



DEPARTMENT OF JUSTICE

Executive Office for Immigration Review

28 CFR Part 68

[Docket No. EOIR-26-AB23; Dir. Order No. 04-2026]

RIN 1125-AB23

Office of the Chief Administrative Hearing Officer Electronic Filing

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

ACTION: Interim final rule; request for comments.

SUMMARY: The Executive Office for Immigration Review (“EOIR”) is implementing electronic filing and records applications for all cases before the Office of the Chief Administrative Hearing Officer (“OCAHO”). This interim final rule (“IFR”) updates the relevant regulations necessary to implement these electronic filing and records applications, including by requiring certain users to file documents electronically and changing service of process methods. This IFR also includes several additional minor changes to OCAHO’s rules of practice and procedure to clarify and improve upon the existing regulatory language.

DATES: *Effective date:* This IFR is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

Comments due date: Electronic comments must be submitted and written comments must be postmarked or otherwise indicate a shipping date on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. The electronic Federal Docket Management System (“FDMS”) at <https://www.regulations.gov> will accept electronic comments until 11:59 p.m. Eastern Time on that date.

ADDRESSES: You may submit comments on this rulemaking, identified by the agency

name and reference RIN 1125-AB23 or EOIR Docket No. EOIR-26-AB23, by one of the two methods below.

- *Federal eRulemaking Portal*: <https://www.regulations.gov>. Follow the website's instructions for submitting comments.
- *Mail*: Please direct your correspondence to: Jamee E. Comans, Acting Assistant Director, Office of Policy, Executive Office for Immigration Review, 5107 Leesburg Pike, Suite 2500, Falls Church, VA 22041. To ensure proper handling, please reference the agency name and RIN 1125-AB23 or EOIR Docket No. EOIR-26-AB23 on your correspondence. Mailed items must be postmarked or otherwise indicate a shipping date on or before the submission deadline. Paper comments that duplicate an electronic submission are unnecessary.

FOR FURTHER INFORMATION CONTACT: Jamee E. Comans, Acting Assistant Director, Office of Policy, Executive Office for Immigration Review, 5107 Leesburg Pike, Suite 2500, Falls Church, VA 22041, telephone (703) 305-0289 (not a toll-free call).

SUPPLEMENTARY INFORMATION

I. Public Participation

Interested persons are invited to participate in this rulemaking by submitting written data, views, or arguments on all aspects of this IFR via one of the methods and by the deadline stated above. All comments must be submitted in English, or accompanied by an English translation. The Department of Justice (“DOJ” or the “Department”) also invites comments that relate to the economic, environmental, or federalism effects that might result from this IFR. Comments that will provide the most assistance to the Department will reference a specific portion of the IFR; explain the reason for any recommended change; and include data, information, or authority that support such recommended change.

Please note that all comments received are considered part of the public record and made available for public inspection at <https://www.regulations.gov>. Such information includes personally identifying information (such as your name, address, etc.) voluntarily submitted by the commenter.

If you want to submit personally identifying information (such as your name, address, etc.) as part of your comment, but do not want it to be posted online, you must include the phrase “PERSONALLY IDENTIFYING INFORMATION” in the first paragraph of your comment and identify what information you want redacted.

If you want to submit confidential business information as part of your comment but do not want it to be posted online, you must include the phrase “CONFIDENTIAL BUSINESS INFORMATION” in the first paragraph of your comment. You also must prominently identify confidential business information to be redacted within the comment. If a comment has so much confidential business information that it cannot be effectively redacted, all or part of that comment may not be posted on <https://www.regulations.gov>.

Personally identifying information located as set forth above will be placed in the agency’s public docket file, but not posted online. Confidential business information identified and located as set forth above will not be placed in the public docket file. The Department may withhold from public viewing information provided in comments that they determine may impact the privacy of an individual or is offensive. For additional information, please read the Privacy Act notice that is available via the link in the footer of <https://www.regulations.gov>. To inspect the agency’s public docket file in person, you must make an appointment with the agency. Please see the “For Further Information Contact” paragraph above for agency contact information.

II. Background

A. Introduction

In May 2014, OCAHO began piloting a voluntary program in which parties may file and serve case-related documents by email in cases before OCAHO. *See* Office of the Chief Administrative Hearing Officer Electronic Filing Pilot Program, 79 FR 31143 (May 30, 2014). That successful pilot was extended indefinitely while EOIR developed a complete electronic filing application. *See* EOIR, *OCAHO Filing* (June 4, 2021), <https://www.justice.gov/eoir/ocaho-filing> [<https://perma.cc/8HPG-QFR2>].

EOIR has now developed an electronic filing application, known as the OCAHO Portal, through which parties can file and receive service of case documents electronically and view all documents in their OCAHO cases online. *See* EOIR, *OCAHO Portal*, <https://ocaho.eoir.justice.gov/>. With its release, EOIR is amending the regulatory sections necessary to effectively implement this electronic filing application, including by mandating electronic filing for most users. This IFR also includes several additional minor changes to OCAHO's rules of practice and procedure to clarify and improve upon the existing regulatory language.

B. History

OCAHO is one of three EOIR adjudicatory components, along with the Immigration Courts and the Board of Immigration Appeals ("Board"). Beginning in 2003, EOIR engaged in a long-term effort to develop and implement electronic case access and filing applications for the Immigration Courts and the Board, which was completed with the full implementation of the EOIR Courts & Appeals System ("ECAS"). *See generally* Executive Office for Immigration Review Electronic Case Access and Filing, 85 FR 78240, 78241 (Dec. 4, 2020) (detailing the history of EOIR's efforts in this area). In addition to and in concert with this broader effort, EOIR has been working to implement a fully electronic case access and filing system for cases before OCAHO.

First, as previously noted, in May 2014, OCAHO began operating a voluntary

email-based electronic filing pilot program. *See* 79 FR 31143–44. Under this pilot program, parties in enrolled cases could file case documents with OCAHO by email, and would similarly receive service by email of orders and decisions issued by OCAHO’s Administrative Law Judges (“ALJs”) and the Chief Administrative Hearing Officer (“CAHO”). 79 FR 31144. This email-based pilot program was intended to be temporary in nature, with a goal of using the experience gained to develop a “more comprehensive and permanent electronic filing system.” 79 FR 31143.

Next, EOIR successfully implemented ECAS before the Immigration Courts and the Board, which allowed the agency to gain significant experience in developing and implementing electronic filing and records applications. *See generally* EOIR, *ECAS: Attorneys and Accredited Representatives*, <https://www.justice.gov/eoir/ecas-attorneys-and-accredited-representatives> [<https://perma.cc/5E6X-GGEL>] (program overview and FAQs).

With the benefit of the experience gained from these projects, EOIR has developed the OCAHO Portal, a secure public application with case access and electronic filing capabilities for OCAHO, to integrate with OCAHO’s internal case management system. EOIR has deployed the OCAHO Portal for all cases before OCAHO. The OCAHO Portal will take the place of OCAHO’s email filing pilot program.

III. Explanation of IFR Changes

This IFR provides for implementation of the OCAHO Portal for electronic case access and filing in OCAHO cases. Under this IFR, electronic filing through the OCAHO Portal is mandatory for all attorneys and other authorized representatives in OCAHO cases. *See* 28 CFR 68.6(b)(1). This includes, for example, mandatory electronic filing of new complaints by the Department of Homeland Security (“DHS”) in cases under sections 274A and 274C of the Immigration and Nationality Act (“INA”), 8 U.S.C. 1324a and 1324c, or by the Department’s Immigrant and Employee Rights

Section (“IER”) or private attorneys or authorized representatives, when applicable, in cases under section 274B of the INA, 8 U.S.C. 1324b. In order to complete implementation of this electronic filing application, EOIR is making the following changes to OCAHO’s regulations.

A. Eligibility, Registration, and Other Requirements for Electronic Filing

1. Who May File Electronically

This IFR makes electronic filing through the OCAHO Portal mandatory for DHS, IER, and attorneys and other authorized representatives who represent complainants or respondents in OCAHO cases, and applies to both new cases and cases currently pending before OCAHO. *See* 28 CFR 68.6(b)(1).

By mandating electronic filing for attorneys and authorized representatives, OCAHO will eventually be able to maintain a complete electronic record for many cases from beginning to end. Similar to EOIR’s experience with electronic filings and records through ECAS, OCAHO anticipates that this will create significant efficiencies for the parties and OCAHO. For example, registered parties will be able to file documents electronically from any location with internet access, and will be able to view all of the documents filed in their case online and on-demand. Furthermore, electronic filing will allow for near-instantaneous delivery and receipt of case filings, without the delays associated with delivery times for filings sent by physical mail. Similarly, OCAHO will be able to quickly process electronic filings and maintain case records through an electronic system.

OCAHO is also making electronic filing available on a voluntary basis to unrepresented (“pro se”) complainants and respondents because all of the efficiencies listed above may also flow to those individuals if they choose to use electronic filing. *See* 28 CFR 68.6(b)(2). Although opting in to electronic filing is voluntary for pro se complainants and respondents, individuals who choose to opt in will do so for the life of

their case and may not opt out without leave from the presiding ALJ or the CAHO. *Id.*

Voluntary electronic filing for pro se complainants and respondents is subject to one exception. *See* 28 CFR 68.6(b)(1). Specifically, ALJs or the CAHO may require pro se complainants and respondents to electronically file documents where paper filing is infeasible or impracticable. This authority only applies to individual cases and in limited scenarios, such as where there are issues with mail delivery or there is a need for the expedited exchange of documents, particularly where parties reside outside the continental United States.

2. Registration Process

In order to file electronically with OCAHO, an attorney, authorized representative, or pro se complainant or respondent must register with OCAHO using a DOJ authentication application—currently DOJ Login—similar to the process for ECAS registration. *See, e.g.,* EOIR, *ECAS: Attorneys and Accredited Representatives*, <https://www.justice.gov/eoir/ecas-attorneys-and-accredited-representatives> [<https://perma.cc/5E6X-GGEL>] (under the heading “Frequently Asked Questions” and the subheading “DOJ Login and ECAS Account Creation,” answering the question “What is DOJ Login?” by stating that “DOJ Login is a cloud-based identity management and authentication service. The Department of Justice authenticates the identity of end users for access to DOJ applications and networks, including remote access.”). The registration process requires each individual to provide basic identifying and contact information, including the user’s name, email address, phone number, and user type (DHS, IER, or private individual). The registration system then uses a multi-factor authentication tool to validate the user’s identity and allow the user to log in to the application. Users with existing DOJ Login accounts for ECAS may also use those accounts.

3. Cases Eligible for Electronic Filing

All OCAHO cases will be eligible for electronic filing, regardless of whether the case is filed by DHS, IER, or by a private complainant. *See* 28 CFR 68.6(a). Electronic filing will be available for users regardless of whether the opposing party or parties in the case have elected to participate in electronic filing. However, for those cases in which one or more parties to the case have chosen not to participate in electronic filing, those parties who are enrolled in electronic filing will be required to serve electronically filed documents on parties not enrolled in electronic filing by another approved method of service, as discussed further in Section III.B of this preamble. *See* 28 CFR 68.6(c)(2).

4. Electronic Filing Application Availability

This IFR provides guidance for how a party subject to electronic filing requirements should proceed if OCAHO's electronic filing application is unavailable. *See* 28 CFR 68.6(b)(3). If OCAHO's electronic filing application is unavailable due to an unplanned system outage on the last day for filing in a specific case, OCAHO will evaluate the overall impact and make appropriate filing deadline adjustments (e.g., extension of filing deadlines to the next business day that the electronic filing application becomes accessible). *Id.* OCAHO will determine whether the electronic filing application is unavailable due to a system outage sufficient to trigger the extended filing deadline, and OCAHO will communicate such outages to external users through email, EOIR's website, or other methods of communication, as available. *Id.*

Parties will maintain the ability to request an extension of deadlines from the ALJ or the CAHO, as appropriate, or to submit a motion to accept an untimely filing. *See, e.g., Tingling v. City of Richmond, Va.*, 13 OCAHO no. 1324c (2021) (discussing standards for granting extensions of time in OCAHO cases). Both the ALJs and the CAHO have the discretion to accept untimely filings. *See, e.g., United States v. Bhattacharya*, 14 OCAHO no. 1380b, 3 n.3, 5–6, 6 n.8 (2021) (discussing the authority of OCAHO adjudicators to accept filings that were untimely or improperly filed or

served). Additionally, in the event that OCAHO's electronic filing application is unavailable, parties are permitted to file paper or email motions or requests for extension of time.

This unplanned unavailability policy tracks the policy of the Immigration Courts and the Board for ECAS, *see* 85 FR 78244–45, and is similar to the Federal courts' policy for their electronic filing system, *see* Fed. R. Civ. P. 6(a)(3)(A); Fed. R. App. P. 26(a)(3)(A).

On the other hand, if OCAHO's electronic filing application is unavailable due to a planned, previously announced system outage on the last day for filing in a specific case, this IFR provides that the user must plan accordingly to electronically file their documents during system availability or be prepared to file the documents in paper or email form with OCAHO in order to meet any applicable filing deadlines. *See* 28 CFR 68.6(b)(3). OCAHO will communicate these planned outages to external users through email, EOIR's website, or other methods of communication, as available. *Id.* This IFR will not change the authority of the ALJs or the CAHO to determine how to treat an untimely filing, nor will it prevent parties from making a motion to accept an untimely filing.

Lastly, in all cases, the IFR also provides ALJs and the CAHO with the authority to accept paper or email filings at their discretion.

5. Filing Classified Information

OCAHO's electronic filing application is not rated for classified information. *See* 28 CFR 68.6(b)(6). Users should not file classified information through OCAHO's electronic filing application, and the application does not change the users' or the agency's responsibilities related to classified information. *Id.* Users will need to file any classified information by paper and follow existing procedures for the filing of classified information. *See* 28 CFR 68.42(b) (detailing procedures for filing classified or sensitive

information in OCAHO cases). OCAHO staff will maintain a paper record for any case that contains classified information.

6. Misuse

This IFR includes language allowing OCAHO to suspend a user's access to the OCAHO electronic filing application for repeated misuse or abuse of the system. *See* 28 CFR 68.6(b)(8). This will ensure that OCAHO has the ability to address repeated violations of the system, such as inappropriate or harassing filings, "spamming" large numbers of filings, or fraudulent activity, among others. *See, e.g., Ravines de Schur v. Easter Seals-Goodwill Northern Rocky Mountain, Inc.*, 15 OCAHO no. 1388a (2021) (detailing a party's inability or unwillingness to comply with the terms of the OCAHO email filing pilot); *United States v. Pasquel Hermanos, Inc.*, 18 OCAHO no. 1506a (2024) (same). In lieu of electronic filings through the OCAHO electronic filing application, suspended users may, for example, paper file documents with OCAHO. *See* 28 CFR 68.6(b)(4).

B. Filing and Service

This IFR also changes and clarifies how filing and service of process is accomplished in cases before OCAHO. *See generally* 28 CFR 68.6. In this IFR, EOIR is updating OCAHO's regulations to expressly allow for electronic filing and service of all pleadings by adding electronic filing to the list of permissible methods of filing and service in OCAHO cases. *See* 28 CFR 68.6(a)(2). Moreover, as explained in Section III.A.1 of this preamble, EOIR is amending OCAHO's regulations to require all represented parties to file all case documents (including complaints) electronically. *See* 28 CFR 68.6(b)(1).

In order to simplify the filing and service process, OCAHO will also complete service electronically on behalf of the parties for all cases in which all parties are using electronic filing. *See* 28 CFR 68.6(c)(1). When a party successfully uploads a document

to OCAHO's electronic filing application and all parties are using electronic filing, OCAHO's electronic filing application will send the parties an electronic notification of the new filing. *Id.* This will simplify the filing process for electronic filers by only requiring them to file their documents with OCAHO in eligible cases rather than needing to execute multiple mailings to complete service requirements.

However, if one or more parties to an OCAHO case are not participating in electronic filing for that particular case, the electronic filer will have to complete service of process on the opposing party by another authorized means of service. *See* 28 CFR 68.6(c)(2). Similarly, in circumstances where the filer is otherwise allowed to file outside of OCAHO's electronic filing application, either due to system unavailability or pursuant to OCAHO's discretion, the filer will need to complete service on the opposing party. *See* 28 CFR 68.6(b)(3)–(4).

In all cases, consistent with existing practice, all filers must include a certificate of service with each filing as proof of completed service on the opposing party or parties. *See* 28 CFR 68.6(c)(1)–(2). For example, if all parties are using OCAHO's electronic filing application, then electronic filers can include a certificate of service that states: "This document was electronically filed through OCAHO's electronic filing application and both parties are participating in electronic filing. Therefore, no separate service was completed."

When parties need to complete service themselves, this IFR will also provide parties with the option to complete service electronically. *See* 28 CFR 68.6(c)(2)(iii). Under this IFR, in situations where the parties need to complete service outside of the OCAHO electronic filing application, the parties may complete service by email, by postal mail, or by personal delivery. 28 CFR 68.6(c)(2). In doing so, this IFR removes the current, limited ability to file by facsimile in certain circumstances, which is now unnecessary in light of the ability to file electronically through OCAHO's electronic

filing application, or by email where allowed.

OCAHO will also serve notices, orders, and decisions issued by OCAHO ALJs or the CAHO by email notification to parties that are participating in electronic filing. *See* 28 CFR 68.3(a)(4). This notification will constitute completed service and begin the administrative review or appeal period, if applicable. *Id.* If a party is not participating in electronic filing, OCAHO will continue to serve such notices, orders, and decisions on that party by mail or other personal delivery. *See* 28 CFR 68.3(a)(1)–(3). In cases where one party is participating in electronic filing and another party is not, OCAHO will serve the participating party electronically and the non-participating party by mail or other personal delivery.

In order for OCAHO to effectuate electronic service, the parties must maintain a valid email address within the OCAHO electronic filing application. 28 CFR 68.6(c)(3). If a user’s email address changes, the user must immediately contact EOIR to update their account. *Id.*

OCAHO considers service completed when the electronic notification is delivered to the last email address on file provided by the user. *Id.*

C. Signatures

This IFR also provides standards for signatures on pleadings and other documents submitted in OCAHO cases. *See* 28 CFR 68.6(b)(7), 68.7(a)(2). Under this IFR, OCAHO will allow four different types of signatures, depending on the type of document being filed and the method by which the document is being filed: (1) original, handwritten ink signatures; (2) encrypted, digital signatures; (3) electronic signatures; and (4) conformed signatures.¹ *Id.*

¹ As explained in EOIR’s notice of proposed rulemaking regarding ECAS: “Digital signatures are defined as signatures performed via a recognized system that provides Personal Key Infrastructure (PKI) from the signer at the time of signing Electronic signatures are defined as signatures performed using a device that does not provide PKI at the time of signing (e.g., stylus and touchpad).” 85 FR 78246 n.15 (citing EOIR Policy Memorandum 20-11, *Filings and Signatures* (Apr. 3, 2020), [https://www.justice.gov/eoir/page/file/1266411/dl?inline=\[https://perma.cc/W3DA-4PVL\]](https://www.justice.gov/eoir/page/file/1266411/dl?inline=[https://perma.cc/W3DA-4PVL])).

First, whether filing electronically or on paper, OCAHO will accept documents with original, handwritten ink signatures; encrypted, digital signatures; or electronic signatures. *Id.* If filed electronically, the document may be signed with an encrypted, digital signature; an electronic signature; or an original, handwritten ink signature which is then scanned for upload to the OCAHO electronic filing application. 28 CFR 68.6(b)(7). If a user signs a document using an encrypted digital signature but the OCAHO electronic filing application is unavailable, the user may print the document with the digital signature and paper file the document with OCAHO. Paper documents filed by OCAHO may also be signed by electronic signature or original, handwritten ink signature.

Second, for documents filed through the OCAHO electronic filing application, this IFR will allow users to sign their own name with a conformed signature. 28 CFR 68.6(b)(7). Conformed signatures will not be accepted for anyone other than the user who is submitting the document. Conformed signatures typically consist of the user typing “/s/” followed by the user’s name into the signature block. By signing into the electronic filing application, the user has demonstrated that they have completed the registration and identity verification process for the electronic filing application, thereby allowing the use of a conformed signature.

These signature rules are subject to any specific form, application, or document signature requirements. 28 CFR 68.6(b)(7), 68.7(a)(2). For example, if an application’s instructions require an original, handwritten ink signature, then the user must follow the application instructions instead of the signature allowances provided for in this IFR. In practice, if the user was electronically filing, the user would sign the application in ink and then scan and electronically file the application with EOIR. The user is also required to make the original available upon request.

D. Duplicate Copies

This IFR updates OCAHO's regulations to clarify that parties are not required to submit extra copies of pleadings (including the complaint) if they are filing electronically. *See* 28 CFR 68.6(a). However, parties are required to file the requisite number of copies of each pleading if filing by paper. *Id.*

E. Other Amendments

This IFR also makes a number of other minor amendments to OCAHO's regulations.

First, the IFR adds a definition of "notice of hearing" to 28 CFR 68.2 to reflect the document's current name in OCAHO's practice as well as to provide flexibility to OCAHO in the event the document changes title in the future.

Second, the IFR revises 28 CFR 68.5 (regarding notices of hearings) to allow ALJs increased flexibility in the scheduling of hearings and prehearing conferences, and to expressly allow for OCAHO hearings to be conducted by video teleconference in appropriate circumstances. In particular, the IFR removes the requirement that an ALJ schedule a hearing, a pre-hearing conference, or both within 30 days of receiving a respondent's answer to a complaint. With rare exceptions, nearly all OCAHO cases are decided through dispositive motions or settlements, making the setting of a hearing date at such an early stage of the case—and typically before discovery has commenced—inefficient for case processing. Further, OCAHO's usual practice is to issue a general scheduling order and seek prehearing statements from the parties, *see* 28 CFR 68.12, before scheduling a prehearing conference, making the setting of a prehearing conference at the stage contemplated by 28 CFR 68.5 similarly inefficient. The revision to 28 CFR 68.5 simply removes the 30-day requirement to provide full flexibility for OCAHO ALJs to manage their cases in the most efficient manner based on the particular circumstances of each case.

Third, the IFR revises 28 CFR 68.13 (regarding conferences) to expressly include

the authority for ALJs to refer appropriate cases to a settlement officer, in accordance with OCAHO's Settlement Officer Program. *See* OCAHO Practice Manual, Chapter 4.7 (Apr. 3, 2025), <https://www.justice.gov/eoir/reference-materials/ocaho/chapter-4/7> [<https://perma.cc/44ZU-UTRK>].

Fourth, the IFR clarifies that discovery requests, answers, or responses should not be filed with the ALJ. Rather, upon motion of a party or on the ALJ's own initiative, the ALJ may order that such requests for discovery, answers, or responses thereto be filed. 28 CFR 68.18(a).

Fifth, the IFR replaces the outdated reference to providing a copy of a proposed final order to the ALJ "on a 3.5" microdisk" in 28 CFR 68.52.

Finally, the IFR clarifies the requirements in 28 CFR 68.54 for filing a request for administrative review and related documents by adding an electronic filing option and removing a cross-reference to 28 CFR 68.6(c) in favor of simply stating the filing and service requirements for documents related to administrative review in that section.

IV. Regulatory Requirements

A. Administrative Procedure Act

The Administrative Procedure Act ("APA") generally requires agencies to publish notice of a proposed rulemaking in the *Federal Register* and, after such notice, "give interested persons an opportunity to participate in the rulemaking through submission of written data, views, or arguments." 5 U.S.C. 553(b) and (c). The APA further provides that the required publication or service of a substantive rule shall be made not less than 30 days before its effective date, except in certain circumstances. *Id.* 553(d). However, the APA provides exceptions to these general requirements, as explained in more detail below.

Consistent with the APA and for the reasons explained below, this IFR is exempt from notice-and-comment procedures and the delayed-effective-date requirement,

because it is a rule of agency procedure and practice. 5 U.S.C. 553(b)(A), (d)(3). At the same time, the Department seeks and welcomes post-promulgation comments on this IFR.

The APA’s notice-and-comment requirements do not apply to “rules of agency organization, procedure, or practice.” 5 U.S.C. 553(b)(A). Courts “have used the term ‘procedural exception’ as shorthand for that exemption.” *AFL-CIO v. NLRB*, 57 F.4th 1023, 1034 (D.C. Cir. 2023) (cleaned up). “[T]he critical feature of a rule that satisfies the . . . procedural exception is that it covers agency actions that do not themselves alter the rights or interests of parties, although it may alter the manner in which the parties present themselves or their viewpoints to the agency.” *Id.* (cleaned up); *cf. Texas v. United States*, 809 F.3d 134, 176 (5th Cir. 2015) (holding that a rule is not procedural when it “modifies substantive rights and interests” (quoting *U.S. Dep’t of Lab. v. Kast Metals Corp.*, 744 F.2d 1145, 1153 (5th Cir. 1984))).

The Department has determined that this rule regulates agency procedure and is therefore exempt from notice-and-comment procedures under the APA. *See* 5 U.S.C. 553(b)(A). The changes in this IFR do not affect the substantive legal requirements for OCAHO cases; rather, the IFR merely makes procedural changes to provide for electronic filing, and thus focuses on “the manner in which the parties present themselves or their viewpoints to the agency.” *See AFL-CIO*, 57 F.4th at 1034. This IFR is also consistent with prior OCAHO procedural rulemakings pertaining solely to agency procedures and practices regarding the processing of cases before OCAHO. *See, e.g.*, 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, 56 FR 50049, 50052 (Oct. 3, 1991); Rules of Practice and Procedure for Administrative Hearings Before Administrative Law Judges in Cases Involving Allegations of Unlawful Employment of Aliens, Unfair Immigration-

Related Employment Practices, and Document Fraud, 64 FR 7066, 7072 (Feb. 12, 1999).

Furthermore, the Department has determined that, this rule relates solely to agency procedure and practice and thus is not subject to the 30-day-delayed-effective-date requirement for “substantive rules” under 5 U.S.C. 553(d). *See* 5 U.S.C. 553(d)(3) (providing that “[t]he required publication or service of a *substantive* rule shall be made not less than 30 days before its effective date . . . except as otherwise provided by the agency for good cause found and published with the rule”) (emphasis added).

B. Regulatory Flexibility Act

The Department has reviewed this IFR in accordance with the Regulatory Flexibility Act and has determined that this IFR does not have a significant economic impact on a substantial number of small entities. *See* 5 U.S.C. 605(b). This rulemaking regulates attorneys and other authorized representatives, most of whom qualify as “small entities” under the Regulatory Flexibility Act. *See* 5 U.S.C. 601(3)–(4), (6).

However, the Department anticipates that the adoption of electronic filing in OCAHO cases will lead to net cost savings for these attorneys and authorized representatives because they will no longer be required to bear the burdens and expenses of mailing or serving paper copies in each of their cases for filings submitted to OCAHO or for service of process on opposing counsel. Therefore, this IFR will not have an adverse economic effect on attorneys or authorized representatives, but instead is expected to result in cost savings. A more detailed analysis of the costs and benefits of this IFR is provided in Section IV.E of this preamble.

C. Unfunded Mandates Reform Act of 1995

This IFR will not result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates

Reform Act of 1995.

D. Congressional Review Act

This IFR is not a major rule as defined by section 804 of the Congressional Review Act. 5 U.S.C. 804(2). This IFR will not result in an annual effect on the economy of \$100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

E. Executive Orders 12866 (Regulatory Planning and Review), 13563 (Improving Regulation and Regulatory Review), and 14192 (Unleashing Prosperity through Deregulation)

Executive Orders 12866 and 13563 direct agencies to assess all 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 using the best available methods to quantify costs and benefits, reducing costs, harmonizing rules, and promoting flexibility.

The Office of Information and Regulatory Affairs of the Office of Management and Budget (“OMB”) has determined that this IFR is not a “significant regulatory action” under section 3(f) of Executive Order 12866. It will neither result in an annual effect on the economy greater than \$100 million nor adversely affect the economy or sectors of the economy. It does not pertain to entitlements, grants, user fees, or loan programs, nor does it raise novel legal or policy issues. It does not create inconsistencies or interfere with actions taken by other agencies. Accordingly, this IFR is not a significant regulatory action subject to review by OMB pursuant to Executive Order 12866. Moreover, the Department certifies that this IFR has been drafted in accordance with the principles of

Executive Order 13563.

This rule is separately exempt from the requirements of Executive Order 14192 because it relates to the immigration-related functions of the United States. *See* Exec. Order 14192, Sec. 5(a).

1. Costs and Savings Associated with Electronic Filing

Although a cost-benefit analysis is not required under Executive Order 12866, the Department has nevertheless weighed the costs and benefits of this IFR and believes that the rule will provide significant efficiency-related savings, which outweigh any potential costs. The main costs of the rule are expected to be de minimis, and largely focused on any familiarization costs by users of OCAHO's electronic filing application. Additionally, any costs associated with developing or maintaining the OCAHO electronic filing application are already being borne by the agency and are separate from this rulemaking, which focuses on providing standards for, and in most cases mandating use of, the application.

In contrast, the Department anticipates that this IFR will result in significant efficiency gains for OCAHO through the usage of electronic filing, records, and service of process. Under this IFR, OCAHO will be able to efficiently: (1) intake electronic documents, which will be automatically added to an electronic record of proceeding; (2) maintain and review fully electronic records of proceeding²; and (3) issue electronic orders and decisions that will be electronically served on participating parties.

EOIR similarly realized all of these efficiency gains at the Immigration Courts and the Board through the full implementation of ECAS. *See, e.g.*, 86 FR 70714 (explaining for example that, in the initial ECAS pilot program, the agency processed charging documents "nearly 10 times faster" and non-charging documents

² In parallel and separate from this rulemaking, EOIR is working with the National Archives and Records Administration to schedule OCAHO case files as media neutral, allowing for electronic maintenance, retention, and disposition of such records.

“approximately 25 percent faster” than paper filings).

In addition to ECAS’s resounding success, OCAHO has also piloted electronic filing through an email-based pilot program. Although that pilot was more limited—for instance, by not having automatic service of process—OCAHO has reported noticeable efficiency gains from the email pilot, which will only further increase with the implementation of OCAHO’s electronic filing application. Now that the OCAHO electronic filing application has been implemented and this IFR has been issued, OCAHO will be able to move towards electronically intaking documents and maintaining the record of proceeding fully electronically, which will save significant labor costs associated with printing, scanning, storing, and otherwise using paper case files.

Replacing paper mail filing with electronic filing will also address a number of issues currently faced by OCAHO. For instance, instantaneous electronic filing will eliminate most mail delays, including those involving parties located outside of the continental United States. *See, e.g., Zajradhara v. Kang Corp.*, 19 OCAHO no. 1555 (2024) (describing the “significant delays inherent with mail filing” for case based out of Saipan). Case deadlines can also be set quickly, as deadlines in cases with electronic filing do not require additional time to account for paper mail delivery. *See* 28 CFR 68.8(c)(3) (requiring the addition of five days to relevant response deadlines whenever documents are sent by ordinary mail). Electronic filing will also resolve ambiguities and confusion surrounding filing dates and deadlines. *See, e.g., Y.Y. v. Zuora, Inc.*, 15 OCAHO no. 1402 (2021) (discussing uncertainty and delay in a party’s receipt of a copy of the complaint when it was sent by mail); *United States v. Terrapower, LLC*, 19 OCAHO no. 1548e (2025) (“It is possible, or perhaps even likely, that registration in e-filing would minimize instances of motions arriving after a matter has already been adjudicated.”); *United States v. Silverado Stages, Inc.*, 10 OCAHO no. 1185 (2013) (CAHO order finding that “[t]he date on the certificate of service is contradicted by the

actual date on which filing and service was made”); *In re Investigation of Space Expl. Techs. Corp.*, 14 OCAHO no. 1378 (2020) (finding a petition to modify or revoke a subpoena untimely where it was emailed to the other party by the deadline but mailed to OCAHO and thus not received and considered filed until after the deadline).

As such, based on the significant experience gained from these projects, the Department anticipates similar benefits to OCAHO with the implementation of OCAHO’s electronic filing application.

The Department similarly anticipates costs savings for the public, mainly for attorneys and authorized representatives—including DHS and IER—who will be required to electronically file with OCAHO under this rule. Primarily, these parties will be able to forgo paper filings and any attendant mailing or courier costs. Pro se parties will similarly benefit from the availability of electronic filing. *See Zajradhara v. Costa World Corp.*, 19 OCAHO no. 1546c (2024) (ALJ order allowing a pro se complainant to electronically file a document because “he was experiencing financial difficulty, which could impact his ability to mail a filing”).

Additionally, the Department anticipates that any costs related to familiarization with OCAHO’s electronic filing application will be de minimis, as the application is straightforward and most users should be generally familiar with electronically uploading documents online. Moreover, EOIR has published step-by-step guidance on its website explaining the online registration and electronic filing process. *See EOIR, OCAHO Portal for E-Filing User Guide* (June 13, 2025), <https://ocaho.eoir.justice.gov/Content/OCAHOPortalUserGuide.pdf> [<https://perma.cc/63PD-RVN7>].

2. Costs and Savings Related to Other Changes

Finally, the Department believes any costs related to the IFR’s minor changes contained in Section III.E of this preamble to be de minimis, and are outweighed by the

benefits described in that section. Perhaps most significantly, the IFR codifies procedures for the use of settlement conferences in cases before OCAHO. However, such settlement conferences are voluntary and require the consent of all parties. Therefore, the Department does not anticipate any additional costs on the parties but, rather, potential efficiency savings by engaging in the settlement process rather than proceeding through a full adjudication before OCAHO.

F. Executive Order 13132 (Federalism)

This IFR will not have substantial direct effects on the States, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, it is determined that this IFR does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

G. Executive Order 12988 (Civil Justice Reform)

This IFR meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

H. Paperwork Reduction Act

This IFR does not include new or revisions to existing “collection[s] of information” as that term is defined in the Paperwork Reduction Act of 1995, Public Law 104-13, 44 U.S.C. chapter 35, and its implementing regulations, 5 CFR part 1320. As most relevant here, the OCAHO electronic filing application is a previously approved collection of information under OMB Control No. 1125-0019.

List of Subjects in 28 CFR Part 68

Administrative practice and procedure, Aliens, Citizenship and naturalization, Civil rights, Employment, Equal employment opportunity, Immigration.

Accordingly, for the reasons set forth in the preamble, and by the authority vested

in the Director, Executive Office for Immigration Review, by the Attorney General Order Number 6260-2025, the Department amends part 68 of title 28 of the Code of Federal Regulations 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, UNFAIR IMMIGRATION-RELATED EMPLOYMENT PRACTICES,
AND DOCUMENT FRAUD**

1. The authority citation for part 68 continues to read as follows:

Authority: 5 U.S.C. 301, 554, 557(b); 8 U.S.C. 1103, 1324a, 1324b, and 1324c;
28 U.S.C. 509, 510, and 2461 note.

2. Amend § 68.2 by adding a definition for “Notice of hearing” in alphabetical order to read as follows:

§ 68.2 Definitions

* * * * *

Notice of hearing means the Notice of Case Assignment or other, similar document served by the Office of the Chief Administrative Hearing Officer on the parties to a case.

* * * * *

3. Revise § 68.3 to read as follows:

§ 68.3 Service of complaints, notices, written orders, and decisions.

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

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

representative of record of a party;

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

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

(4) By delivering a copy or providing notification by email to such individual, party, partner of a party, officer, registered agent for service of process, or attorney or representative of record of a party.

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

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

4. Amend § 68.5 by:

a. Removing the words “within thirty (30) days of receipt of respondent’s answer to the complaint” in paragraph (a); and

b. Revising paragraph (b) to read as follows:

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

* * * * *

(b) *Place of hearing.* In cases under sections 274A and 274C of the INA, pursuant to sections 274A(e)(3)(B) and 274C(d)(2)(B) of the INA, hearings shall 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. In cases under section 274B of the INA, pursuant to section 554 of title 5, United States Code, due regard shall be given to the convenience of the parties and the witnesses in selecting a place for a hearing. Hearings

under sections 274A, 274B, and 274C of the INA may be conducted by video teleconference.

5. Revise § 68.6 to read as follows:

§ 68.6 Filing and service of documents.

(a) *Filing generally.* This section applies to the filing of all documents in cases before OCAHO.

(1) *Filing a complaint.* Subject to the electronic filing requirements of paragraph (b) of this section, a party must file a complaint either:

(i) Electronically through OCAHO's electronic filing application; or

(ii) By filing an original and four copies with the Chief Administrative Hearing Officer.

(2) *Filing pleadings and documents other than the complaint.* Subject to the electronic filing requirements of paragraph (b) of this section, a party must file pleadings and documents, including any attachments, other than the complaint either:

(i) Electronically through OCAHO's electronic filing application; or

(ii) By filing an original and two copies with the Administrative Law Judge assigned to the case.

(b) *Electronic filing--(1) Mandatory electronic filing.* The Department of Homeland Security, the Department of Justice, and all attorneys or authorized representatives are required to electronically file all documents, including complaints, with OCAHO through OCAHO's electronic filing application. In individual cases, an Administrative Law Judge or the Chief Administrative Hearing Officer may require unrepresented complainants and respondents to electronically file documents where paper filing is infeasible or impracticable.

(2) *Voluntary electronic filing.* Subject to paragraph (b)(1) of this section, although not required, unrepresented complainants and respondents may electronically

file documents with OCAHO through OCAHO's electronic filing application. If an unrepresented complainant or respondent opts to use OCAHO's electronic filing application for a case, the individual must electronically file all documents through OCAHO's electronic filing application for the duration of that case, unless the presiding Administrative Law Judge or the Chief Administrative Hearing Officer grants leave to opt out of electronic filing.

(3) *Unavailability of electronic filing application.* If OCAHO's electronic filing application is unavailable due to an unplanned system outage on the last day for filing in a specific case, the filing deadline will be extended to the first day that the electronic filing application becomes accessible that is not a Saturday, Sunday, or legal holiday. For planned system outages, parties must electronically file documents during system availability within the applicable filing deadline, or paper or email file documents within the applicable filing deadline. EOIR will issue public communications for planned system outages ahead of the scheduled outage. Any planned system outage announced five or fewer business days prior to the start of the outage will be treated as an unplanned outage.

(4) *Discretion to accept paper or email filings.* The Administrative Law Judges and the Chief Administrative Hearing Officer retain discretion to accept paper or email filings in all cases.

(5) *Originals.* Parties must make the originals of all filed documents available to OCAHO or the opposing party for review upon request.

(6) *Classified information.* Notwithstanding any other provisions of this part, classified information is never allowed to be electronically filed.

(7) *Signatures on electronically filed documents.* All documents filed electronically with OCAHO must have an original, handwritten ink signature; an encrypted, digital signature; an electronic signature; or a conformed signature. This

paragraph (b)(7) is subject to the signature requirements of the application or document being submitted.

(8) *Misuse.* OCAHO retains the right to suspend a user's access to the OCAHO electronic filing application for repeated misuse or abuse of the system.

(c) *Service of filings.* The service of filings with OCAHO depends on whether all parties are using OCAHO's electronic filing application.

(1) *When all parties are using the electronic filing application.* If all parties in a specific case are using OCAHO's electronic filing application, the parties do not need to serve a document that is filed through OCAHO's electronic filing application on the opposing party. The OCAHO electronic filing application will effectuate service by providing a notification of all electronically filed documents on all parties to a case by email. The filing party must include a certificate of service stating that all parties are using OCAHO's electronic filing application and, therefore, no separate service was completed.

(2) *When not all parties are using the electronic filing application.* If one or more parties in a specific case are not using OCAHO's electronic filing application, or when the electronic filing application is unavailable, parties must serve a copy of all documents filed with OCAHO—except for the complaint as detailed in § 68.3—on all parties of record by one of the means specified in this paragraph (c)(2), regardless of whether the document is filed electronically or in paper with OCAHO. The filing party must include a certificate of service that specifies the date and manner of service on the other party or parties. When a party is represented by an attorney, service must be made upon the attorney. Service under this paragraph (b)(2) may be made:

- (i) By personal delivery;
- (ii) By mailing a copy to the last known address of the party or representative; or
- (iii) By email, if the party being served has consented to receive electronic service

of documents.

(3) *Valid email address.* Use of OCAHO's electronic filing application requires a valid email address for electronic service. OCAHO will use the email address provided by the parties when they register for the electronic filing application for electronic service on participating parties. Users must immediately update their electronic filing application account if their email address changes. OCAHO will consider service completed when the electronic notification is delivered to the last email address on file provided by the user.

6. Amend § 68.7 by revising paragraph (a) to read as follows:

§ 68.7 Form of pleadings.

(a) *Requirements for all pleadings--(1) Caption.* Every pleading must contain a caption setting forth the statutory provision under which the proceeding is instituted, the title of the proceeding, the case number assigned by the Office of the Chief Administrative Hearing Officer, the names of all parties (or, after the complaint, at least the first party named as a complainant or respondent), and a designation of the type of pleading (e.g., complaint, motion to dismiss).

(2) *Signatures.* Every pleading must be signed by the party or person representing the party who is submitting the pleading. For pleadings filed by paper, the pleading must have an original, handwritten ink signature; an encrypted, digital signature; or an electronic signature. For pleadings filed through OCAHO's electronic filing application, the pleading must have an original, handwritten ink signature; an encrypted, digital signature; an electronic signature; or a conformed signature. This paragraph (a)(2) is subject to the requirements of the application or document being submitted.

(3) *Date and contact information.* All pleadings must contain the date the pleading is being filed, and must contain the mailing address, email address (if available), and telephone number of the party or person representing the party.

(4) *Size and format of pleadings.* Unless otherwise permitted by the Administrative Law Judge or the Chief Administrative Hearing Officer, all pleadings must be submitted on standard size (8 ½ x 11) pages, whether filed electronically or in paper. The Administrative Law Judge or the Chief Administrative Hearing Officer may require that exhibits and other written material presented be indexed, paginated, and accompanied by a table of contents.

* * * * *

7. Amend § 68.8 by revising paragraphs (b) and (c) to read as follows:

§ 68.8 Time computations.

* * * * *

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

(c) *Computation of time for service.* (1) When service of pleadings (other than the complaint) is accomplished by mail, service is deemed effective at the time of mailing.

(2) When service of pleadings is accomplished by electronic filing through OCAHO's electronic filing application, service is deemed effective at the time that the electronic filing application provides a notification to all parties of the electronically filed pleading.

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

8. In § 68.13, add paragraph (d) to read as follows:

§ 68.13 Conferences.

* * * * *

(d) *Settlement officers and conferences.* With the consent of all parties to a case, the presiding Administrative Law Judge may refer a case to another Administrative Law Judge—or, in cases under section 274B of the INA, to the Chief Administrative Hearing Officer—to act as a settlement officer in order to facilitate settlement negotiations between the parties.

(1) The settlement officer shall convene and preside over settlement conferences by video teleconference, in person, or by telephone.

(2) The settlement officer may require that a representative for each party be present at or participate in settlement conferences, and may require that the parties or agents of the parties with full settlement authority be present or available by telephone or video teleconference.

(3) Settlement proceedings under this paragraph shall be conducted in accordance with the confidentiality provisions outlined in 5 U.S.C. 574. The settlement officer shall not discuss any aspect of the case with the presiding Administrative Law Judge. Furthermore, any evidence regarding statements, conduct, offers of settlement, and concessions of the parties made in proceedings before the settlement officer shall be inadmissible in any proceeding before the presiding Administrative Law Judge, except by stipulation of the parties.

10. Amend § 68.18 by revising paragraph (a) to read as follows:

§ 68.18 Discovery—general provisions.

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

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

* * * * *

§ 68.52 [Amended]

10. Amend § 68.52(a)(2) by removing the text “on a 3.5” microdisk” and adding in its place the text “in an electronic format”.

11. Amend § 68.54 by revising paragraph (c) to read as follows:

§ 68.54 Administrative review of a final order of an Administrative Law Judge in cases arising under section 274A or 274C.

* * * * *

(c) *Filing and service of documents relating to administrative review.* All requests for administrative review, briefs, and other filings relating to review by the Chief Administrative Hearing Officer must be filed and served electronically through OCAHO’s electronic filing application consistent with § 68.6. If electronic filing is not possible, a request for administrative review, brief, or other filing relating to administrative review must be filed and served by email, same-day hand delivery, or overnight delivery. A notification of administrative review by the Chief Administrative Hearing Officer will also be served by email, same-day hand delivery, or overnight delivery.

* * * * *

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