



Office of the Secretary

29 CFR Part 18

RIN 1290-AA36

Rules of Practice and Procedure for Administrative Hearings Before the Office of Administrative Law Judges

AGENCY: Office of the Secretary

ACTION: Direct final rule; request for comments

SUMMARY: The Department of Labor (DOL or Department) is revising the Rules of Practice and Procedure for Administrative Hearings Before the Office of Administrative Law Judges (OALJ rules of practice and procedure) to provide for electronic filing (e-filing) and electronic service (e-service) of papers. In addition to technical amendments, the revised regulations provide that e-filing will be required for persons represented by attorneys or non-attorney representatives unless good cause is shown justifying a different form of filing. Self-represented persons will have the option of e-filing or of filing by conventional means. Finally, the Department is revising the OALJ rules of practice and procedure to require advance notice to the parties of the manner of a hearing or prehearing conference, whether in person in the same physical location, by telephone, by videoconference, or by other means.

DATES: This direct final rule is effective on [INSERT DATE 45 DAYS AFTER DATE OF PUBLICATION] without further action unless the Department receives significant adverse comment to this rule by midnight Eastern Standard Time on [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION]. If the Department receives significant adverse comment, it will publish a timely withdrawal of the final rule in the **Federal Register**.

ADDRESSES: You may read background documents, submit comments, and read comments received through the Federal eRulemaking Portal at <http://www.regulations.gov>. To locate this direct final rule, identified by Regulatory Identification Number (RIN) 1290-AA36, search for docket number DOL-2020-0015 or key words such as “Office of Administrative Law Judges” or “Rules of Practice and Procedure for Administrative Hearings Before the Office of Administrative Law Judges.” Instructions for submitting comments are found on the www.regulations.gov website. Please be advised that comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided.

Therefore, the Department recommends that commenters safeguard their personal information by not including social security numbers, personal addresses, telephone numbers, and email addresses in comments. It is the responsibility of the commenters to safeguard their information. If you need assistance to review the comments or the direct final rule, the Department will consider providing the comments and the direct final rule in other formats upon request. For assistance to review the comments or obtain the direct final rule in an alternate format, contact Mr. Todd Smyth, General Counsel, at (513) 684-3252.

FOR FURTHER INFORMATION CONTACT: Todd Smyth, General Counsel, U.S. Department of Labor, Office of Administrative Law Judges, 800 K Street NW, Washington, DC 20001-8002; telephone (513) 684-3252. Individuals with hearing or speech impairments may access the telephone number above by TTY by calling the toll-free Federal Information Relay Service at (800) 877-8339.

SUPPLEMENTARY INFORMATION: This preamble has four sections: Section I describes the process of rulemaking using a direct final rule with a companion proposed rule; Section II provides background; Section III provides a section-by-section analysis of

the regulatory text; and Section IV addresses the administrative requirements for this rulemaking.

I. Direct Final Rule Published Concurrently With Companion Proposed Rule

In direct final rulemaking, an agency publishes a direct final rule in the **Federal Register** with a statement that the rule will go into effect unless the agency receives significant adverse comment within a specified period. The agency concurrently publishes an identical proposed rule. If the agency receives no significant adverse comment in response to the direct final rule, the agency publishes a **Federal Register** notice withdrawing the proposed rule, and the final rule goes into effect. If the agency receives significant adverse comment, the agency withdraws the direct final rule and treats such comment as submissions on the proposed rule. An agency typically uses direct final rulemaking when it anticipates the rule will be non-controversial.

The Department has determined that this rule, which revises the OALJ rules of practice and procedure to accommodate electronic filing by persons appearing before OALJ and electronic service of ALJ-issued documents, is exempt from the notice and comment requirements under 5 U.S.C. 553(b) as a rule of agency practice and procedure. Regardless, the agency has decided to allow for public input, so this rule is suitable for direct final rulemaking. The rule makes technical changes to OALJ's procedural rules, and—consistent with similar court and agency e-filing systems—provides that persons represented by attorney and non-attorney representatives will be required to e-file unless good cause is shown to be exempted, and that self-represented persons will have the option of e-filing or using conventional filing methods. Thus, the Department does not expect to receive significant adverse comment on this rule.

The Department is also publishing a companion notice of proposed rulemaking in the “Proposed Rules” section of today’s **Federal Register** to expedite notice-and-comment rulemaking in the event the Department receives significant adverse comment

and withdraws this direct final rule. The proposed and direct final rules are substantively identical, and their respective comment periods run concurrently. The Department will treat comments received on the companion proposed rule as comments regarding the direct final rule and vice versa. Thus, if the Department receives significant adverse comment on either this direct final rule or the companion proposed rule, the Department will publish a **Federal Register** notice withdrawing this direct final rule and will proceed with the proposed rule. If no significant adverse comment is received, this direct final rule will become effective.

For purposes of this direct final rule, a significant adverse comment is one that explains (1) why the rule is inappropriate, including challenges to the rule's underlying premise or approach; or (2) why the direct final rule will be ineffective or unacceptable without a change. In determining whether a significant adverse comment necessitates withdrawal of this direct final rule, the Department will consider whether the comment raises an issue serious enough to warrant a substantive response had it been submitted in a standard notice-and-comment process. A comment recommending an addition to the rule will not be considered significant and adverse unless the comment explains how this direct final rule would be ineffective without the addition.

The Department requests comments on all issues related to this rule, including economic or other regulatory impacts of this rule on the regulated community.

This rule is not an E.O. 13771 regulatory action because it is not significant under E.O. 12866.

II. Background

On May 19, 2015, the regulations governing practice and procedure for proceedings before the United States Department of Labor, Office of Administrative Law Judges (OALJ) were significantly revised. 80 FR 28768 (May 19, 2015). At the time, the Department acknowledged that implementation of a dedicated electronic filing system

and electronic service system for OALJ adjudications would be beneficial, but stated that because the OALJ did not have a dedicated electronic filing and service system, the rules of practice and procedure necessarily focused on traditional filing and service. 80 FR at 28772, 28775. The Department now has an electronic filing and service system (eFile/eServe system) for its adjudicatory agencies. This revision to part 18 makes regulatory changes to implement this new system.

When the Department revised the OALJ rules of practice and procedure in 2015, it modeled those rules on the Federal Rules of Civil Procedure (FRCP). The Department noted that “[u]sing language similar or identical to the applicable FRCP gains the advantage of the broad experience of the Federal courts and the well-developed precedent they have created to guide litigants, judges, and reviewing authorities within the Department on procedure. Parties and judges obtain the additional advantage of focusing primarily on the substance of the administrative disputes, spending less time on the distraction of litigating about procedure.” 77 FR 72142, 72144 (Dec. 4, 2012) (proposed rule). Accordingly, the Department revises part 18 to accommodate electronic filing with a view toward aligning part 18, to the extent practicable, with the equivalent federal rules.

The current OALJ rule at 29 CFR 18.30 governs serving and filing of pleadings and other papers, and was modeled on FRCP 5. As noted above, § 18.30 did not address in detail electronic filing or service because OALJ did not have a dedicated e-filing system in 2015. In 2018, FRCP 5 was amended to revise the provisions for electronic service based on the federal judiciary’s experience with its electronic filing system, namely the Case Management/Electronic Case Files (CM/ECF) system. In brief, the changes to FRCP 5 deleted the requirement of consent in writing to electronic service where service is made on a registered user through the court’s electronic filing system; ended the practice of leaving it to local rules to require or allow electronic filing, and

instead established a uniform national rule that makes electronic filing mandatory for parties represented by counsel (providing, however, for certain exceptions); required that any local rule requiring electronic filing by self-represented parties must allow reasonable exceptions; established a uniform national signature provision; and provided that no certificate of service is required when a paper is served by filing it with the court's electronic filing system.

Most of the Rule 5 revisions make sense in regard to DOL OALJ adjudications but with some modifications to reflect administrative practice and functional differences between CM/ECF and the Department's eFile/eServe system. As explained in more detail below, the regulatory amendments address the following:

- require persons represented by attorney and non-attorney representatives to use the Department's system to file all papers electronically and to receive electronic service of documents unless another form of filing or service is allowed by the presiding judge for good cause or is required by standing order;
- give self-represented persons the option to use conventional means of filing, or to use the Department's system to file all papers electronically and to receive electronic service of documents;
- provide that a filing made through a person's eFile/eServe system account and authorized by that person, together with that person's name on a signature block, constitutes that person's signature.

FRCP 5(d)(1)(B) was revised in 2018 to provide that “[n]o certificate of service is required when a paper is served by filing it with the court's electronic-filing system.”

The Department, however, has determined that a certificate of service will continue to be required for all filings with OALJ given that (1) OALJ proceedings have a significant number of self-represented parties as participants, and (2) especially early in OALJ proceedings, the identification of parties and their representatives—and accurate contact

information for such persons and entities—is often fluid and uncertain. *Compare* “Notice for Comment on Proposed Amendments to the Local Civil and Criminal Rules for the Middle District of Louisiana” (Apr. 12, 2019) (proposing to revise court’s local rule to provide that a certificate of service is required for an initial complaint filed with the court’s electronic filing system, and the case involves a party who is not an electronic filer); General Order 2019-06 (M.D. La. Nov. 12, 2019) (adopting amendment to Local Civil Rule 5(e)(1) to provide that “[w]hen a document filed after the initial complaint is served by filing it with the Court’s electronic filing system, no certificate of service is required when all parties are electronic filers.”).

The Department notes that, as with all OALJ rules of practice and procedure, the e-filing provisions will not apply if they are “inconsistent with a governing statute, regulation, or executive order. . . . If a specific Department of Labor regulation governs a proceeding, the provisions of that regulation apply[.]” 20 CFR 18.10(a). For instance, OALJ will continue to serve decisions via certified mail where required by the governing statute or regulation, including on persons participating in the Department’s eFile/eServe system.

Finally, as a consequence of the COVID-19 national emergency in 2020, courts and administrative adjudicators across the Nation have dramatically increased the use of telephonic and video hearings, including the Department of Labor’s OALJ. The Department is revising Part 18 to require the judge to give advance notice of the manner of the hearing—whether in person in the same physical location, by telephone, by videoconference, or by other means—and to provide parties an opportunity to request a different manner of hearing. *See* 5 U.S.C. 554(b)(1) (requiring timely notice of the time, place, and nature of the hearing).

III. Section-by-Section Analysis

General Provisions

§ 18.11 Definitions.

A definition of “*eFile/eServe system*” is added to the definitions section of part 18 to clarify that it means the Department of Labor’s electronic filing and electronic service system for adjudications.

A definition of “*registered user*” is added to the definitions section of part 18 to clarify that it means any person registered to file papers using the Department’s eFile/eServe system.

A definition of “*standing order*” is added to the definitions section of Part 18. Amendments to § 18.30 follow the language of FRCP 5 to permit exceptions, permissions, or requirements relating to e-filing to be established by “local rule.” OALJ is organized differently than the judiciary, and does not use local rules. However, OALJ sometimes issues Administrative Orders addressing court administration applicable to all cases pending before OALJ, or to all cases pending in a district office. For example, in the past when an OALJ district office was closed for an extended period due to severe weather conditions and the aftermath, the Chief Judge or District Chief Judge issued an Administrative Order extending filing dates and permitting alternative forms of filing (such as email) until the office returned to normal operations. Similarly, OALJ may need to issue standing orders to address national or local conditions impacting electronic filing.

Service, Format and Timing of Filings and Other Papers

§ 18.30 Service and filing.

The current § 18.30 is modeled on FRCP 5. FRCP 5 was amended in 2018 in regard to electronic filing, and the following revisions to § 18.30 are modeled on the FRCP 5 amendments to the extent practicable.

Paragraph (a)(2)(ii)(E) is revised to permit a registered user of the Department’s eFile/eServe system to serve filings on other registered users through the Department’s system.

A new paragraph (a)(2)(iii) is added to provide that represented persons required to file electronically using the Department's eFile/eServe system, and self-represented persons who opt to file electronically using that system, are deemed to have consented to electronic service of documents issued by the judge and papers filed by other registered users of the system.

The first sentence of paragraph (b)(1) is revised to harmonize it to the current FRCP 5 in regard to the time period for filing a paper. Specifically, rather than the current requirement to file a paper "within a reasonable time after service with a certificate of service," the amended paragraph requires filing "no later than a reasonable time after service." The FRCP 5 made this change because "within" might be read as barring filing before the paper is served. "No later than" was substituted in FRCP 5 to ensure that it is proper to file a paper before it is served.

Paragraph (b)(2) is revised to clarify that a paper submitted electronically in the Department's eFile/eServe system is filed when received by that system.

The provisions of § 18.30(b)(3) have been amended and reorganized. New paragraph (b)(3)(i)(A) provides that a person represented by an attorney or non-attorney representative is required to file using the Department's eFile/eServe system following the instructions on the system's website, unless another form of electronic or non-electronic filing is allowed by the judge for good cause or is allowed or required by standing order. This aligns practice before OALJ with current common practice before state and federal courts and agencies. *See* 76 FR 56107 (Sept. 12, 2011) (Social Security Administration final rule announcing that it will require claimant representatives to use SSA's electronic services as they become available on matters for which the representatives request direct fee payment); 76 FR 63537 (Oct. 13, 2011) (U.S. Merit Systems Protection Board pilot program requiring agencies and attorneys representing

appellants to file pleadings electronically for appeals in the Washington Regional Office and Denver Field Office); 84 FR 14554 (Apr. 10, 2019) (Occupational Safety and Health Review Commission final rule adopting mandatory electronic filing and service); 84 FR 37081 (July 31, 2019) (U.S. Patent and Trademark Office final rule amending its Rules of Practice in Trademark Cases and Rules of Practice in Filings to mandate electronic filing of trademark applications and submissions associated with trademark applications and registrations). The Department believes that, rather than imposing undue costs or difficulties on representatives, e-filing will reduce costs and make filing with OALJ more convenient and certain. *See generally* <http://www.azd.uscourts.gov/efiling/advantages> (outlining advantages of electronic case filing). At present, a representative filing via the Department's eFile/eServe system would need a computer, access to email and the Internet, and a Portable Document Format (PDF) application. Such capacities are common, if not essential, in legal practice today. Moreover, because a representative is allowed to establish good cause for using other forms of filing, the amended rule allows for reasonable exceptions to an e-filing mandate. This requirement applies only to those documents filed 45 days after the effective date or later. This time period between the effective date, when litigants can be certain that the direct final rule will not be withdrawn, and the applicability date, on which e-filing becomes mandatory, allows the Department time to update its communications to parties about how to file and allows parties who were previously filing and serving documents by mail to adjust to electronic filing.

New paragraph (b)(3)(i)(B) provides that a self-represented person may use the Department's eFile/eServe system to file papers. This is a more permissive approach than found in FRCP 5, which allows a self-represented party to file electronically only by court order or a local rule. The Department, by contrast, encourages all persons participating in OALJ hearings to use the Department's eFile/eServe system for filings.

New paragraph (b)(3)(i)(C) provides that a filing made through the Department's eFile/eServe system containing the registered user's name on a signature block constitutes that person's signature. This is consistent with FRCP 5 and provides a simple, practical solution to the signing of papers filed electronically through the Department's system.

New paragraph (b)(3)(i)(D) provides that a paper filed electronically is a written paper for purposes of the part 18 regulations. This provision is consistent with FRCP 5(d)(3)(D).

Current § 18.30(b)(3) has been moved to paragraph (b)(3)(ii), and modified to state the permissible methods of filing for those persons excepted from mandatory use of the Department's eFile/eServe system. Paragraph (b)(3)(ii) is also revised to state the website address at which current OALJ National and District office addresses are listed—specifically: <https://www.dol.gov/agencies/oalj/contacts>.

Current § 18.30(b)(3)(i) requires prior permission from the judge to file by facsimile. With the availability of e-filing, the concerns that prompted that limitation on facsimile filing will be largely mooted. For self-represented persons who do not have ready access to reliable Internet services, filing by facsimile may be a viable alternative. Thus, the Department will eliminate the requirement of current § 18.30(b)(3)(i)(A) to receive prior permission to file by facsimile. The Department, however, will retain the current requirements for use of a facsimile cover sheet and retention of the original document and a transmission record. These requirements are consolidated and re-lettered as new paragraphs (b)(3)(ii)(A) and (B).

Current § 18.30(b)(4) is deleted as it has been mooted by the new provisions in paragraph 18.30(b)(3)(i).

§ 18.32 Computing and extending time.

FRCP 6(a) governs the computation of time periods under the FRCP, in any local rule or court order, or in any statute that does not specify a method of computing time. In this regard, FRCP 6(a)(1)(C) provides that the “last day” of a time period is included in the calculation, and provides that the “last day” ends at midnight in the court’s time zone for electronic filing, and when the clerk’s office is scheduled to close for filing by other means. FRCP 6(a)(4)(A) and (B).

The current § 18.32 is modeled on FRCP 6, but does not address electronic filing. Thus, the Department revises § 18.32(a)(2)(i) to provide that unless a different time is set by a statute, executive order, regulation, or judge’s order, for electronic filing, the “last day” goes through 11:59:59 pm in the time zone of the presiding judge’s office—or, for cases not yet assigned to an OALJ national or district office—in the time zone of the office of the Chief Judge of OALJ. Although standardizing the time for electronic filing at midnight Eastern Time on the last day of the filing period was considered, because the Department’s eFile/eServe system is administered in Washington, D.C., the Department opted to set the time based on local time at the presiding judge’s location in order not to reduce hours available for e-filing for persons outside the Eastern time zone. In regard to filing by means other than electronic filing, the Department revises § 18.32(a)(2)(ii) to follow FRCP 6(a)(4)(B) to state “when the clerk’s office is scheduled to close.” OALJ clerks’ offices close at 4:30 p.m. in the time zone of the presiding judge’s office or 4:30 p.m. in the time zone of the office of the Chief Judge of OALJ for cases not yet assigned to an OALJ national or district office.

§ 18.34 Format of papers filed.

The current § 18.34 addresses the format of papers filed in hard copy. New § 18.34 requires that papers filed electronically be in a format that is accepted by the Department’s eFile/eServe system.

Prehearing Procedure

Current § 18.40(a) requires that the judge provide at least 14 days' notice of the date, time, and place of the hearing. In view of increased use of telephonic and video hearings, § 18.40(a) is revised to require the judge to also provide 14 days' notice of the manner of hearing, whether in person in the same physical location, by telephone, by videoconference, or by other means. Paragraph 18.40(a) is also revised to refer to the provisions of new § 18.30(a) in regard to how the notice of hearing will be sent to the parties. This revision is necessary to harmonize § 18.40(a) with the new eFile/eServe system.

The Department amends § 18.40(b) to require the judge to consider the convenience and necessity of the parties and witnesses in selecting the manner of the hearing.

Current § 18.41 addresses changes to the time, date, and place of the hearing. The Department amends § 18.41(a), (b), and (c) to add the manner of the hearing to the subjects that can be changed by the judge or upon motion of a party.

Current § 18.44(b) provides that prehearing conferences may be conducted in person, by telephone, or other means. New § 18.44(b) explicitly includes videoconferences as a permissible means of conducting prehearing conferences.

Hearing

§ 18.82 Exhibits.

By 2022, the National Archives and Records Administration (NARA) will, to the fullest extent possible, no longer accept temporary or permanent records from agencies in a non-electronic format. *See* National Archives and Records Administration, 2018–2022 Strategic Plan at 12 (Feb. 2018); *Delivering Government Solutions in the 21st Century*, at 22, 100-102 (June 21, 2018). Accordingly, the Department must move expeditiously toward conducting administrative adjudications using electronic records to the greatest extent practical. Thus, new § 18.82(a) provides that those who are required or have opted

to file using the Department's eFile/eServe system must file electronically any exhibits to be offered into evidence at the hearing, unless the exhibit is not susceptible to electronic filing. An example of an exhibit not susceptible to electronic filing is a three-dimensional object. Current paragraphs (a) through (g) are re-lettered to paragraphs (b) through (h). Newly lettered paragraph (d) on exchange of exhibits is amended to clarify that if a copy of a written exhibit being offered into evidence was previously filed electronically pursuant to § 18.82(a), a physical copy of the exhibit need not be produced for the judge at the hearing unless the judge directs otherwise.

IV. Administrative Requirements

Executive Orders 12866, Regulatory Planning and Review; and 13563, Improving Regulation and Regulatory Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility.

This direct final rule has been drafted and reviewed in accordance with Executive Order 12866. The Office of Information and Regulatory Affairs of the Office of Management and Budget (OMB) determined that this direct final rule is not a significant regulatory action under section 3(f) of Executive Order 12866 because the rule will not have an annual effect on the economy of \$100 million or more; will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; and will not materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof. Furthermore, the rule does not raise a novel legal or policy issue arising out of legal mandates, the President's

priorities, or the principles set forth in the Executive Order. Accordingly, OMB has waived review.

Regulatory Flexibility Act of 1980

Because no notice of proposed rulemaking is required for this rule under section 553(b) of the Administrative Procedure Act, the regulatory flexibility requirements of the Regulatory Flexibility Act, 5 U.S.C. 601, do not apply to this rule. *See* 5 U.S.C. 601(2).

Paperwork Reduction Act (PRA)

The Department has determined that this direct final rule is not subject to the requirements of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. (PRA), as this rulemaking involves administrative actions to which the Federal government is a party or that occur after an administrative case file has been opened regarding a particular individual. *See* 5 CFR 1320.4(a)(2), (c).

Unfunded Mandates Reform Act of 1995 and Executive Order 13132, Federalism

The Department has reviewed this direct final rule in accordance with the requirements of Executive Order 13132 and the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1501 et seq., and has found no potential or substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. As there is no federal mandate contained herein that could result in increased expenditures by state, local, and tribal governments, or by the private sector, the Department has not prepared a budgetary impact statement.

Executive Order 13175, Consultation and Coordination with Indian Tribal Governments

The Department has reviewed this direct final rule in accordance with Executive Order 13175 and has determined that it does not have “tribal implications.” The direct final rule does not “have substantial direct effects on one or more Indian tribes, on the

relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.”

List of Subjects in 29 CFR Part 18

Administrative practice and procedure, Labor.

For the reasons set out in the Preamble, the Department of Labor amends 29 CFR part 18 as set forth below.

**PART 18—RULES OF PRACTICE AND PROCEDURE FOR
ADMINISTRATIVE HEARINGS BEFORE THE OFFICE OF
ADMINISTRATIVE LAW JUDGES**

1. The authority citations for part 18 continue to read as follows:

Authority: 5 U.S.C. 301; 5 U.S.C. 551-553; 5 U.S.C. 571 note; E.O. 12778; 57 FR 7292.

2. Amend § 18.11 by adding definitions in alphabetical order for “eFile/eServe system”, “Registered user”, and “Standing order” to read as follows:

§ 18.11 Definitions.

* * * * *

eFile/eServe system means the Department of Labor’s electronic filing and electronic service system for adjudications.

* * * * *

Registered user means any person registered to file papers using the Department’s eFile/eServe system.

* * * * *

Standing order means an order issued by the Chief Judge or District Chief Judge addressing court administration that applies to all cases pending before OALJ or an OALJ district office, and which is in force until changed or withdrawn by a subsequent order.

3. Amend § 18.30 by revising paragraph (a)(2)(ii)(E), adding paragraph (a)(2)(iii), revising the first sentence in paragraph (b)(1) introductory text, revising paragraphs (b)(2) and (3), and removing paragraph (b)(4).

The revisions and addition read as follows:

§ 18.30 Service and filing.

(a) * * *

(2) * * *

(ii) * * *

(E) Sending it to a registered user by filing it with the Department’s eFile/eServe system or sending it by other electronic means that the person consented to in writing—in either of which events service is complete upon filing or sending, but is not effective if the filer or sender learns that it did not reach the person to be served; or

* * * * *

(iii) *Consent to electronic service.* Any person required to file electronically pursuant to paragraph (b)(3)(i)(A) of this section and any person who opts to file electronically pursuant to paragraph (b)(3)(i)(B) of this section is deemed to have consented to electronic service of documents issued by the judge and papers filed by a registered user of the Department’s eFile/eServe system.

* * * * *

(b) * * *

(1) * * * Any paper that is required to be served must be filed no later than a reasonable time after service with a certificate of service. * * *

(2) *Filing: when made—in general.* A paper submitted electronically in the Department’s eFile/eServe system is filed when received by the system. Papers submitted by other means are filed when received by the docket clerk or by the judge during a hearing.

(3) *Filing: how made—(i) Electronic filing and signing—(A) By a represented person—generally required; exceptions.* Beginning on [INSERT DATE 90 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER], a person represented by an attorney or non-attorney representative must file using the Department’s eFile/eServe system following the instructions on the system’s website, unless another form of electronic or non-electronic filing is allowed by the judge for good cause or is allowed or required by standing order.

(B) *By a self-represented person—when allowed or required.* A person not represented by an attorney or non-attorney representative may file using the Department’s eFile/eServe system following the instructions on the system’s website.

(C) *Signing.* A filing made through a person’s eFile/eServe system account and authorized by that person, together with that person’s name on a signature block, constitutes the person’s signature.

(D) *Same as a written paper.* A paper filed electronically is a written paper for purposes of these rules.

(ii) *Other forms of filing.* Persons who are excepted from e-filing under paragraph (b)(3)(i)(A) of this section, or who have opted not to use e-filing as permitted by paragraph (b)(3)(i)(B) of this section, may file papers by mail, courier service, hand delivery, facsimile, or alternative means of electronic delivery. The mailing addresses for OALJ’s National and District offices are found at <https://www.dol.gov/agencies/oalj/contacts>.

(A) *Filing by facsimile—cover sheet.* Filings by facsimile must include a cover sheet that identifies the sender, the total number of pages transmitted, and the matter’s docket number and the document’s title.

(B) *Filing by facsimile—retention of the original document.* The original signed document will not be substituted into the record unless required by law or the judge. Any party filing a facsimile of a document must maintain the original document and transmission record until the case is final. A transmission record is a paper printed by the transmitting facsimile machine that states the telephone number of the receiving machine, the number of pages sent, the transmission time, and an indication that no error in transmission occurred. Upon a party’s request or judge’s order, the filing party must provide for review the original transmitted document from which the facsimile was produced.

4. Amend § 18.32 by revising paragraph (a)(2) to read as follows:

§ 18.32 Computing and extending time.

(a) * * *

(2) “*Last day*” *defined.* Unless a different time is set by a statute, regulation, executive order, or judge’s order, the “last day” ends:

(i) For electronic filing, at 11:59:59 pm in the time zone of the presiding judge’s office—or, for cases not yet assigned to an OALJ national or district office—at 11:59:59 pm in the time zone of the office of the Chief Judge of OALJ; and

(ii) For filing by other means, when the clerk’s office is scheduled to close.

* * * * *

5. Amend § 18.34 by revising the introductory text to read as follows:

§ 18.34 Format of papers filed.

Papers submitted electronically in the Department’s eFile/eServe system must be in a format accepted by the Department’s eFile/eServe system. Papers not filed

electronically must be printed in black ink on 8.5 x 11-inch opaque white paper. All papers must be legible, and begin with a caption that includes:

* * * * *

6. Revise § 18.40 to read as follows:

§ 18.40 Notice of hearing.

(a) *In general.* Except when the hearing is scheduled by calendar call, the judge must, at least 14 days before the hearing, notify the parties of the hearing's date, time, and place, and of the manner of the hearing, whether in person in the same physical location, by telephone, by videoconference, or by other means. The notice is sent by the means provided for in § 18.30(a), unless the judge determines that circumstances require service by certified mail or other means. The parties may agree to waive the 14-day notice for the hearing.

(b) *Date, time, place, and manner.* The judge must consider the convenience and necessity of the parties and the witnesses in selecting the date, time, place, and manner of the hearing.

7. Amend § 18.41 by revising the section heading and paragraphs (a), (b) introductory text, and (b)(2) to read as follows:

§ 18.41 Continuances and changes in place or manner of hearing.

(a) *By the judge.* Upon reasonable notice to the parties, the judge may change the time, date, place, and manner of the hearing.

(b) *By a party's motion.* A request by a party to continue a hearing or to change the place or manner of the hearing must be made by motion.

* * * * *

(2) *Change in place or manner of hearing.* A motion to change the place or manner of a hearing must be filed promptly.

8. Amend § 18.44 by revising paragraph (b) to read as follows:

§ 18.44 Prehearing conference.

* * * * *

(b) *Scheduling.* Prehearing conferences may be conducted in person in the same physical location, by telephone, by videoconference, or by other means after reasonable notice of time, place, and manner of conference has been given.

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9. Revise § 18.82 to read as follows:

§ 18.82 Exhibits.

(a) *Filing of exhibits to be offered into evidence.* Persons who are required to file electronically pursuant to § 18.30(b)(3)(i)(A)—or who have opted to use e-filing as permitted by § 18.30(b)(3)(i)(B)—must electronically file in the Department’s eFile/eServe system any exhibits to be offered in evidence at a hearing, unless that exhibit is not susceptible to filing in electronic form.

(b) *Identification.* All exhibits offered in evidence must be marked with a designation identifying the party offering the exhibit and must be numbered and paginated as the judge orders.

(c) *Electronic data.* By order, the judge may prescribe the format for the submission of data that is in electronic form.

(d) *Exchange of exhibits.* When written exhibits are offered in evidence, one copy must be furnished to the judge and to each of the parties. If the exhibit being offered was previously filed with the judge, either electronically pursuant to paragraph (a) of this section or otherwise, and furnished to the other parties prior to hearing, the exhibit need not be produced at the hearing unless the judge directs otherwise. If the exhibit being offered at the hearing was not furnished to each party or filed with the judge prior to the hearing, a paper copy of that exhibit for the judge and each party must be produced at the hearing unless the judge directs otherwise. If the judge does not fix a date for the

exchange of exhibits, the parties must exchange copies of exhibits at the earliest practicable time before the hearing begins.

(e) *Authenticity.* The authenticity of a document identified in a pre-hearing exhibit list is admitted unless a party files a written objection to authenticity at least seven days before the hearing. The judge may permit a party to challenge a document's authenticity if the party establishes good cause for its failure to file a timely written objection.

(f) *Substitution of copies for original exhibits.* The judge may permit a party to withdraw original documents offered in evidence and substitute accurate copies of the originals.

(g) *Designation of parts of documents.* When only a portion of a document contains relevant matter, the offering party must exclude the irrelevant parts to the greatest extent practicable.

(h) *Records in other proceedings.* Portions of the record of other administrative proceedings, civil actions, or criminal prosecutions may be received in evidence, when the offering party shows the copies are accurate.

Signed on this 14th day of December, 2020, in Washington, D.C.

EUGENE SCALIA
Secretary of Labor