



Issue Date: 10 March 2011

Case No. 2011-MIS-00003

In the Matter of

**ENFORCEMENT OF REGULATION
GOVERNING FILING BY FACSIMILE,
29 C.F.R. § 18.3(f)**

ADMINISTRATIVE NOTICE

Section 18.3(a) of the Rules of Practice and Procedure for Administrative Hearings Before the Office of Administrative Law Judges, 29 C.F.R. Part 18, sets the normal procedure for filings with Office of Administrative Law Judges (“OALJ”). It provides that “[a]ll documents to be filed shall be delivered or mailed” to the street address of the Chief Docket Clerk in Washington, DC or to the district office to which the matter has been transferred for hearing. The regulation at 29 C.F.R. § 18.3(g) deems documents delivered by courier service as a mailing. Filings by facsimile (“fax”), however, are governed by special rule at Section 18.3(f). That regulation *limits* the instances in which fax filings are permitted. Specifically, Section 18.3(f)(1) provides:

(1) *Filing by a party; when permitted.* Filings by a party may be made by facsimile (fax) when explicitly permitted by statute or regulation, or when directed or permitted by the administrative law judge assigned to the case. If prior permission to file by facsimile cannot be obtained because the presiding administrative law judge is not available, a party may file by facsimile and attach a statement of the circumstances requiring that the document be filed by facsimile rather than by regular mail. That statement does not ensure that the filing will be accepted, but will be considered by the presiding judge in determining whether the facsimile will be accepted *nunc pro tunc* as a filing.

The reasons for limiting the instances in which fax filings are permitted were stated in the preamble to the 1994 Interim Final Rule that first permitted fax filings in proceedings before OALJ. *Amendment of Filing and Service Requirements in Proceedings Before the Office of Administrative Law Judges*, 59 Fed. Reg. 41874 (Aug. 15, 1994). The Department found that fax filings for routine matters would place an undue administrative and resource burden on

OALJ because of technical problems with facsimile transmissions, the cost of equipment and supplies, and the burden on administrative staff. *Id.*

There has recently been a large increase in the number of documents submitted to this Office by facsimile of a non-urgent and routine nature, causing the unnecessary expenditure of limited resources to process them. Accordingly, it has become necessary to remind participants in proceedings before OALJ that the requirements at 29 C.F.R. § 18.3(f) *must* be met prior to filing any document via facsimile. Thus,

NOTICE IS HEREBY PROVIDED that all parties, attorneys and representatives involved in matters before this Office are **REQUIRED** to comply with the provisions of 29 C.F.R. § 18.3 when filing documents with OALJ. In particular, parties must file by hand-delivery or mail under Section 18.3(a) unless filing by fax is permitted by Section 18.3(f). Do not send courtesy copies of documents by fax.

A

STEPHEN L. PURCELL
Chief Administrative Law Judge