evidence may be received, but the agency as a matter of policy shall provide for the exclusion of irrelevant, immaterial, or unduly repetitious evidence * * *'' 5 U.S.C. 556(d); *see also Fed. Trade Comm'n* v. *Cement Inst.*, 333 U.S. 683, 805–06 (1948) (administrative agencies not restricted by rigid rules of evidence). The Department believes that it is inappropriate to apply the rules of evidence at 29 CFR part 18 subpart B because whistleblowers often appear pro se and may be disadvantaged by strict adherence to formal rules of evidence. Furthermore, hearsay evidence is often appropriate in whistleblower cases, as there often are no relevant documents or witnesses other than hearsay to prove discriminatory intent. ALJs have the responsibility to determine the appropriate weight to be given such evidence. For these reasons, the interests of determining all of the relevant facts are best served by not requiring strict evidentiary rules. No comments were received on this section, but, as explained above, this section was revised to specify that the formal rules of evidence will not apply to proceedings before an ALJ under this section.

Secretary or the Department of Labor's Associate Solicitor for Fair Labor Standards unless the Assistant Secretary requests that documents be sent, the Assistant Secretary is participating in the proceeding, or service on the Assistant Secretary is otherwise required by these rules. Other minor changes were made as needed to clarify the provision without changing its meaning.

Section 1983.109 Decision and Orders of the Administrative Law Judge

This section sets forth the requirements for the content of the decision and order of the ALJ, and includes the standard for finding a violation under CPSIA. The section further provides that the Assistant Secretary's determination to dismiss the complaint without an investigation or without a complete investigation pursuant to § 1983.104 is not subject to review. Thus, paragraph (c) of § 1983.109 clarifies that the Assistant Secretary's determinations on whether to proceed with an investigation under CPSIA and whether to make particular investigative findings are discretionary decisions not subject to review by the ALJ. The ALJ hears cases de novo and, therefore, as a general matter, may not

statute and the description of the remedies in § 1983.105(a)(1). The statement that the decision of the ALJ will become the final order of the Secretary unless a petition for review is timely filed with the ARB and the ARB accepts the petition for review was deleted from § 1983.110(a) and moved to paragraph (e) of this section. Additionally, OSHA has revised the period for filing a timely petition for review with the ARB to 14 days rather than 10 business days. With this change, the final rule expresses the time for a petition for review in a way that is consistent with the other deadlines for filings before the ALJs and the ARB in the rule, which are also expressed in days rather than business days. This change also makes the final rule congruent with the 2009 amendments to Rule 6(a) of the Federal Rules of Civil Procedure and Rule 26(a) of the Federal Rules of Appellate Procedure, which govern computation of time before those tribunals and express filing deadlines as days rather than business days. Accordingly, the ALJ's order will become the final order of the Secretary 14 days after the date of the decision, rather than after 10 business days, unless a timely petition for review is filed. As a practical matter, this revision