

DEPARTMENT OF INDUSTRIAL RELATIONS
OCCUPATIONAL SAFETY AND HEALTH
APPEALS BOARD

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Subject matter for additional regulations necessary to implement OASIS

A. New Regulations Necessitated By Oasis:

1. **New Regulation:** A regulation that defines the OASIS electronic file as the official file of the Appeals Board. Paper files are no longer the official file.

OASIS will be a completely paperless system. If documents are filed in paper, they will be scanned into electronic format and placed in the electronic case file. Thus, the official file of the Appeals Board will be the only file available, the paperless file. Also, by defining the electronic file OSHAB will be able to define the case history and notes that are public and those notes of a judge or lawyer that will be maintained as confidential.

2. **New Regulation:** The scanned documents in the electronic file have the same evidentiary value as the original documents they depict.

OASIS will only retain scans of original documents that have been created and retained electronically, but have never been printed. Either way, documents stored in the Administrative Record will have the same validity as though they are the original documents since they are exact unaltered facsimiles.

3. **New Regulation:** Specifying the retention period for documents scanned into OASIS. This regulation must specify how long OSHAB retains paper documents that have been scanned into the system just in case the original document needs to be re-scanned or referred to for some reason. Some courts have a one year retention period; others have a 6 month retention period.

In OASIS, the paper documents that are scanned into the system are electronically available making the long-term retention of paper documents unnecessary. Most courts retain copies of the paper for a defined period of time just in case there is an issue scanning a document where the document is unreadable and needs to be rescanned. The courts that the Appeals Board has contacted that scan many thousands more documents that we anticipate scanning have informed us that their quality control measures are very nearly 100 percent effective. They have not needed to return to the paper documents for re-scanning or reference and OSHAB believes that we can duplicate this success.

4. **New Regulation:** If a party to a case contests the validity of the electronic document, they have the burden of proof to show that the electronic document is materially different than the original. A material difference is defined as a difference that would prove that the document is fraudulent or so altered from the original that its value as evidence cannot be determined or

relied upon. A document is not materially altered when it is marked as evidence during a hearing, when the scanning process adds identifying characters or bar codes.

Because we are dealing with electronic documents OSHAB will want to have a procedure where a party may demonstrate that the electronic document is unreliable as evidence because it was materially altered before or after scanning or that somehow it is fraudulent. The proponent of such an assertion will have the burden of proof.

B. Existing Regulations That Will Need Modification to Implement OASIS.

5. **Modification of section 376.4** which states that during the pendency of a proceeding, exhibits filed and entered into evidence shall not be released into the custody of a party unless all parties agree.

Because OASIS is a paperless system and some evidence cannot be scanned into the record, such as models used for demonstrative purposes during the hearing, or other equipment that is used during the hearing as evidence, the judge will have to select a party to hold the evidence until the conclusion of the litigation and then petition the Appeals Board to dispense with the evidence after the case if final. This type of rule is consistent with many other tribunals operating in a paperless environment.

6. **Modification of section 364** – Withdrawal of Appeal – which allows employers to withdraw their appeal at any time, may be modified to allow withdrawal of appeal electronically. This may be in the form of a specified motion, an electronic form, or a pdf document on Employer's letterhead and sent via email.

OASIS will for the first time enable more of the Appeals Board's business to be conducted online, including the withdrawal of an appeal.

7. **Modification of section 364.1** – Withdrawal of Division Action – allows the Division to withdraw citations by oral or written motion.

OASIS, like the discussion of section 364 above, should accommodate an electronic means of withdrawing division action.

8. **Modification of section 372.2** – Requests for Issuance of Subpoenas. Application for issuance of subpoenas will be automated in OASIS. A rule allowing the electronic application for issuance of subpoenas or subpoena duces tecum may be possible.

OASIS may enable requests for the issuances of subpoenas to be automated. Requesters may send requests electronically to a special email queue or by other electronic means to be determined. OSHAB will be able to issue subpoenas electronically and mail or email them to a party for service. This system would save a great deal of time in the process of requesting and issuing subpoenas.

9. **Modification of section 372.3** – Deposition Subpoenas. Same as section 372.2 above, Application for issuance of subpoenas may be automated in OASIS.

10. **Modification of section 374** – Prehearing Conference – section 374.2 – Status Conference – and section 374.3 – Settlement Conference.

These conference types will be revisited to determine whether we need all of these types and to accommodate new types. For example, it may not be necessary to have a pre-hearing and status conference separately described. OSHAB may choose to call them conferences without distinguishing. OSHAB may, at some future time, change the kind and type of pre-trial events that are held. OASIS will be designed to accommodate flexibility needed for these kinds of changes.

11. **Modification of section 376.6** – Confidential Evidence. This will need to be modified for OASIS to include the concept of an electronic file which will store and seal confidential documents. Also, it makes photographs taken during the course of an inspection confidential and it does not appear to be limited to just photographs that contain confidential information. This may also be the place to add to the list of evidence that is deemed confidential.

OASIS will have the ability to store information in a confidential location. Such “sealed” exhibits cannot be unsealed unless there is an order by a judge or the Appeals Board. This is the way in which confidential information will be protected in OASIS.

12. **Modification of section 380** – Briefs. This rule needs modification OASIS. It requires the “original” brief to be filed with the Appeals Board. It does not define original. OSHAB needs to clarify that electronic copies of documents are original documents and how electronic briefs will be filed. We may also want to clarify time-frames.

OASIS will enable the Appeals Board to file documents, at least selected documents, electronically.

13. **Modification of section 390** – Filing of Petition and Answer. This will need to include the ability of parties to file petitions for reconsideration and answers electronically.

OASIS will enable participants to files petitions for reconsideration and associated documents in an electronic form that will be automatically routed to the correct legal unit persons.

14. **Modification of section 392.5** – Availability of Hearing Tapes. This regulation is outdated. We now have the ability to and routinely send hearing recordings via email through a service called Hightail. This regulation needs to be modified for this new process.

OASIS will store the hearing recording in the electronic case file; however, this regulation change is necessitated by other than OASIS technology.