING

Subpart A—General

Subpart B—Activities by Own Employees

Subpart C—Activities by Other Than Own Employees

Subpart D—Penalties and Enforcement

Subpart E—Exemptions

Subpart F—Agency Reports

AUTHORITY: Sec. 319, Public Law 101–121 (31 U.S.C. 1352); [citation to Agency rulemaking authority].

SOURCE: 55 FR 6737 and 6751, Feb. 26, 1990, unless otherwise noted.

CROSS REFERENCE: See also Office of Management and Budget notice published at 54 FR 52306, December 20, 1989.

Subpart A—General

§ 69.100 Conditions on use of funds.

(a) No appropriated funds may be expended by the recipient of a Federal contract, grant, loan, or cooperative ageement to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any of the following covered Federal actions: the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(b) Each person who requests or receives from an agency a Federal contract, grant, loan, or cooperative agreement shall file with that agency a certification, set forth in appendix A, that the person has not made, and will not make, any payment prohibited by paragraph (a) of this section.

(c) Each person who requests or receives from an agency a Federal contract, grant, loan, or a cooperative agreement shall file with that agency a disclosure form, set forth in appendix B, if such person has made or has agreed to make any payment using nonappropriated funds (to include profits from any covered Federal action), which would be prohibited under paragraph (a) of this section if paid for with appropriated funds.

(d) Each person who requests or receives from an agency a commitment providing for the United States to insure or guarantee a loan shall file with that agency a statement, set forth in appendix A, whether that person has made or has agreed to make any payment to influence or attempt to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with that loan insurance or guarantee.

(e) Each person who requests or receives from an agency a commitment providing for the United States to insure or guarantee a loan shall file with