

DEPARTMENT OF LABOR**Office of the Secretary****Employment and Training Administration****20 CFR Part 655****29 CFR Parts 18 and 24****Amendment of Filing and Service Requirements in Proceedings Before the Office of Administrative Law Judges**

AGENCY: Office of the Secretary, Labor.

ACTION: Final rule.

SUMMARY: This document completes the interim rulemaking published on August 15, 1994. This final rule amends regulations governing the filing and service of documents in proceedings before the Department of Labor's Office of Administrative Law Judges generally, and in one instance, the Regional Administrator's service of a notice of denial of temporary labor certification. The amendments modify regulations which heretofore required filing or service by mailgram or telegram, substituting therefore the option to file or serve those documents by facsimile (fax), telegram or other means normally assuring next day delivery. The amendments also provide guidelines for the filing and service of documents by facsimile, limiting such filings to instances when they are explicitly permitted by statute or regulation, or by the presiding administrative law judge. Finally, the amendments eliminate the routine filing of documents relating to discovery, limiting such filings to instances when there is a reason for their submission.

EFFECTIVE DATE: May 19, 1995.

FOR FURTHER INFORMATION CONTACT: John M. Vitton, Deputy Chief Administrative Law Judge, Office of Administrative Law Judges. Telephone: (202) 633-0341.

SUPPLEMENTARY INFORMATION:**Background**

The Department issued these regulations in interim final form on August 15, 1994, and asked for comments from the public and concerned parties. In the only one month comment period that followed, the Office of Administrative Law Judges received no comments.

The interim final rule is hereby being adopted as a final rule, with only one change which we perceive to be an improvement. Specifically, the rule governing service and filing of

documents is modified to make service of representatives conform to practice in the United States District Courts, where, if a party is represented by an attorney, only the attorney is served unless direct service on the party is ordered by the court. See Federal Rules of Civil Procedure 5(b).

Technical Comments

The only change to the interim final rule is in 29 CFR 18.3. Subparagraph 18.3(a) is modified by inserting after the heading "Generally.", the following: "Except as otherwise provided by these rules, copies of all documents shall be served on all parties of record." Subparagraph 18.3(b) is modified by revising the heading "By parties." to read "How made; by parties." In addition, subparagraph 18.3(b) is modified by deleting from the interim final rule the sentence "Service of all documents shall be made upon all parties, and when a party is represented by an attorney or other representative, service also shall be made upon the attorney or representative." That sentence is replaced by the following: "Whenever under these rules service by a party is required to be made upon a party represented by an attorney or other representative the service shall be made upon the attorney or other representative unless service upon the party is ordered by the presiding administrative law judge."

Procedural Matters

This is not a significant regulatory action as defined by Executive Order 12866. Previously, on August 8, 1994, the undersigned certified to the Small Business Administration that this rule, if promulgated, would not have a significant economic impact upon a substantial number of small entities as defined in the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). The rule does not contain any information collection or record keeping requirements as defined in the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.).

Effective Date

This document will become effective upon publication pursuant to 5 U.S.C. 553(d). The undersigned has determined that good cause exists for waiving the customary requirement for delay in the effective date of a final rule for 30 days following its publication. This determination is based upon the fact that the underlying interim rule in this matter has been in effect since September 14, 1994. Accordingly, there is no need for postponement of the effective date.

List of Subjects*20 CFR Part 655*

Administrative practice and procedure, Aliens, Employment, Migrant labor.

29 CFR Part 18

Administrative practice and procedure.

29 CFR Part 24

Employment, Environmental protection.

Accordingly, the interim final rule amending 20 CFR 655 and 29 CFR Part 18 and 24, which was published at 59 CFR 41874 on August 15, 1994, is adopted as a final rule with the following change:

TITLE 29—LABOR**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. 581; E.O. 12778; 57 FR 7292.

2. Section 18.3 is amended by revising paragraphs (a) and (b) to read as follows:

§ 18.3 Service and filing of documents.

(a) *Generally.* Except as otherwise provided in this part, copies of all documents shall be served on all parties of record. All documents should clearly designate the docket number, if any, and short title of the matter. If the matter involves a program administered by the Office of Workers' Compensation Programs (OWCP), the document should contain the OWCP number in addition to the docket number. All documents to be filed shall be delivered or mailed to the Chief Docket Clerk, Office of Administrative Law Judges (OALJ), 800 K Street, NW., Suite 400, Washington, DC 20001-8002, or to the OALJ Regional Office to which the proceeding may have been transferred for hearing. Each document filed shall be clear and legible.

(b) *How made; by parties.* All documents shall be filed with the Office of Administrative Law Judges, except that notices of deposition, depositions, interrogatories, requests for admissions, and answers and responses thereto, shall not be so filed unless the presiding judge so orders, the document is being offered into evidence, the document is submitted in support of a motion or a response to a motion, filing is required by a specialized rule, or there is some other compelling reason for its submission. Whenever under this part

service by a party is required to be made upon a party represented by an attorney or other representative the service shall be made upon the attorney or other representative unless service upon the party is ordered by the presiding administrative law judge. Service of any document upon any party may be made by personal delivery or by mailing a copy to the last known address. The person serving the document shall certify to the manner and date of service.

* * * * *

Signed at Washington, DC, this 15th day of May 1995.

Robert Reich,

Secretary of Labor.

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