

## Department of Justice

## § 68.51

### § 68.46 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.

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

### § 68.47 Stipulations.

The parties may by stipulation in writing at any stage of the proceeding, or by stipulation made orally at the hearing, agree upon any pertinent facts in the 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.

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

### § 68.48 Record of hearings.

(a) *General.* A verbatim written record of all hearings shall be kept, except in cases where the proceedings are terminated in accordance with § 68.14. All evidence upon which the Administrative Law Judge relies for decision shall be contained in the transcript of testimony, either directly or by appropriate reference. All exhibits introduced as evidence shall be marked for identification and incorporated into the record. Transcripts may be obtained by the parties and the public from the official court reporter of record. Any fees in connection therewith shall be the responsibility of the parties.

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

involved and only upon approval of the Administrative Law Judge.

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

### § 68.49 Closing the record.

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

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

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

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

### § 68.50 Receipt of documents after hearing.

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

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

### § 68.51 Restricted access.

On his/her own motion, or on the motion of any party, the Administrative Law Judge may direct that there be a

restricted access portion of the record to contain any material in the record to which public access is restricted by law or by the terms of a protective order entered in the proceedings. This portion of the record shall be placed in a separate file and clearly marked to avoid improper disclosure and to identify it as a portion of the official record in the proceedings.

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

**§ 68.52 Final order of the Administrative Law Judge.**

(a) *Proposed final order.* (1) Within twenty (20) days of filing of the transcript of the testimony, or within such additional time as the Administrative Law Judge may allow, the Administrative Law Judge may require the parties to file proposed findings of fact, conclusions of law, and orders, together with supporting briefs expressing the reasons for such proposals. Such proposals and briefs 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.

(2) The Administrative Law Judge may, by order, require that when a proposed order is filed for the Administrative Law Judge's consideration, the filing party shall submit to the Administrative Law Judge a copy of the proposed order on a 3.5" microdisk.

(b) *Entry of final order.* Unless an extension of time is given by the Chief Administrative Hearing Officer for good cause, the Administrative Law Judge shall enter the final order within sixty (60) days after receipt of the hearing transcript or of post-hearing briefs, proposed findings of fact, and conclusions of law, if any, by the Administrative Law Judge. The final order entered by 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.

(c) *Contents of final order with respect to unlawful employment of unauthorized aliens.* (1) If, upon the preponderance of the evidence, the Administrative Law Judge determines that a person or entity named in the complaint has violated section 274A(a)(1)(A) or (a)(2) of the INA, the final order shall require the

person or entity to cease and desist from such violations and to pay a civil penalty in an amount of:

(i) Not less than \$275 and not more than \$2,200 for each unauthorized alien with respect to whom there was a violation of either such paragraph occurring before March 27, 2008; not less than \$375 and not more than \$3,200 for each unauthorized alien with respect to whom there was a violation of either such paragraph occurring on or after March 27, 2008;

(ii) In the case of a person or entity previously subject to one final order under this paragraph (c)(1), not less than \$2,200 and not more than \$5,500 for each unauthorized alien with respect to whom there was a violation of either such paragraph occurring before March 27, 2008, and not less than \$3,200 and not more than \$6,500 for each unauthorized alien with respect to whom there was a violation of either such paragraph occurring on or after March 27, 2008; or

(iii) In the case of a person or entity previously subject to more than one final order under paragraph (c)(1) of this section, not less than \$3,300 and not more than \$11,000 for each unauthorized alien with respect to whom there was a violation of each such paragraph occurring before March 27, 2008, and not less than \$4,300 and not more than \$16,000 for each unauthorized alien with respect to whom there was a violation of each such paragraph occurring on or after March 27, 2008.

(2) The final order may also require the respondent to participate in, and comply with the terms of, one of the pilot programs set forth in Pub. L. 104-208, Div. C, sections 401-05, 110 Stat. 3009, 3009-655 to 3009-665 (1996) (codified at 8 U.S.C. 1324a (note)), with respect to the respondent's hiring or recruitment or referral of individuals in a state (as defined in section 101(a)(36) of the INA) covered by such a program.

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