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that appear in the complete version, shall be filed with the Secretary within 5 days after the filing of the complete version, unless the Administrative Law Judge or the Commission directs otherwise, and shall be served by the party on the other parties in accordance with the rules in this part. The expurgated version shall indicate any omissions with brackets or ellipses, and its pagination and depiction of text on each page shall be identical to that of the *in camera* version.

(f) *When in camera or confidential information is included in rulings or recommendations of the Administrative Law Judge.* If the Administrative Law Judge includes in any ruling or recommendation information that has been granted *in camera* status pursuant to § 3.45(b) or is subject to confidentiality protections pursuant to a protective order, the Administrative Law Judge shall file 2 versions of the ruling or recommendation. A complete version shall be marked “*In Camera*” or “Subject to Protective Order,” as appropriate, on every page and shall be served upon the parties. The complete version will be placed in the *in camera* record of the proceeding. An expurgated version, to be filed within 5 days after the filing of the complete version, shall omit the *in camera* and confidential information that appears in the complete version, shall be marked “Public Record” on every page, shall be served upon the parties, and shall be included in the public record of the proceeding. An expurgated version, to be filed within 5 days after the filing of the complete version, shall omit the *in camera* and confidential information that appears in the complete version, shall be marked “Public Record” on the first page, shall be served upon the parties, and shall be included in the public record of the proceeding.

(g) *Provisional in camera rulings.* The Administrative Law Judge may make a provisional grant of *in camera* status to materials if the showing required in § 3.45(b) cannot be made at the time the material is offered into evidence but the Administrative Law Judge determines that the interests of justice would be served by such a ruling. Within 20 days of such a provisional grant of *in camera* status, the party offering the

evidence or an interested third party must present a motion to the Administrative Law Judge for a final ruling on whether *in camera* treatment of the material is appropriate pursuant to § 3.45(b). If no such motion is filed, the Administrative Law Judge may either exclude the evidence, deny *in camera* status, or take such other action as is appropriate.

[74 FR 1832, Jan. 13, 2009, as amended at 76 FR 52253, Aug. 22, 2011]

§ 3.46 Proposed findings, conclusions, and order.

(a) *General.* Within 21 days of the closing of the hearing record, each party may file with the Secretary for consideration of the Administrative Law Judge proposed findings of fact, conclusions of law, and rule or order, together with reasons therefor and briefs in support thereof. Such proposals shall be in writing, shall be served upon all parties, and shall contain adequate references to the record and authorities relied on. If a party includes in the proposals information that has been granted *in camera* status pursuant to § 3.45(b), the party shall file 2 versions of the proposals in accordance with the procedures set forth in § 3.45(e). Reply findings of fact, conclusions of law, and briefs may be filed by each party within 10 days of service of the initial proposed findings.

(b) *Exhibit index.* The first statement of proposed findings of fact and conclusions of law filed by a party shall include an index listing for each exhibit offered by the party and received in evidence:

- (1) The exhibit number, followed by
- (2) The exhibit’s title or a brief description if the exhibit is untitled;
- (3) The transcript page at which the Administrative Law Judge ruled on the exhibit’s admissibility or a citation to any written order in which such ruling was made;
- (4) The transcript pages at which the exhibit is discussed;
- (5) An identification of any other exhibit which summarizes the contents of the listed exhibit, or of any other exhibit of which the listed exhibit is a summary;

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(6) A cross-reference, by exhibit number, to any other portions of that document admitted as a separate exhibit on motion by any other party; and

(7) A statement whether the exhibit has been accorded *in camera* treatment, and a citation to the *in camera* ruling.

(c) *Witness index*. The first statement of proposed findings of fact and conclusions of law filed by a party shall also include an index to the witnesses called by that party, to include for each witness:

(1) The name of the witness;

(2) A brief identification of the witness;

(3) The transcript pages at which any testimony of the witness appears; and

(4) A statement whether the exhibit has been accorded *in camera* treatment, and a citation to the *in camera* ruling.

(d) *Stipulated indices*. As an alternative to the filing of separate indices, the parties are encouraged to stipulate to joint exhibit and witness indices at the time the first statement of proposed findings of fact and conclusions of law is due to be filed.

(e) *Rulings*. The record shall show the Administrative Law Judge's ruling on each proposed finding and conclusion, except when the order disposing of the proceeding otherwise informs the parties of the action taken.

[74 FR 1833, Jan. 13, 2009]

Subpart F—Decision

§3.51 Initial decision.

(a) *When filed and when effective*. The Administrative Law Judge shall file an initial decision within 70 days after the filing of the last filed initial or reply proposed findings of fact, conclusions of law and order pursuant to §3.46, within 85 days of the closing the hearing record pursuant to §3.44(c) where the parties have waived the filing of proposed findings, or within 14 days after the granting of a motion for summary decision following a referral of such motion from the Commission. The Administrative Law Judge may extend any of these time periods by up to 30 days for good cause. The Commission may further extend any of these time periods for good cause. Except in cases subject to §3.52(a), once issued, the ini-

tial decision shall become the decision of the Commission 30 days after service thereof upon the parties or 30 days after the filing of a timely notice of appeal, whichever shall be later, unless a party filing such a notice shall have perfected an appeal by the timely filing of an appeal brief or the Commission shall have issued an order placing the case on its own docket for review or staying the effective date of the decision.

(b) *Exhaustion of administrative remedies*. An initial decision shall not be considered final agency action subject to judicial review under 5 U.S.C. 704. Any objection to a ruling by the Administrative Law Judge, or to a finding, conclusion or a provision of the order in the initial decision, which is not made a part of an appeal to the Commission shall be deemed to have been waived.

(c) *Content, format for filing*. (1) An initial decision shall be based on a consideration of the whole record relevant to the issues decided, and shall be supported by reliable and probative evidence. The initial decision shall include a statement of findings of fact (with specific page references to principal supporting items of evidence in the record) and conclusions of law, as well as the reasons or basis therefor, upon all the material issues of fact, law, or discretion presented on the record (or those designated under paragraph (c)(2) of this section) and an appropriate rule or order. Rulings containing information granted *in camera* status pursuant to §3.45 shall be filed in accordance with §3.45(f).

(2) The initial decision shall be prepared in a common word processing format, such as WordPerfect or Microsoft Word, and shall be filed by the Administrative Law Judge with the Office of the Secretary in both electronic and paper versions.

(3) When more than one claim for relief is presented in an action, or when multiple parties are involved, the Administrative Law Judge may direct the entry of an initial decision as to one or more but fewer than all of the claims or parties only upon an express determination that there is no just reason for delay and upon an express direction for the entry of initial decision.