PART 404—[AMENDED]

1. The authority citation for Subpart P of Part 404 continues to read as follows:

Authority: Secs. 202, 205 (a), (b), and (d)–(h), 216(i), 221 (a) and (i), 222(c), 223, 225, and 1102 of the Social Security Act; 42 U.S.C. 402, 405 (a), (b), and (d)–(h), 416(i), 421 (a) and (i), 422(c), 423, 425, and 1302; sec. 505(a) of Pub. L. 96–265, 94 Stat 473; secs. 2(d)(2), 5, 6, and 15 of Pub. L. 98–460, 98 Stat. 1797, 1801, 1802, and 1808.

§ 404.1594 [Amended]

2. Section 404.1594, paragraph (f)(7) is amended by removing the cross-reference "§§ 404.1560 through 404.1569" and inserting "§ 404.1561".

PART 416—[AMENDED]

3. The authority citation for Subpart I of Part 416 continues to read as follows:

Authority: Secs. 1102, 1614(a), 1619, 1631(a) and (d)(1), and 1633 of the Social Security Act; 42 U.S.C. 1302, 1382c(a), 1382h, 1383(a) and (d)(1), and 1383b; secs. 2, 5, 6, and 15 of Pub. L. 98–460, 98 Stat. 1794, 1801, 1802, and 1808.

§ 416.994 [Amended]

4. Section 416.994, paragraph (b)(5)(vii) is amended by removing the cross-reference "§§ 416.960 through 416.969" and inserting "§ 416.961".

5. The authority citation for Subpart K of Part 416 continues to read as follows:

Authority: Secs. 1102, 1602, 1611, 1612, 1613, 1614(f), 1621, and 1631 of the Social Security Act; 42 U.S.C. 1302, 1381a, 1382, 1382a, 1382b, 1382c(f), 1382j, and 1383; sec. 211 of Pub. L. 93–66, 87 Stat. 154; sec. 2639 of Pub. L. 98–369, 98 Stat. 1144.

§ 416.1161 [Amended]

6. Section 416.1161, paragraph (b) is amended by removing "home energy assistance described in §§ 416.1155 and 416.1156" and inserting "support and maintenance assistance described in § 416.1157(c)".

[FR Doc. 87-27020 Filed 11-23-87; 8:45 am]
BILLING CODE 4190-11-M

DEPARTMENT OF JUSTICE

Executive Office for Immigration Matters

28 CFR Part 0

[A.G. Order 1237-87]

Organization of the Department of Justice Executive Office for Immigration Matters

AGENCY: Executive Office for Immigration Matters, Department of Justice.

ACTION: Final rule.

SUMMARY: The name of the Executive Office for Immigration Review is hereby changed to Executive Office for Immigration Matters. To assist in the implementation of the Immigration Reform and Control Act of 1986, the Office of Chief Administrative Hearing Officer has been established and placed within the Executive Office for Immigration Matters. The Chief Administrative Hearing Officer has the authority to generally supervise Administrative Law Judges in their duties of adjudicating cases under 8 U.S.C. 1324 A and B. Also, certain changes in terminology have been made to reflect current word usage.

EFFECTIVE DATE: November 24, 1987.

FOR FURTHER INFORMATION CONTACT: Gerald S. Hurwitz, Counsel to the Director, Executive Office for Immigration Matters, Suite 1609, 5203 Leesburg Pike, Falls Church, Virginia 22041, telephone (703) 756-6470.

SUPPLEMENTARY INFORMATION: The name of the Executive Office for Immigration Review is hereby changed to Executive Office for Immigration Matters. This is being done to more accurately reflect the broader mission and increase responsibilities of the agency. Sections 101 and 102 of the Immigration Reform and Control Act of 1986 require that Administrative Law Judges preside over hearings involving allegations of unlawful employment of aliens and unfair immigration-related employment practices. To implement these provisions, the Department of Justice has created the position of Chief Administrative Hearing Officer who will be responsible for generally supervising the Administrative Law Judge Program under the direction of the Director, Executive Office for Immigration Matters. Also, the seldom used term "Chief Special Inquiry Officer" and "Special Inquiry Officer" have been changed to "Chief Immigration Judge" and "Immigration Judge" to reflect current terminology. Compliance with 5 U.S.C. 553 as to notice of proposed rulemaking and delayed effective date is unnecessary, as this rule relates to agency management and organization.

This is not a major rule within the meaning of section 1(b) of Executive Order 12291. In accordance with 5 U.S.C. 605(b), the Attorney General certifies that this rule will not have a significant impact on a substantial number of small entities.

List of Subjects in 28 CFR Part 0

Government employees, Organization and functions (Government agencies), Authority delegations (Government agencies).

Accordingly, Chapter I of Title 28 of the Code of Federal Regulations is amended as follows:

PART 0—ORGANIZATION OF THE DEPARTMENT OF JUSTICE EXECUTIVE OFFICE FOR IMMIGRATION MATTERS; IMMIGRATION MATTERS

1. The authority citation for Part 0 is revised to read as follows:

Authority: 5 U.S.C. 301, 2303; 8 U.S.C. 1103, 1324A, 1427(g); 15 U.S.C. 644(k); 18 U.S.C. 2554, 4001, 4041, 4042, 4044, 4082, 4201 *et seq.*, 6003(b); 21 U.S.C. 871, 881(d), 904; 22 U.S.C. 263a, 1621–1645o, 1622 note; 28 U.S.C. 509, 510, 515, 524, 542, 543, 552, 552a, 569; 31 U.S.C. 1108; 50 U.S.C. App. 2001–2017p; Pub. L. No. 91–513, sec. 501; EO 11919; EO 11267; EO 11300.

2. Section 0.105 is amended by revising paragraph (a) to read as follows:

§ 0.105 General functions.

* * * * *

(a) Subject to limitations contained in section 103 of the Immigration and Nationality Act (8 U.S.C. 1103) and excepting the authority delegated to the Executive Office for Immigration Matters, the Board of Immigration Appeals, the Office of the Chief Immigration Judge, Immigration Judges, and the Office of the Chief Administrative Hearing Officer, administer and enforce the Immigration and Nationality Act and all other laws relating to immigration (including but not limited to admission, exclusion, and deportation), naturalization, and nationality. Nothing in this paragraph shall be construed to authorize the Commissioner of Immigration and Naturalization to supervise the litigation of or to approve the filing of records on review, appeals, or petitions for writs of certiorari or to intervene or have independent representation in cases under the immigration and nationality laws except as provided in paragraph (e) of this section.

* * * * *

3. Subpart U is revised to read as follows:

Subpart U—Executive Office for Immigration Matters

Sec.
0.115 General functions.
0.116 Board of Immigration Appeals.
0.117 Office of Chief Immigration Judge.
0.118 Office of Chief Administrative Hearing Officer.

Subpart U—Executive Office for Immigration Matters

§ 0.115 General functions.

The Executive Office for Immigration Matters shall be headed by a Director, who shall be responsible for the general supervision of the Board of Immigration Appeals, the Office of the Chief Immigration Judge, and the Office of the Chief Administrative Hearing Officer in the execution of their duties.

The Director may redelegate the authority delegated to him by the Attorney General to the Chairman of the Board of Immigration Appeals, the Office of the Chief Immigration Judge, or the Office of the Chief Administrative Hearing Officer.

§ 0.116 Board of Immigration Appeals.

The Board of Immigration Appeals shall consist of a Chairman and four other members. The Chairman shall be responsible for providing supervision and establishing internal operating procedures of the Board in the exercise of its authorities and responsibilities as delineated in 8 CFR 3.1 through 3.6.

§ 0.117 Office of Chief Immigration Judge.

The Chief Immigration Judge shall provide general supervision to the Immigration Judges in performance of their duties in accordance with the Immigration and Nationality Act, 8 U.S.C. 1226 and 1252 and 8 CFR 3.9.

§ 0.118 Office of Chief Administrative Hearing Officer.

The Chief Administrative Hearing Officer shall provide general supervision to the Administrative Law Judges in performance of their duties in accordance with 8 U.S.C. 1324 A and B.

Date: November 13, 1987.

Edwin Meese III,

Attorney General.

[FR Doc. 87-27013 Filed 11-19-87; 3:10 pm]

BILLING CODE 4410-01-M

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28 CFR Part 68

[A.G. Order 1236-87]

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

AGENCY: Executive Office for Immigration Matters, Department of Justice.

ACTION: Interim final rule with request for comments.

SUMMARY: These regulations will establish procedures for implementation of sections 274A and 274B of the Immigration and Nationality Act as amended by the Immigration Reform and Control Act of 1986.

Specifically, these regulations will add a new Part 68 which will provide the rules of practice and procedure in administrative hearings regarding:

(1) Allegations of unlawful hiring, recruiting or referring for a fee, for employment, in the United States of aliens knowing that the aliens are not authorized to work in the United States, or the continued employment of aliens in the United States knowing the aliens are (or have become) unauthorized to work in the United States, or failure to comply with the employment verification requirements;

(2) Allegations of unfair immigration-related employment practices; or

(3) Allegations of the unlawful imposition of any requirement that an individual post bond, security, or otherwise guarantee or indemnify against potential liability for unlawful hiring, recruiting or referring of such individual.

DATES: *Effective Date:* November 24, 1987, pursuant to 5 U.S.C. 553(d).

Comment Date: Although not required under the Administrative Procedure Act for the promulgation of rules of agency procedure or practice, written comments will be considered if received no later than December 24, 1987.

ADDRESSES: Please submit written comments in duplicate to the Office of the Director, Executive Office for Immigration Matters, Suite 1609, 5203 Leesburg Pike, Falls Church, Virginia 22041.

Complaints may be submitted immediately to the Chief Administrative Hearing Officer, 5113 Leesburg Pike, Skyline Building 4, Suite 310, Falls Church, Virginia 22041. Such complaints will be accepted if timely under any applicable provision of the Immigration and Nationality Act, as amended.

FOR FURTHER INFORMATION CONTACT: Gerald S. Hurwitz, Counsel to the Director, Executive Office for Immigration Matters, Suite 1609, 5203 Leesburg Pike, Falls Church, Virginia 22041, (703) 756-6470.

SUPPLEMENTARY INFORMATION: Sections 101 and 102 of the Immigration Reform and Control Act of 1986 require that hearings be held by Administrative Law Judges in certain cases involving allegations of knowing hiring, recruiting or referring for a fee, for employment, in the United States, unauthorized aliens, or continuing to employ aliens not authorized to work in the United States, or failure to comply with the employment verification requirements and in situations where unfair immigration-related employment practices are alleged. To implement these provisions properly, it is necessary to designate hearing procedures to guide in the conduct of these proceedings. The following regulations provide a set of rules for all cases properly brought before the Administrative Law Judges which comply with the requirements of the Immigration Reform and Control Act of 1986.

The Administrative Law Judges will act as independent adjudicators and will be under the general direction of the Executive Office for Immigration Matters within the Department of Justice. They will be supervised for administrative purposes by a Chief Administrative Hearing Officer who, under the direction of the Director of the Executive Office for Immigration Matters, will administer the Administrative Law Judge program.

These rules of procedure provide for responsive pleadings with complaints lodged with the Office of the Chief Administrative Hearing Officer and answers to follow. Time limits are set for the various pleadings. Also provided, at the discretion of the Administrative Law Judge, are prehearing statements and conferences designed to streamline the proceedings, for example, by narrowing the issues, arriving at stipulations, exchanging proposed exhibits, or engaging in other prehearing matters as appropriate.

A discovery process is set forth which is designed to assist the Administrative Law Judge and the parties in the development of the facts and a complete record. The Immigration Reform and Control Act of 1986 provides the Administrative Law Judge with subpoena powers and includes a provision that a subpoena may be enforced in the appropriate federal district court.

Representation by any licensed attorney in good standing is allowed in all cases or an individual may appear pro se. The rules also provide for intervention by the Special Counsel for Immigration-Related Unfair Employment Practices (Special Counsel) in cases involving unfair immigration-related employment practices. In unfair immigration-related employment cases, any person who believes that he or she has been adversely affected directly by an unfair immigration-related employment practice, or any individual or private organization authorized in writing to act on such person's behalf, may petition the Administrative Law

Judge to intervene, or appear under certain circumstances. Intervenors as parties, and amicus curiae are also permitted under certain circumstances.

The actual mechanics of the hearing are set forth, including rules of evidence. A verbatim written record is to be kept of the proceedings. After the close of the hearing, the Administrative Law Judge will have the full authority to make appropriate awards, grant relief, and issue other appropriate orders as provided by statute.

In cases involving knowing hiring, recruiting or referring for a fee, for employment, in the United States of aliens not authorized to work in the United States, the failure to comply with the employment verification requirements, and prohibition of indemnity bond cases, the Administrative Law Judge's decision may be reviewed by the Chief Administrative Hearing Officer. This official has no review authority over other immigration-related matters and will have the authority to vacate or modify the decision. Thereafter, judicial review is available. Failure to request that the Chief Administrative Hearing Officer review a decision by the Administrative Law Judge shall not prevent a party from seeking judicial review. In cases involving unfair immigration-related employment practices, only judicial review is available. Recourse to the Chief Administrative Hearing Officer is not available.

On March 23, 1987, a proposed rule pertaining to the functions of the Special Counsel was issued (see 52 FR 9274 et seq. (March 23, 1987)) to establish standards and procedures for the enforcement of section 102 of the Immigration Reform and Control Act of 1986 which prohibits certain unfair immigration-related employment practices. Because that proposed rule contained provisions with respect to proceedings before Administrative Law Judges which overlap provisions of the rule being established herein, it has been decided that in order to avoid duplication, the overlapping provisions will be dropped from the aforementioned rule proposed at 52 FR 9274 et seq. (March 23, 1987). Specifically, those sections of the rule proposed in 52 FR 9274 et seq. containing procedures relating to the conduct of administrative enforcement proceedings (Sections 44.306, 44.307, 44.308, 44.309, 44.310) will be deleted from the final rule pertaining to the functions of the Special Counsel. In developing the rule established herein, the Executive Office for Immigration Matters had the benefit of comments received on the rule previously published at 52 FR 9274 et seq. By issuing this rule as an interim final rule with opportunity for comment, the public will be given another chance to comment on the procedures that will be used to conduct hearings and, at the same time, the Department will have in place a functioning set of procedures so that there will be no delay in enforcing sections 101 and 102 of the Immigration Reform and Control Act of 1986.

By the promulgation of these rules of procedure, the hearing provisions under sections 101 and 102 will be properly implemented. All parties will be provided a full and fair opportunity to be heard and an impartial independent adjudication of their cases.

This rule is not a major rule within the meaning of Executive Order 12291. In accordance with 5 U.S.C. 605(b), the Attorney General certifies that this rule will not have a significant economic impact on a substantial number of small entities because it is procedural in nature.

The Executive Office for Immigration Matters invites public comments during the thirty (30) days immediately following the effective date.

List of Subjects in 28 CFR Part 68

Administrative practice and procedure, Aliens, Citizenship and naturalization, Civil rights, Discrimination in employment, Employment, Equal employment opportunity, Immigration, Nationality, Non-Discrimination.

Accordingly, Chapter 1 of Title 28 of the Code of Federal Regulations is amended as follows:

Part 68 is added to 28 CFR chapter I to read as follows:

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; 5 U.S.C. 554; 8 U.S.C. 1103; 8 U.S.C. 1324a and b.

§ 68.1 Scope of rules.

These rules of practice are generally applicable to adjudicatory proceedings before Administrative Law Judges of the Executive Office for Immigration Matters, United States Department of Justice, with regard to unlawful employment cases and unfair immigration-related employment practice cases under 8 U.S.C. 1324a and b. 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 shall be applied in any situation not provided for

or controlled by these rules, or by any statute, executive order, or regulation.

§ 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" is the official who, under the direction of the Director, Executive Office for Immigration Matters, generally administers the Administrative Law Judge program, supervises the Administrative Law Judges in the performance of their duties in accordance with 8 U.S.C. 1324a and b, and who, in accordance with 8 U.S.C. 1324a and § 68.52 exercises authority to review, modify or vacate the orders of Administrative Law Judges in cases involving unlawful hiring, recruiting or referring for employment of certain aliens, and unlawful continued employment or failure to comply with requirements for employment verification, and prohibition of indemnity bond cases. The Chief Administrative Hearing Officer has no review authority over cases arising under 8 U.S.C. 1324b involving unfair immigration-related employment practice cases;

(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 (INS) in cases arising under 8 U.S.C. 1324a. In cases arising under 8 U.S.C. 1324b, "complainant" means the Special Counsel (as defined in § 68.2(o)) or, in private actions, an individual or private organization;

(g) "Complaint" means the formal document initiating an adjudicatory proceeding. A complaint format will be prescribed by the Office of the Chief Administrative Hearing Officer to be used in all cases. (See § 68.4 for content of pleadings.) Complaints shall be completed by complainants or their counsel;

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

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

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

(l) "Party" includes all persons or entities named or admitted as a complainant, respondent, or intervenor in a proceeding, and also includes, in unfair immigration-related employment practice cases, the person or entity who has filed a charge with the Special Counsel;

(m) "Pleading" means the complaint, motions, requests for discovery, the answer thereto, any supplement or amendment thereto, and reply that may be permitted to any answer, supplement or amendment, or any correspondence or comments submitted to the Administrative Law Judge by a party;

(n) "Respondent" means a party to an adjudicatory proceeding against whom findings may be made or who may be required to provide relief or take remedial action;

(o) "Special Counsel" means the Special Counsel for Immigration-Related Unfair Employment Practices appointed by the President under section 102 of the Immigration Reform and Control Act of 1986, or his or her designee;

(p) "Unlawful Employment Cases" means cases involving the knowing 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 8 U.S.C. 1324a;

(q) "Unfair Immigration-Related Employment Practice Cases" means cases involving discrimination against any individual (other than an unauthorized alien) with respect to the hiring, or recruitment or referral for a fee, of the individual for employment, or the discharging of the individual from employment:

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

(2) In the case of a citizen or intending citizen, because of the individual's citizenship status, in violation of 8 U.S.C. 1324b.

(r) "Prohibition of Indemnity Bond Cases" means cases where a person or entity unlawfully requires, as a condition to the hiring, recruiting or referring (for a fee) of an individual for employment in the United States, that the individual post a bond or otherwise provide a financial guarantee or indemnify for potential liability as a result of the hiring, recruiting, or referring of the individual.

§ 68.3 Service and filing of documents.

(a) *Generally.* An original and two copies of the complaint shall be filed with the Office of the Chief Administrative Hearing Officer. An original and one copy of all other pleadings shall be filed with the Office of 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 to the Administrative Law Judge assigned to the case and to all other parties of record. Each pleading filed shall be clear and legible.

(b) *By parties.* All pleadings shall be filed with the Office of the Chief Administrative Hearing Officer or appropriate Administrative Law Judge assigned to the case with a copy, including any attachment, to each of the other parties of record. Original complaints shall be served by the Chief Administrative Hearing Officer in accordance with § 68.3(d). 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.

(c) *By the Office of the Chief Administrative Hearing Officer or Administrative Law Judges.* Service of notices, orders and decisions shall be made by regular mail to the last known address of the parties or, if the parties are represented by an attorney, to the attorney.

(d) *Service of complaint and Notice of Hearing.* Service of complaint and notice of the date set for hearing shall be made by the Office of the Chief Administrative Hearing Officer or the Administrative Law Judge to whom the complaint 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. Service is complete upon receipt by addressee.

§ 68.4 Content 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 or paper (e.g., complaint, motion to dismiss, etc.). The pleading shall be signed and shall contain the address and telephone number of the party or person representing the party. Although there are no formal specifications for pleadings, except for the complaint which shall be in the format prescribed by the Chief Administrative Hearing Officer, they should be typewritten when possible on standard size (8½ x 11) paper. Legal size (8½ x 14) paper will not be accepted, except with the Administrative Law Judge's permission.

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

(c) 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.

§ 68.5 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) *Date of entry of orders.* In computing any period of time involving the date of the entry of an order, the date of entry shall be the date the order is entered.

(c) *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. However, when pleadings are filed by mail, five (5) days shall be added to the prescribed period.

(d) *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 of a pleading, notice, or other document upon said party, and the pleading, notice, or document is served upon said party by mail, five (5) days shall be added to the prescribed period.

§ 68.6 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.

§ 68.7 Motions and requests.

(a) *Generally.* 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, and which 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) *Answers 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 an answer in support of, or in opposition to, the motion, accompanied by such affidavits or other evidence as he/she desires to rely upon. Unless the Administrative Law Judge provides otherwise, no reply to an answer, 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.

§ 68.8 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.

§ 68.9 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.

§ 68.10 Consent order or settlement.

(a) *Generally.* At any time after the commencement of a proceeding, the parties jointly may move to defer the hearing for a reasonable time to permit negotiation of a settlement or an agreement containing findings and an order disposing of the whole or any part of the proceeding. The allowance of such deferment and the duration thereof shall be at the discretion of the Administrative Law Judge, after consideration of such factors as the nature of the proceeding, the requirements of the public interest, the representations of the parties, and the probability of reaching an agreement which will result in a just disposition of the issue involved. The Administrative Law Judge may require the parties to submit progress reports on a regular basis as to the status of negotiations.

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

(1) That the order shall have the same force and effect as an order made after full hearing;

(2) That the entire record on which any order may be based shall consist solely of the complaint, order of reference, or notice of administrative determination (or amended notice, if one is filed), as appropriate, and the agreement;

(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 order entered into in accordance with the agreement.

(c) *Submission.* On or before the expiration of the time granted for negotiations, the parties or their authorized representatives or their counsel may:

(1) Submit the proposed agreement containing consent findings and an order for consideration by the Administrative Law Judge; or

(2) Notify the Administrative Law Judge that the parties have reached a full settlement and have agreed to dismissal of the action; or

(3) Inform the Administrative Law Judge that agreement cannot be reached.

(d) *Disposition.* In the event an agreement containing consent findings and an 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 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 order.

§ 68.11 Intervenor in unfair immigration-related employment cases.

(a) Any 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 may, in his or her discretion, grant such a petition, if, in his or her opinion, the petitioner has a legitimate interest in the proceedings and the participation will not unduly delay the outcome and is likely to contribute materially to the proper disposition of the proceedings.

(b) The Special Counsel may intervene as a matter of right at any time.

§ 68.12 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.

§ 68.13 Amicus curiae.

A brief of an amicus curiae may be filed by leave of the Administative 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.

§ 68.14 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. Unless the Administrative Law Judge orders

otherwise, the frequency or sequence of these methods is not limited.

(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;

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

(5) Discovery be conducted with no one present except persons designated by the Administrative Law Judge.

(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 or agreement of the parties.

(e) *Stipulations regarding discovery.* Unless otherwise ordered, a written stipulation entered into by all the parties and filed with the Administrative Law Judge assigned may:

(1) Provide that depositions be taken before any person, at any time or place, upon sufficient notice, and in any manner, and when so taken may be used like other depositions; and

(2) Modify the procedures provided by these rules for other methods of discovery.

§ 68.15 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, answers, and all related pleadings shall be filed with the Administrative Law Judge and 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 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 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 the documents respond, if they are sufficient to answer said interrogatories.

§ 68.16 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 (a)(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 and filed with the Administrative Law Judge.

§ 68.17 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 on 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 and filed with the Administrative Law Judge.

§ 68.18 Depositions.

(a) *When, how and by whom taken.* The deposition of any witness may be taken at any stage of the proceeding at reasonable times. 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 depositions.

(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, read by or to, and subscribed by the witness and certified by the person administering the oath.

(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. The Administrative Law Judge may then limit the scope or manner of the taking of the deposition.

§ 68.19 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 §§ 68.14 through 68.18, 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. Likewise, 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/her burden of showing that the objection is justified, the Administrative Law Judge shall 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/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 or an officer or agent of a party fails to comply with an order, including, but not limited to, an order for the taking of a deposition, the production of documents, or the answering of interrogatories, or responding to request for admissions, or any other order of the Administrative Law Judge, the Administrative Law Judge, for the purposes of permitting resolution of the relevant issues and disposition of the proceeding without unnecessary delay despite such failure, may take such action in regard thereto as is just, including but not limited to the following:

(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 should have been 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 § 68.21(e); 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/she is authorized to enter on a motion made pursuant to § 68.40.

§ 68.20 Use of depositions at hearings.

(a) *Generally.* At the hearing, any part or all of a deposition, so far as admissible under the Federal Rules of Evidence, 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 purpose 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.

§ 68.21 Subpoenas.

(a) Except as provided in paragraph (b) of this section, the presiding Administrative Law Judge may issue subpoenas as authorized by statute or law upon written application of a party requiring 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 certified mail or by any person who is not less than 18 years of age. A witness, other than a witness for 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.

(b) If a party's written application for subpoena is submitted three (3) working days or less before the hearing to which it relates, a subpoena shall issue at the discretion of the presiding Administrative Law Judge, as appropriate.

(c) The subpoena shall identify the person or things subpoenaed, the person to whom and the place, date, and the time at which it is returnable or the nature of the evidence to be examined or copied, and the date and time when access is requested.

(d) Any person served with a subpoena who intends not to comply with it shall, within ten (10) days after the date of service of the subpoena upon him or her, petition the Administrative Law Judge to revoke or modify the subpoena. A copy of the petition shall be served on all parties to the hearing. 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 party who applied for such 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 to be served a copy of the final determination of the petition upon the petitioner and all parties.

(e) Failure to comply. Upon the failure to any person to comply with an order to testify or a subpoena issued under this Section, the Administrative Law Judge may, where authorized by statute or 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.

§ 68.22 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. 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.

§ 68.23 Notice of hearing.

(a) *Generally.* Except when hearings are scheduled by calendar call, the Office of the Chief Administrative Hearing Officer, or the Administrative Law Judge to whom the matter is referred shall notify the parties by mail of a day, time, and place set for hearing thereon or for a prehearing conference, or both. No date earlier than thirty (30) days after the date of such notice shall be set for such hearing or conference, except by agreement of the parties and the permission of the Administrative Law Judge. Any party, however, may by motion and for good cause shown request the Administrative Law Judge to shorten the time for a hearing. In no event, however, may the setting of the hearing be less than five (5) days after the complaint is served on the respondent.

(b) *Change of date, time, and place.* The Administrative Law Judge assigned to the case may change the time, date, and place of the hearing, or temporarily adjourn a hearing, or upon motion and for good cause shown by a party. The parties shall be given not less than ten (10) days notice of the new hearing date.

(c) *Place of hearing.* Unless otherwise required by statute or regulation, due regard shall be given to the convenience of the parties and the witnesses in selecting a place for the hearing. In this regard, 8 U.S.C. 1324a requires that hearings in unlawful employment cases 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.

§ 68.24 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. At least 3" x 3½" of blank space shall be provided on the last page of the motion to permit space for the entry of an order by the Administrative Law Judge. Copies shall be served on all parties. Any motions for continuances made within ten (10) 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. Motions for continuances, based on reasons not reasonably ascertainable prior thereto, may also be made on the record at calendar call, prehearing conferences, or hearings.

(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 may be 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.

§ 68.25 Authority of Administrative Law Judge.

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

(1) Conduct formal hearings in accordance with the provisions 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 statute or 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 therefor;

(8) Where applicable, take any appropriate action authorized by the Rules of Civil Procedure for the United States District Courts, issued from time-to-time and amended pursuant to 28 U.S.C. 2072; and

(9) Do all other things necessary to enable him/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, where authorized by statute or law, may certify the facts to the Federal District Court having jurisdiction in the place in which he/she is sitting to request appropriate remedies.

§ 68.26 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.

§ 68.27 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.

§ 68.28 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.

§ 68.29 Expedition.

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

§ 68.30 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 (except the Special Counsel) shall be limited to the extent prescribed by the Administrative Law Judge.

(b) Each attorney shall file a notice of appearance. Such notice shall indicate the name of the case or controversy, the docket number if assigned, and the party on whose behalf the appearance is made.

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

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

(g) *Qualifications*— (1) *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. Any attorney of record who intends to withdraw from a case must provide the Administrative Law Judge and all parties with written notice at

least ten (10) days before the hearing date, unless otherwise allowed by the Administrative Law Judge.

(2) *Denial of authority to appear.* The Administrative Law Judge may deny the privilege of appearing to any person, within applicable statutory constraints, e.g., 5 U.S.C. 555, who he/she finds, after notice and an opportunity for hearing in the matter, does not possess the requisite qualifications to represent others; or is lacking in character or integrity; or has engaged in unethical or improper professional conduct; or has engaged in an act involving moral turpitude. No provision hereof shall apply to any person who appears on his/her own behalf or on behalf of any corporation, partnership, or association of which the person is a partner, officer, or regular employee.

(h) *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. A regular employee of a party who appears on behalf of the party may be required to show his/her authority to so appear.

§ 68.31 Legal assistance.

The Office of the Chief Administrative Hearing Officer does not have authority to appoint counsel, nor does it refer parties to attorneys.

§ 68.32 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 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 suspending or barring an attorney from participation in a particular proceeding. Any attorney so suspended or barred may appeal to the Chief Administrative Hearing Officer but no proceeding shall be delayed or suspended pending disposition of the appeal; provided, however, that the Administrative Law Judge shall suspend the proceeding for a reasonable time for the purpose of enabling the party to obtain another attorney or representative.

§ 68.33 Hearing room conduct.

Proceedings shall be conducted in an orderly manner. The consumption of food or beverage, smoking, or rearranging of courtroom furniture, unless specifically authorized by the Administrative Law Judge, are prohibited.

§ 68.34 Ex Parte communications.

(a) *General.* Except for other employees of the Executive Office for Immigration Matters, 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.

§ 68.35 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 for the Administrative Law Judge 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 this case and decision shall be based on them.

(b) *Dismissal—Abandonment by party.* A request for hearing may be dismissed upon its abandonment or settlement by the party or parties who filed it. A party shall be deemed to have abandoned a request for hearing if neither the party nor his/her representative appears at the time and place fixed for the hearing and either—

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

(2) Within ten (10) days after the mailing of a notice to him/her by the Administrative Law Judge to show cause, such party does not show good cause for such failure to appear and fails to notify the Administrative Law Judge prior to the time fixed for hearing that he/she cannot appear. A default decision, under § 68.6(b), may be entered, with prejudice, against any party failing, without good cause, to appear at a hearing.

§ 68.36 Motion for summary decision.

(a) Any party may, at least twenty (20) days before the date fixed for any hearing, move with or without supporting affidavits for a summary decision on all or any part of the proceeding. Any other party may, within ten (10) days after service of the motion, serve 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 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. The Administrative Law Judge may deny the motion whenever the moving party denies access to information by means of discovery to a party opposing the motion.

(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.

§ 68.37 Formal hearings.

(a) *Public.* Hearings shall be open to the public. However, in unusual circumstances, 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) *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.

§ 68.38 Evidence.

(a) *Applicability of Federal Rules of Evidence.* Unless otherwise provided by statute or these rules, and where appropriate, 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 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.

§ 68.39 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.

§ 68.40 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.

§ 68.41 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 one copy 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.

§ 68.42 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.

§ 68.43 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.

§ 68.44 Authenticity.

The authenticity of all documents submitted as proposed exhibits in advance of the hearing shall be deemed admitted unless written objection thereto 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.

§ 68.45 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 proceeding. It is desirable that the facts be thus agreed upon so far as and whenever practicable. Stipulations may be received in evidence at a hearing or prior thereto, and when received in evidence, shall be binding on the parties thereto.

§ 68.46 Record of hearings.

(a) *General.* A verbatim written record of all hearings shall be kept. 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, 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.

§ 68.47 Closing of hearings.

The Administrative Law Judge may hear arguments of counsel and may limit the time of such arguments at his/her discretion, and may allow briefs to be filed on behalf of either party but shall closely limit the time within which the briefs for both parties shall be filed, so as to avoid unreasonable delay.

§ 68.48 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.

§ 68.49 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.

§ 68.50 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.

§ 68.51 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, a party, if authorized by the Administrative Law Judge, may file proposed findings of fact, conclusions of law, and order together with a supporting brief 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.* Within a reasonable time after the time allowed for the filing of the proposed findings of fact, conclusions of law, and order, or within thirty (30) days after receipt of an agreement containing consent findings

and order disposing of the disputed matter in whole, the Administrative Law Judge shall make his/her 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 include findings of fact and conclusions of law, with reasons therefor, upon each material issue of fact or law presented on the record. 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) Unfair Immigration-Related Employment Practice Cases.

(i) If, upon the preponderance of the evidence, the Administrative Law Judge determines that an unfair immigration-related employment practice has occurred, the order shall include a requirement that the respondent cease and desist from such practice. The order may also require the respondent—

(A) To comply with the requirements of 8 U.S.C. 1324a(b) 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 8 U.S.C. 1324a(b)(5), 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; and

(D) Except as provided in § 68.51(c)(1)(ii), to pay a civil penalty of not more than $1,000 for each individual discriminated against; and in the case of a respondent previously subject to such an order, to pay a civil penalty of not more than $2,000 for each individual discriminated against.

(ii) Back pay liability shall not accrue from a date more than two years prior to the date of the filing of the complaint with the Administrative Law Judge. 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.

(iii) In applying 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 an unfair immigration-related employment practice has not occurred, then the order shall dismiss the complaint.

(v) Attorneys' fees. The Administrative Law Judge 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.

(2) Unlawful employment of unauthorized aliens.

(i) If upon the preponderance of the evidence, the Administrative Law Judge determines that a person or entity has violated 8 U.S.C. 1324a (a)(1)(A) or (a)(2), the order shall include a requirement that the respondent 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 in the case of a respondent 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 in the case of a respondent previously subject to more than one order under this subparagraph.

(ii) The order may also require the respondent to comply with the requirements of 8 U.S.C. 1324a(b) 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 8 U.S.C. 1324a (A)(1)(B), 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.

(3) Prohibition of indemnity bonds. If upon the preponderance of the evidence, the Administrative Law Judge determines that a person or entity has violated 8 U.S.C. 1324a (g)(1), the order may require the respondent to pay a 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.

§ 68.52 Administrative and judicial review.

(a) Unlawful employment and prohibition of indemnity bond cases under 8 U.S.C. 1324a. Upon issuance of a final order by an Administrative Law Judge in an unlawful employment or prohibition of indemnity bond case under 8 U.S.C. 1324a, a copy of the decision together with the record of proceeding will be forwarded to the Chief Administrative Hearing Officer, an official having no review authority over other immigration-related matters, who may conduct such review he or she deems appropriate. Any party may file with the Chief Administrative Hearing Officer within five (5) days of the date of the decision a written request for review of any issue of law together with supporting arguments. Within thirty (30) days from date of decision, the Chief Administrative Hearing Officer may issue an order which adopts, affirms, modifies or vacates the Administrative Law Judge's order.

(1) If the Chief Administrative Hearing Officer issues no order, the Administrative Law Judge's order becomes the final order of the Attorney General. If the Chief Administrative Hearing Officer modifies or vacates the order, the order of the Chief Administrative Hearing Officer becomes the final order.

(2) A person or entity adversely affected by a final order respecting an assessment or penalty may, within forty-five (45) days after the date the final

order is issued, file a petition in the Court of Appeals for the appropriate circuit for review of the 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) Unlawful immigration-related employment practice cases under 8 U.S.C. 1324b. Any person aggrieved by an order issued under § 68.51(c)(1) 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 respondent resides or transacts business. If an order issued under § 68.51(c)(1) 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.

§ 68.53 Certification of official record.

Upon timely receipt of notification that administrative review is to be conducted or that an appeal has been taken, the Chief Administrative Hearing Officer shall promptly certify and file with the appropriate United States Court, a full, true, and correct copy of the entire record, including the transcript of proceedings.

Date: November 13, 1987.

Edwin Meese III,

Attorney General.

[FR Doc. 87-27014 Filed 11-19-87; 3:10 pm]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 2

[General Docket Nos. 84-1231, 84-1233, and 84-1234; FCC 87-302]

Cellular Communications Systems, Frequency Allocation in the 900 MHz Reserve Band, and Spectrum Allocation for and Establishment of Other Rules and Policies Regarding the Use of Radio Frequencies in a Land Mobile Satellite Service

AGENCY: Federal Communications Commission

ACTION: Final rule.

SUMMARY: This action amends Part 2 of the Commission's Rules and denies eight petitions for reconsideration of the Report and Order in General Docket Nos. 84-1231, 84-1233, and 84-1234, FCC 86-333, 51 FR 37398 (October 22, 1986), which allocated spectrum to the cellular, private land mobile, general purpose mobile, and mobile satellite services. The rule change is necessary to clarify language in footnote US308, and the denial is based upon the lack of new information from the petitioning parties.

EFFECTIVE DATE: December 24, 1987.

FOR FURTHER INFORMATION CONTACT: Julius Knapp, Office of Engineering and Technology, Spectrum Engineering Division, Frequency Allocations Branch, (202) 653-8108.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Memorandum Opinion and Order in General Dockets 84-1231, 84-1233 and 84-1234, FCC 87-302, Adopted September 17, 1987, and released November 9, 1987.

The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 239), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20032.

Summary of Memorandum Opinion and Order

In this Memorandum Opinion and Order the Commission considered eight individual petitions for reconsideration of its Report and Order decision to allocate 6 MHz for public safety and 2 MHz for a general purpose radio service from the 800-900 MHz reserve and 27 MHz to mobile satellite to be shared with aeronautical mobile satellite in the L-band. *See* 51 FR 37398 (October 22, 1986). The petitions were filed by Aeronautical Radio, Inc., et al. (Aviation parties); Airfone, Inc.; Associated Public Safety Communications Officers, Inc. (APCO); Global Land Mobile Satellite, Inc.; Hughes Communications Mobile Satellite Services, McCaw Space Technologies, Inc., MCCA American Satellite Service Corp., Mobile Satellite Corp., and Skylink Corp. filing jointly as the "Coalition"; Land Mobile Communications Council (LMCC); North American Mobile Satellite (NAMS); and the National Aeronautics and Space Administration (NASA).

Two petitions requested a change in the Commission's 6 MHz allocation for public safety radio use at 821-824/866-869 MHz. APCO requested that 2 MHz more be added to the 6 MHz allocation for public safety use while NASA petitioned for placing the allocated 6 MHz into a reserve pending the outcome of the National Plan and 1987 Mobile WARC. The National Plan addresses how the public safety allocation will be used. The 1987 Mobile WARC was held in Geneva, Switzerland in September/October 1987, and considered mobile international allocations.

Concerning the 2 MHz allocation at 901-902/940-941 MHz for a General Purpose Radio Service, LMCC requested that the allocation instead be given to private land mobile. It claimed the record supported its request.

Global Land Mobile Satellite and NAMS each petitioned the Commission for an 8 MHz allocation at UHF for the mobile satellite service. Both parties reiterated previous arguments that the UHF allocation is essential to the success of the service. With regard to the Commission's allocation at L-band to the mobile satellite service, Aviation Parties argued for a dismissal of mobile satellite from the L-band frequencies 1545-1559/1646.5-1660.5 MHz, claiming a need to use these frequencies on an exclusive basis for the aeronautical mobile satellite service. In contrast, the petition from the Mobile Satellite Coalition requested a strengthening of the Commission's allocation to make the mobile satellite service and the aeronautical mobile satellite service co-primary across the entire L-band allocation.

The final petitioner—Airfone, Inc.—requested that the 4 MHz placed into reserve (849-851/894-896 MHz) be allocated to establish an air-ground radiotelephone service.

The Commission denied all eight petitions claiming that none of the parties had submitted information or facts substantially different from that submitted earlier in this proceeding. Accordingly, the Commission was not persuaded that its allocation decision should be altered.

However, in response to comments, a clarification of Footnote US308 was made to indicate that AMSS(R) communications, beyond the 10 MHz primary allocation that is available, should appropriately be accommodated by real-time preemptive access on the MSS system in the shared 18 MHz. Also, the footnote recognizes that all communications involving safety of life