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DEPARTMENT OF LABOR

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, Department of Labor.

ACTION: Final rule.

SUMMARY: This action finalizes the Department of Labor's (DOL or Department) proposal to require electronic filing (e-filing) in proceedings before the Office of Administrative Law Judges (OALJ), published on January 11, 2021. The Department has reviewed the comments received in response to the proposal and is now implementing the rule as described in the proposed rule of January 11, 2021, with appropriate exceptions for good cause shown and self-represented parties.

DATES: This final rule is effective on [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Alyssa Kaercher, General Counsel of the Office of Administrative Law Judges, at Kaercher.Alyssa.J@dol.gov or 202-693-7347.

SUPPLEMENTARY INFORMATION: This preamble is divided into three sections: Section I provides an overview of this rulemaking and describes its procedural background; Section II provides a summary of the public comments received; and Section III covers the administrative requirements for this rulemaking.

I. Background

On January 11, 2021, the Department published a direct final rule (DFR) (86 FR 1800) and companion notice of proposed rulemaking (NPRM) (86 FR 1862) to require e-filing and make acceptance of electronic service (e-service) automatic by attorneys and lay representatives

representing parties in proceedings before the OALJ, and to provide an option for self-represented parties to utilize these electronic capabilities. The rule also would have required 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. The Department invited written comments from the public for 30 days on the proposed rule. The Department received significant adverse public comments from stakeholders on the direct final rule. Therefore, the OALJ withdrew the direct final rule on February 25, 2021. The Department has reviewed the comments received in response to the proposal and is now implementing the rule as described in the proposed rule of January 11, 2021, with appropriate exceptions for good cause shown and self-represented parties.

A. Overview

This action finalizes the corresponding NPRM published in the January 11, 2021 issue of the Federal Register (86 FR 1862). The e-filing amendments are revising 29 CFR part 18 in order to require e-filing and allow for automatic e-service system for OALJ, as well as require advance notice to the parties of the manner of a hearing or prehearing conference, whether in person, by telephone, by videoconference, or by other means.

A general overview of the legal framework, statements explaining the necessity of this e-filing rule, as well as further background on the rulemaking is available in the Department's NPRM, as published in the Federal Register on January 11, 2021, and will not be restated in full herein.

In brief, this final rule requires 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; gives 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; and provides 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. It also requires 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, to account for the increase in the use of telephonic and video hearings as a result of the COVID-19 national emergency. See 5 U.S.C. 554(b)(1) (requiring timely notice of the time, place, and nature of the hearing).

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[.]" 29 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.

B. Procedural History

On January 11, 2021, the Department initially published the e-filing amendments as a DFR (86 FR 1800) without a prior proposal because the Department viewed such amendments as noncontroversial at that time and anticipated no adverse comment. The Department also published a companion NPRM in the "Proposed Rules" section of the January 11, 2021 (86 FR 1862) issue to expedite notice-and-comment rulemaking in case significant adverse comments were received from stakeholders. A significant adverse comment for the purposes of these notices 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. The proposed and direct final rules were substantively identical, and their respective comment periods ran concurrently. The Department is treating comments received on the companion direct final rule as comments regarding the proposed rule, and vice versa.

On February 25, 2021, the Department withdrew the January 11, 2021 DFR due to the receipt of significant adverse comment (86 FR 11426). Accordingly, on March 17, 2021, the Department re-opened the comment period on the January 11, 2021 NPRM for 15 days in order to give the public an additional opportunity to voice concerns regarding the proposed e-filing rule (86 FR 14559). The Department also scheduled listening sessions in order to better understand and address concerns from practitioners and the regulated community.

II. Public Comments Received

The Department invited written comment in its January 11, 2021 DFR and concurrently published NPRM. The proposed and direct final rules were substantively identical, and their comment periods ran contemporaneously from January 11, 2021 to February 10, 2021. On March 17, 2021, each comment period was reopened for fifteen days. Comments were submitted electronically at *http://www.regulations.gov* using docket number DOL-2020-0015. The Department requested comments on all issues related to the rule, including economic or other regulatory impacts of the rule on the regulated community.

In issuing this final action, the Department considered comments received on the DFR and NPRM during both the initial and subsequent comment periods. The Department also considered comments received on the conforming Benefits Review Board (Board) rulemaking because commenters noted that they also practiced before the OALJ. Comments to the conforming Board rulemaking were submitted electronically at *http://www.regulations.gov* using docket number DOL-2020-0013.

The Department received thirty-six unique comments on its OALJ and Board e-filing rules. Of the thirty-six comments received, twelve were determined to be out of scope either because they were comments exclusively on the technical aspects of the Electronic Filing System and did not address the substance of the e-filing rule, addressed issues wholly unrelated to this rulemaking, or were general statements. Of the remaining twenty-four comments, one

commenter supported the e-filing rule and twenty-three raised concerns that are discussed below.

A. Comment Supporting the E-Filing Rule

The Department received one comment in support of the rule's e-filing requirement and automation of e-service, and the rule's extension of the provisions to self-represented parties. The commenter attested to the "overall greater convenience for both parties to use e-filing and e-service, as well as the costs saved by going paperless." They observed that "it is in the public interest for the DOL to create a streamlined procedure" because "[a] disarray of inconsistent filing methods is not only burdensome to those processing at DOL, but also to those who would like to track their submitted applications." Additionally, the commenter cited to both *Forbes* and the New York City Bar Environmental Law Committee in addressing the range of significant environmental benefits that e-filing provides.

This comment reflects the Department's belief that e-filing will benefit all participants in OALJ matters. The greater utilization of e-filing and e-service will reduce case processing times by eliminating the timeframes required to allow for the delivery of traditional mailings. These time savings will allow the OALJ to more efficiently process appeals without any sacrifice to the quality of their work. It will also greatly reduce mailing and copying costs for both OALJ and the parties. The Department agrees that the cost, convenience, and efficiency benefits merit this final rule.

B. Comments Raising Concerns about the E-Filing Rule

Nearly all commenters raising concerns about the rule identified themselves as practitioners before OALJ or the Board. These commenters predominately objected to the rule's e-filing mandate at § 18.30, but many expressed support for the Department's efforts to move to e-filing and e-service. Three opposing commenters addressed concerns with other rule provisions.

1. Comments Regarding the Portion of the Rule that Makes E-Filing Mandatory at § 18.30.

Twenty-two commenters recommended that the rule's e-filing mandate be delayed or abandoned. Several commenters expressed general support for the efficiency and modernization that e-filing provides. However, commenters expressed frustration with the OALJ and Board e-filing systems, which they found to be time-consuming, resource intensive, and difficult to navigate. Accordingly, commenters asked that the e-filing mandate be abandoned or delayed to allow for the eFile/eServe system's redesign.

Three of the commenters encouraged the continued use of paper filings to accommodate unreliable technology. One practitioner identified the particular technological barriers faced by black lung practitioners, who "likely have some of the worst internet service in the United States" and "[o]ften experience the loss of internet access." Another noted, "[i]f internet service is disrupted, we currently have backup: 'snail mail', wherein dropping a document in the mail constitutes proper service." Practitioners also expressed concern that pro se (self-represented) applicants may be disadvantaged if they cannot use the e-filing system successfully.

The Department has acknowledged the commenters' concerns with the e-filing system and has taken initiatives to improve the user experience of the system. All twenty-two comments requesting that the rule be delayed due to concerns about the eFile/eServe system were made during the initial comment period that closed on February 10, 2021. After receiving these comments, the Department held listening sessions for users to provide feedback on the e-filing systems. The Department relied on the information obtained at these listening sessions to make improvements to the eFile/eServe system. The Department is confident that the issues identified have been addressed sufficiently to merit effectuating the e-filing mandate without additional delay.

Additionally, the final rule sufficiently responds to the commenters' technology concerns. First, § 18.30(b)(3) allows attorneys and lay representatives to request an exemption from the e-filing mandate for good cause. Individuals who anticipate technological barriers to e-filing may use this provision to request an exception to the mandate. Second, § 18.30(b)(3)(i)(B) exempts

self-represented petitioners from the e-filing mandate, allowing those who cannot navigate the e-filing system to continue submitting paper filings. The Department notes that these concerns were largely Board specific, and that the corresponding Board e-filing rule contains an additional provision addressing technological failures. Overall, the OALJ framework is largely consistent with Federal district court and U.S. Courts of Appeals practice, which generally mandate e-filings for attorneys unless an exception is granted, and provide self-represented parties the option of filing pleadings in paper form.

2. Comments Regarding Portions of the Rule Addressing Filing Deadlines, Public Access, and Service.

One commenter asked that the rule's requirement at § 18.32 be changed to allow e-filings to be considered timely if they are filed by 11:59 p.m. based on the time in which the filer is located. Section 18.32 requires that filing deadlines be computed "using 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 p.m. in the time zone of the office of the Chief Judge of OALJ [Eastern Time]." The commenter supported the rule's definition of the end of the filing day at 11:59 p.m. However, the commenter observed that "[w]hether the filing is made at 11:59 p.m. East Coast, or 11:59 p.m. West Coast, the Agency personnel who receive the filing will find it the next morning when they report to the office." Accordingly, there is "no harm" in allowing all filers to file at the end of their local day.

The Department has considered this request and finds that maintaining the rulemaking's filing deadline computation better effectuates its goal of efficiently processing case appeals. Computing filing deadlines by the time zone of the presiding judge's office allows OALJ to expeditiously determine whether a filing is timely. In contrast, a filing deadline based on the filer's location creates an administrative burden because it requires an individualized assessment of the filer's location, which may not be readily apparent in firms with multiple office locations. Using the presiding judge's office, or Eastern Time for unassigned cases, mirrors the approach of

Federal courts. *See, e.g.,* Fed. R. App. P. 26(a)(4); Fed. R. Civ. P. 6(a)(4). Further, the preamble to the DFR explained that the Department initially considered standardizing the time for electronic filing at midnight Eastern Time on the last day of the filing period, because the Department's eFile/eServe system is administered in Washington, D.C. *Rules of Practice and Procedure for Administrative Hearings Before the Office of Administrative Law Judges*, 86 FR 1800, 1803 (Jan. 11, 2021). However, 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," satisfying this commenter's concern. *Id.*

One commenter asserted that requiring separate e-service was inefficient and requested that the Electronic Case Filing System be changed so that service was automatically made on all parties. Section 18.30 allows for e-service to be completed sending a filing to a user registered with the Department's eFile/eServe system. The eFile/eServe system is designed to function similarly to the Case Management/Electronic Case Files (CM/ECF) system used by the Federal district courts and Courts of Appeals. This allows for automatic e-service with minimal exceptions for individuals exempted from e-filing and documents containing sensitive information that must be served through an alternative, secure method. Accordingly, the Department has taken measures to establish automatic service through the eFile/eServe system.

One commenter expressed concern that e-filing would impede public access to OALJ and Board case files because the rule does not allow for general access by non-parties. The Department appreciates this comment. However, the Department believes that public policy concerns merit the level of public access provided, which balances the public's right to know about proceedings and the parties' privacy interests. Here, broad, public access is inappropriate because of the significant personal information contained within OALJ and Board case files. OALJ adjudicates immigrant and non-immigrant employment-related cases, which often contain extensive information about job applicants, wage documents, personally identifiable information, and similar information of a private, business or financial nature. Black lung and longshore

claims also often contain extensive information of a private nature, where general public interest is limited.

Restricting general access by non-parties is consistent with the approach of the federal courts in similar cases. Fed. R. Civ. P. 5.2(c) limits remote public access to electronic files in Social Security and immigration cases due to the significant amount of personal information these files contain. Fed. R. Civ. P. 5.2(c) does not completely bar public access because it permits non-parties to obtain the full case file at the courthouse. Likewise, this rulemaking limits non-parties' remote access to electronic files, while allowing access through an alternative means. The Freedom of Information Act (FOIA) governs public access to agency rules, opinions, orders, records, and proceedings. *See* 5 U.S.C. 552; 29 CFR 70.1 through 70.54. Under FOIA, non-parties may submit a request to obtain OALJ and Board case files subject to the applicable FOIA exceptions. Accordingly, this final rule's restrictions on non-parties' access to electronic records in agency proceedings are consistent with FOIA's public access provisions, the federal court process, and the policy considerations inherent in Fed. R. Civ. P. 5.2(c).

C. Out of Scope Comments

Twelve comments were beyond the scope of this action. Five comments related only to specific concerns about using the Electronic Filing System, rather than the rule's specific e-filing mandate or other procedural amendments. To the extent that these comments refer to the e-filing mandate, these comments do not alter the Department's conclusion for the reasons noted above. One comment appears to pose questions to employers about their "coronavirus response plan," and is therefore out of scope. Finally, six comments made general and vague statements that did not address specific provisions of the OALJ or Board rules, or about e-filing or e-service, and were therefore also out of scope.

D. Removal of Delayed Applicability Date

This final rule will take effect [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. Although this is a rule of agency procedure,

the Department is using the minimum period provided under section 553(d) of the APA for substantive rules that do not meet a statutory exception. *See* 5 U.S.C. 553(d)(3). The Department is removing the 45-day delayed applicability date included in the initial DFR and NPRM. *See Rules of Practice and Procedure for Administrative Hearings Before the Office of Administrative Law Judges*, 86 FR 1803, 1805; *Rules of Practice and Procedure for Administrative Hearings Before the Office of Administrative Law Judges*, 86 FR 1862, 1865, 1867 (proposed Jan. 11, 2021). The 30-day period between publication and the effective date of this final rule is reasonable and practical because the eFile/eServe system is currently operational. Accordingly, the Department no longer needs additional time to update communications about e-filing or to allow parties time to adjust to the e-filing system. The Department determines that both it and the public are prepared to adhere to the e-filing mandate within 30 days of this rule's publication, obviating the need for a delayed applicability date.

III. Administrative Requirements of the Rulemaking

A. 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, of reducing costs, of harmonizing rules, and of promoting flexibility.

This 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 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.

B. 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), 604(a).

C. Paperwork Reduction Act

The Department has determined that this final rule is not subject to the requirements of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq*., 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).

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

The Department has reviewed this 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.

E. Executive Order 13175, Consultation and Coordination with Indian Tribal Governments

The Department has reviewed this rule in accordance with Executive Order 13175 and has determined that it does not have "tribal implications." The 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 citation for part 18 continues 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 the Office of Administrative Law Judges (OALJ) or an OALJ district office, and which is in force until changed or withdrawn by a subsequent order.

3. Amend § 18.30 by:

a. Revising paragraph (a)(2)(ii)(E);

b. Adding paragraph (a)(2)(iii);

c. Revising the first sentence in paragraph (b)(1) introductory text and paragraphs (b)(2) and (3); and

d. 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.* 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 this section.

(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, 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 p.m. 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 p.m. 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 at § 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.

* * * * *

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 susceptive 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.

_____

Keith Sonderling,
Secretary of Labor.

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