



DEPARTMENT OF LABOR

Benefits Review Board

20 CFR Part 802

RIN 1290-AA35

Rules of Practice and Procedure

AGENCY: Benefits Review Board, Department of Labor.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department of Labor is issuing this Notice of Proposed Rulemaking to seek public comments on a proposal to require electronic filing (e-filing) and make acceptance of electronic service (e-service) automatic by attorneys and lay representatives representing parties in proceedings before the Benefits Review Board (Board), and to provide an option for self-represented parties to utilize these electronic capabilities.

DATES: The Department invites interested persons to submit comments on the proposed rules of practice and procedure. To ensure consideration, comments must be in writing and must be received by [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

ADDRESSES: You may submit comments, identified by Regulatory Identification Number (RIN) 1290-AA35, only by the following method: Electronic Comments. Submit comments through the Federal eRulemaking Portal <http://www.regulations.gov>. To locate the proposed rule, use docket number DOL-2020-0013 or key words such as “Administrative practice and procedure,” “Black lung benefits,” “Longshore and harbor workers,” or “Workers’ compensation.” Follow the instructions for submitting comments. All comments must be received by 11:59 p.m. on the date indicated for consideration in this rulemaking.

Instructions: All submissions received must include the agency name and docket number or RIN for this rulemaking. All comments received generally will be posted without change to <http://www.regulations.gov>, including any personal information provided. Therefore, the Department recommends that commenters safeguard their personal information by not including social security numbers, personal addresses, telephone numbers, or email addresses in comments. It is the responsibility of the commenter to safeguard personal information.

If you need assistance to review the comments and the proposed rule, the Department will consider providing the comments and the proposed rule in other formats upon request. For assistance to review the comments or obtain the proposed rule in an alternate format, contact Mr. Thomas Shepherd, Clerk of the Appellate Boards, at (202) 693-6319.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas Shepherd, Clerk of the Appellate Boards, at (202) 693–6319 or Shepherd.Thomas@dol.gov. Individuals with hearing or speech impairments may access this telephone number by TTY by calling the toll-free Federal Information Relay Service at (800) 877-8339.

SUPPLEMENTARY INFORMATION: This preamble is divided into four sections: Section I describes the process of rulemaking using a direct final rule with a companion proposed rule; Section II provides general background information on the development of the proposed rulemaking; Section III is a section-by-section summary and discussion of the proposed regulatory text; and Section IV covers the administrative requirements for this proposed rulemaking.

I. Proposed rule published concurrently with companion direct final rule

The Department is simultaneously publishing with this proposed rule an identical “direct final” rule elsewhere in this issue of the Federal Register. In direct final rulemaking, an agency publishes a final rule with a statement that the rule will go into

effect unless the agency receives significant adverse comment within a specified period. If the agency receives no significant adverse comment in response to the direct final rule, the rule goes into effect. If the agency receives significant adverse comment, the agency withdraws the direct final rule and treats such comment as submissions on the proposed rule. The proposed rule then provides the procedural framework to finalize the rule. An agency typically uses direct final rulemaking when it anticipates the rule will be non-controversial.

The Department has determined that this rule is suitable for direct final rulemaking. The proposed revisions to the Board's procedural regulations would require represented parties, unless exempted by the Board for good cause shown, to file documents via the Board's new electronic case management system, which will also automatically serve these documents on registered system users. Some parties are already e-filing documents with the Board on a voluntary basis. Moreover, this new system is similar to those used by courts and other administrative agencies and will thus be familiar to the representatives. The proposed rule also would give self-represented (*pro se*) parties the option to file and serve documents through the electronic case management system or via conventional methods. These changes to the Board's procedures and practices should not be controversial. The Department has determined that this rule is exempt from the notice and comment requirements under 5 U.S.C. 553(b) as a rule of agency practice and procedure. Nonetheless, the agency has decided to allow for public input by issuing a direct final rule and concurrent notice of proposed rulemaking.

The comment period for this proposed rule runs concurrently with the comment period for the direct final rule. Any comments received in response to this proposed rule also will be considered as comments regarding the direct final rule and vice versa. For purposes of this rulemaking, a significant adverse comment 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. In determining whether a significant adverse comment necessitates withdrawal of the direct final rule, the Department will consider whether the comment raises an issue serious enough to warrant a substantive response had it been submitted in a standard notice-and-comment process. A comment recommending an addition to the rule will not be considered significant and adverse unless the comment explains how the rule would be ineffective without the addition.

The Department requests comments on all issues related to this rule, including economic or other regulatory impacts of this rule on the regulated community. All interested parties should comment at this time because the Department will not initiate an additional comment period on the proposed rule even if it withdraws the direct final rule.

This rule is not an E.O. 13771 regulatory action because the Office of Information and Regulatory Affairs has determined it is not significant under E.O. 12866.

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), the Office of Information and Regulatory Affairs designated this rule as not a "major rule," as defined by 5 U.S.C. 804(3).

II. Background of this rulemaking

The Department promulgates this rule under the authority of 5 U.S.C. 301, as well as the Black Lung Benefits Act, 30 U.S.C. 901 *et seq.*, and the Longshore and Harbor Workers' Compensation Act, 33 U.S.C. 901 *et seq.*

The Board is proposing a rule that would make e-filing mandatory and acceptance of e-service automatic for parties represented by attorneys and lay representatives. E-filing has been optional and e-service was not available through the Board's prior electronic system. As a result, the Board would receive filings in both paper and electronic form. The Board's long-term goal is to have entirely electronic case files (e-

case files), which the Board believes will significantly benefit both the Board and the participants in Board appeals by allowing the Board to more efficiently process incoming documents and to reduce the time it takes to adjudicate claims. Requiring attorneys and lay representatives to use e-filing and automatically receive service of e-filed documents through the Department's electronic case management system will help the Board move toward this goal.

The Board previously used *DOL Appeals*, a consolidated web-based case tracking system deployed in FY2011 to replace individual legacy applications and streamline business processes specific to each of the three Adjudicatory Boards in the Department: the Board, the Administrative Review Board (ARB), and the Employees' Compensation Appeals Board (ECAB). The Board reviews appeals of administrative law judges' decisions arising under the Black Lung Benefits Act, and the Longshore and Harbor Workers' Compensation Act and its extensions. The ARB issues decisions in cases arising under a variety of worker protection laws, including those governing environmental, transportation, and securities whistleblower protections; H-1B immigration provisions; child labor; employment discrimination; job training; seasonal and migrant workers; and Federal construction and service contracts. ECAB hears appeals taken from determinations and awards under the Federal Employees' Compensation Act with respect to claims of Federal employees injured in the course of their employment.

The *DOL Appeals* case management system provided a broad range of capabilities to the Adjudicatory Boards' staff for inputting, processing, tracking, managing, and reporting specific details on thousands of cases since its initial implementation. In FY2013, the system was enhanced to provide access to parties. More than 1,400 individuals were registered users of the *DOL Appeals* system. Users had the ability to check their case status, electronically file motions and briefs, and receive Board

issuances electronically. However, users who e-filed documents still had to serve those documents on other parties by some other method (typically mail, commercial delivery, or electronic mail), as *DOL Appeals* did not have an automatic e-service function like that of the Federal courts' electronic filing system. Moreover, because e-filing has been optional, the Board received, and still receives, many paper filings, including from attorneys and lay representatives.

At present, the Board lacks sufficient resources to digitally image all pleadings received in paper form, and that option is unduly burdensome and labor intensive. Furthermore, if e-filing remains optional, it is unlikely that the Board will achieve the goal of completely electronic case files. If, however, attorneys and lay representatives are required to e-file all documents through the Board's new case management system, imaging the remaining paper pleadings from self-represented parties would be manageable for the Board. In addition, greater utilization of e-filing and e-service through the new case management system will reduce case processing times by eliminating the timeframes required to allow for the delivery of traditional mailings. These time savings will allow the Board to more efficiently process appeals without any sacrifice to quality of work and will also greatly reduce mailing and copying costs for both the Board and the parties.

Although Federal agencies are required by law to provide information and services via the Internet, agencies must also consider the impact on persons without access to the Internet and, to the extent practicable, ensure that the availability of government services has not been diminished for such persons. 44 U.S.C. 3501 note. Accordingly, the Board will make e-filing and e-service optional for self-represented parties. The Board sees no legal restriction to making e-filing mandatory and acceptance of e-service automatic for attorneys and lay representatives, and does not believe it would impose undue costs or difficulties for them, particularly since a party may obtain an

exemption for good cause shown. The Board notes in this regard that e-filing is generally mandatory for attorneys in the Federal district courts and U.S. Courts of Appeals; unless an exemption is granted, only self-represented parties have the option of filing pleadings in paper form. The Board also notes that, consistent with the Federal courts, the Department's electronic case management system requires the filer to convert other electronic formats to Portable Document File (PDF) before filing. Parties filing via the electronic case management system need a computer, access to e-mail and the Internet, and the ability to convert documents to a PDF format. The rule also provides that registered electronic case management system users are deemed to accept service of all documents through the system. The Board will issue decisions and orders electronically to registered users who are parties to a case.

III. Section-by-Section Analysis of Proposed Rules

The Board proposes to remove and reserve the following sections: § 802.204, Place for filing notice of appeal and correspondence; § 802.207, When a notice of appeal is considered to have been filed in the office of the Clerk of the Board; and § 802.216, Service and form of papers. The Board is making this change to clarify and consolidate its rules governing computation of time in current § 802.221, filing of documents in new § 802.222, and service of documents in new § 802.223.

In general, the provisions in §§ 802.204, 802.207, and 802.216 will be moved into these three consolidated regulations and revised to accommodate mandatory e-filing and automatic acceptance of e-service for represented parties. The Board has proposed, however, to remove from its regulations the requirement in § 802.204 that a party who files a notice of appeal must serve a copy of it on the "deputy commissioner" (an official who is now called "district director," 20 CFR §§701.301(a)(7), 725.101(a)(16)). This non-statutory procedure is no longer required because the Board routinely provides the district director with notice of each appeal filed.

§ 802.219 Motions to the Board; orders

The Board proposes to amend § 802.219(d) to replace the current cross-reference to § 802.216, a regulation the Board proposes to remove, with cross-references to new §§ 802.222 and 802.223. The new regulations will govern filing and service of motions made to the Board.

§ 802.221 Computation of time

The Board proposes to amend § 802.221 in several ways. Proposed paragraph (a) retains the same general time computation rule as in current paragraph (a) but substitutes the word “must” for “shall” wherever it occurs. This substitution is consistent with Executive Order 13563, which states that regulations must be “written in plain language[.]” 76 FR 3821 (Jan. 18, 2011). No alteration in meaning is intended by this change.

Proposed paragraph (b) is limited to computing time for nonelectronic documents. Paragraph (b)(1) retains the current provision that, when sent by mail, the time period calculated under paragraph (a) is satisfied if the document is mailed within that time period, as demonstrated by postmark or other evidence. Paragraph (b)(2) adds a new provision to address the widespread use of commercial carriers (*e.g.*, FedEx, UPS) for delivering documents. The rule provides that the time period calculated under paragraph (a) is satisfied if delivered to the carrier within that time period, as evidenced by the carrier’s receipt or tracking information.

Proposed paragraph (c) is a new provision that addresses electronic filings made through the case management system. The time period calculated under paragraph (a) is deemed met if the pleading is filed by 11:59:59 pm Eastern Time on the due date. The Board chose the Eastern Time zone based on the fact that Washington, D.C. is located within it. This mirrors the approach of Federal courts. *See, e.g.*, Fed. R. App. P. 26(a)(4); Fed. R. Civ. P. 6(a)(4). Finally, proposed paragraph (d), which notes that

waivers of filing time limits may be requested by motion (except for notices of appeal), is identical to current paragraph (c).

§ 802.222 Filing notice of appeal, pleadings, and other correspondence

Proposed § 802.222 is a new rule containing all filing requirements. The rule incorporates many of the general provisions in current § 802.216 and adds additional provisions for electronic filings. The rule also includes the special provisions for determining when a notice of appeal is filed that currently appear in § 802.207. Placing all of this information in one section will clarify the parties' obligations when filing any pleading, exhibit, or other document with the Board.

Proposed paragraph (a) contains the general requirements that apply to all pleadings, including captions, certificates of service, signatures, and formatting. Because documents in a case may need to be served by more than one method, paragraph (a)(2) requires the parties to include detailed service information on the certificate of service. To simplify signatures on electronic filings, paragraph (a)(3) provides that pleadings filed via the case management system will be deemed signed by the filing person.

Proposed paragraph (b) is a new provision requiring filing parties to redact certain personally identifiable and sensitive information from all documents filed with the Board. The rule is intended to protect the interests of the parties, minors who may be involved in a case, and the public generally. The language of this rule is based on similar rules in the Federal courts. *See, e.g.,* Fed. R. Civ. P. 5.2(a); *see also* Fed. R. App. P. 25(a)(5).

Proposed paragraph (c) governs nonelectronic filings. It retains the current requirements for submitting paper documents (*e.g.,* parties must file an original and two copies of each pleading) and includes the Board's address, which is currently located in § 802.204.

Proposed paragraph (d) is an entirely new provision addressing electronic filings. Paragraph (d)(1) requires attorneys and lay representatives to register for the electronic

case management system and file all documents through it. This requirement applies only to those documents filed 45 days after the effective date or later. This time period between the effective date, when litigants can be certain that the direct final rule will not be withdrawn, and the applicability date, on which e-filing becomes mandatory, allows the Office of Administrative Law Judges to update its notices of appeal rights so that by the time e-filing with the Board is mandatory, parties will have received a notice of appeal rights with updated information. It also allows parties who were previously filing and serving documents by mail to adjust to electronic filing. As discussed above, mandating electronic filing and automatically serving documents electronically filed through the system will benefit the parties and improve case processing. The regulation requires that e-filed documents be in PDF format and expresses a preference for text-searchable PDF format. To simplify the filing process, the regulation also informs filers that no paper copies need be filed unless requested by the Board; electronic submission alone is sufficient. Paragraph (d)(2) permits attorneys and lay representatives to request, by motion, an exemption from mandatory e-filing or acceptance of automatic e-service for good cause shown.

Proposed paragraph (d)(3) allows self-represented (*i.e., pro se*) parties to file in either electronic or nonelectronic format. Providing this flexibility will allow these parties to easily participate in their cases. To remove any confusion about whether an electronically filed document is a “paper,” paragraph (d)(4) specifically provides that such documents are written papers for purposes of all of the Board’s procedural rules. Proposed paragraph (d)(5) addresses technical failures in two ways. First, any person encountering technical difficulties in filing or receiving electronic documents through the case management system may file a motion with the Board requesting relief appropriate to the particular incident. The Board encourages filers to retain documentation of the failure in these instances. Second, paragraph (d)(5) provides that the Board may issue a

special order providing relief (*e.g.*, allowing nonelectronic filings) when the case management system is not operational.

Proposed paragraph (e) contains special rules on filing notices of appeal. Paragraph (e)(1) incorporates the general rule contained in current § 802.207(a)(1) on the filing date of a notice of appeal. Paragraph (e)(2) generally incorporates the provision in current § 802.207(a)(2) that the Board may consider an appeal submitted to another governmental unit to have been filed with the Clerk of the Board as of the date it was received by the other governmental unit. Paragraph (e)(2) does not specifically require that the other governmental unit promptly forward the notice of appeal to the office of the Clerk of the Board because the Board does not have such authority. Paragraph (e)(3) incorporates the provisions in current § 802.207(b) that permit the Board to use the date of mailing as the filing date for the notice of appeal if appeal rights would otherwise be lost. Paragraph (e)(3) extends this same protection to notices of appeal sent by commercial carrier (*e.g.*, FedEx, UPS) and provides that the filing date in these instances is the date of delivery to the commercial carrier. Given the widespread use of commercial carriers, this additional provision will help ensure that parties' appeal rights are not lost. Finally, paragraph (e)(4) clarifies that electronic notices of appeal filed through the case management system are considered received, and thus filed, as of the date and time recorded by the system.

§ 802.223 Service requirements

Proposed § 802.223 is a new rule containing all service requirements. Paragraph (a) requires, akin to current § 802.216(c), parties to serve every party in the case and the Solicitor of Labor with a copy of all documents filed with the Board. Paragraph (b) identifies the types of nonelectronic service (personal delivery; mail or commercial delivery) and electronic service (electronic mail, if consented to in writing by the person served, and electronic service to a registered user through the case management system)

permitted. Significantly, paragraph (b)(2)(B) provides that a registered electronic case management system user “is deemed to have consented to accept service through the system.” Thus, automatic service through the electronic case management system is effective with respect to registered system users without any additional form of service. Paragraph (c) describes when service is effected for different delivery methods, which could become important to a cross-appeal filing under § 802.205(b).

Finally, paragraph (d) governs the date of receipt for electronic documents served by the case management system or electronic mail. The receipt date is particularly important to determining deadlines for response briefs, responses to motions, and requests for oral argument. *See* §§ 802.212, 802.219, 802.305. Under paragraph (d)(1), electronic case management system-served documents are considered received by the system’s registered users in the case on the date the document is sent by the system. Similarly, under paragraph (d)(2) documents served via electronic mail are considered received when sent. In both instances, the recipients of service will have rapid access to the filed pleading, exhibit, or other document.

IV. Administrative Requirements of the Proposed Rulemaking

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 proposed 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 direct final rule is not a significant regulatory action under section 3(f) of Executive Order 12866 because the proposed 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 proposed 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.

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).

Paperwork Reduction Act

The Department has determined that this proposed 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).

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

The Department has reviewed this proposed 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.

Executive Order 13175, Consultation and Coordination with Indian Tribal Governments

The Department has reviewed this proposed rule in accordance with Executive Order 13175 and has determined that it does not have “tribal implications.” The proposed 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 20 CFR Part 802

Administrative practice and procedure, Black lung benefits, Longshore and harbor workers, Workers’ compensation.

For the reasons set forth in the preamble, the Department of Labor proposes to amend 20 CFR part 802 as follows:

PART 802—RULES OF PRACTICE AND PROCEDURE

1. The authority citation for part 802 continues to read as follows:

Authority: 5 U.S.C. 301; 30 U.S.C. 901 *et seq.*; 33 U.S.C. 901 *et seq.*; Reorganization Plan No. 6 of 1950, 15 FR 3174; Secretary of Labor's Order 03-2006, 71 FR 4219, January 25, 2006.

§ 802.204 [Removed and Reserved]

2. Remove and reserve § 802.204.

§ 802.207 [Removed and Reserved]

3. Remove and reserve § 802.207.

§ 802.216 [Removed and Reserved]

4. Remove and reserve § 802.216.

5. In § 802.219, revise paragraph (d) to read as follows:

§ 802.219 Motions to the Board; orders

* * * * *

(d) The rules governing the filing and service of documents in §§ 802.222 and 802.223 apply to all motions.

* * * * *

6. Revise § 802.221 to read as follows:

§ 802.221 Computation of time.

(a) In computing any period of time prescribed or allowed by these rules, by direction of the Board, or by any applicable statute which does not provide otherwise, the day from which the designated period of time begins to run must not be included. The last day of the period so computed must be included, unless it is a Saturday, Sunday, or legal holiday, in which event the period runs until the end of the next day which is not a Saturday, Sunday, or legal holiday.

(b) For nonelectronic documents, the time period computed under paragraph (a) of this section will be deemed complied with if—

(1) When sent by mail, the envelope containing the document is postmarked by the U.S. Postal Service within the time period allowed. If there is no such postmark, or it is not legible, other evidence such as, but not limited to, certified mail receipts, certificates of service, and affidavits, may be used to establish the mailing date.

(2) When sent by commercial carrier, the receipt or tracking information demonstrates that the paper was delivered to the carrier within the time period allowed.

(c) For electronic filings made through the Board's case management system, paragraph (a) of this section will be deemed to be met if the document is electronically filed within the time period allowed. A document is deemed filed as of the date and time the Board's electronic case management system records its receipt, even if transmitted outside of the Board's business hours set forth in § 801.304 of this chapter. To be considered timely, an e-filed pleading must be filed by 11:59:59 pm Eastern Time on the

due date.

(d) A waiver of the time limitations for filing a paper, other than a notice of appeal, may be requested by proper motion filed in accordance with §§ 802.217 and 802.219.

7. Add § 802.222 to subpart B to read as follows:

§ 802.222 Filing notice of appeal, pleadings, and other correspondence.

This section prescribes rules and procedures by which parties and representatives to proceedings before the Board file pleadings (including notices of appeal, petitions for review and briefs, response briefs, additional briefs, and motions), exhibits, and other documents including routine correspondence.

(a) *Requirements for all pleadings.* All pleadings filed with the Board must—

(1) Include a caption and title.

(2) Include a certificate of service containing—

(i) The date and manner of service;

(ii) The names of persons served; and

(iii) Their mail or electronic mail addresses or the addresses of the places of delivery, as appropriate for the manner of service.

(3) Include a signature of the party (or his or her attorney or lay representative) and date of signature. Pleadings filed by an attorney, lay representative or self-represented party via the Board's case management system will be deemed to be signed by that person.

(4) Conform to standard letter dimensions (8.5 × 11 inches).

(b) *Redacted filings and exhibits.* Any person who files a pleading, exhibit, or other document that contains an individual's social security number, taxpayer-identification number, or birth date; the name of an individual known to be a minor; or a financial-account number, must redact all such information, except the last four digits of

the social security number and taxpayer-identification number; the year of the individual's birth; the minor's initials; and the last four digits of the financial-account number.

(c) *Nonelectronic filings.* All nonelectronic pleadings filed with the Board must be secured at the top. For each pleading filed with the Board, the original and two legible copies must be submitted. Nonelectronic filings must be sent to the U.S. Department of Labor, Benefits Review Board, ATTN: Office of the Clerk of the Appellate Boards (OCAB), 200 Constitution Ave. NW, Washington, DC 20210-0001, or otherwise presented to the Clerk.

(d) *Electronic filings.* (1) Except as provided in paragraph (d)(2) of this section, beginning on [DATE 45 DAYS AFTER EFFECTIVE DATE OF FINAL RULE], attorneys and lay representatives must register for the Board's electronic case management system and file all pleadings, exhibits, and other documents with the Board through this system (e-file). All e-filed documents must be in Portable Document Format (PDF). The Board prefers that pleadings be filed in text-searchable PDF format. Paper copies are not required unless requested by the Board.

(2) Attorneys and lay representatives may request an exemption (pursuant to § 802.219) for good cause shown. Such a request must include a detailed explanation why e-filing or acceptance of e-service should not be required.

(3) Self-represented parties may file pleadings, exhibits, and other documents in electronic or nonelectronic form in accordance with paragraph (c) or (d) of this section.

(4) A document filed electronically is a written paper for purposes of this Part.

(5) A person who is adversely affected by a technical failure in connection with filing or receipt of an electronic document may seek appropriate relief from the Board under § 802.219. If a technical malfunction or other issue prevents access to the Board's

case management system for a protracted period, the Board by special order may provide appropriate relief pending restoration of electronic access.

(e) *Special rules for notices of appeal.* (1) Except as otherwise provided in this section, a notice of appeal is considered to have been filed only as of the date it is received by the office of the Clerk of the Board.

(2) A notice of appeal submitted to any other agency or subdivision of the Department of Labor or of the U.S. Government or any state government, and subsequently received by the office of the Clerk of the Board, will be considered filed with the Clerk of the Board as of the date it was received by the other governmental unit if the Board finds in its discretion that it is in the interest of justice to do so.

(3) If the notice of appeal is sent by mail or commercial carrier and the fixing of the date of delivery as the date of filing would result in a loss or impairment of appeal rights, it will be considered to have been filed as of the date of mailing or the date of delivery to the commercial carrier.

(i) For notices sent by mail, the date appearing on the U.S. Postal Service postmark (when available and legible) will be prima facie evidence of the date of mailing. If there is no such postmark or it is not legible, other evidence such as, but not limited to, certified mail receipts, certificates of service, and affidavits, may be used to establish the mailing date.

(ii) For notices sent by commercial carrier, the date of delivery to the carrier may be demonstrated by the carrier's receipt or tracking information.

(4) If the notice of appeal is electronically filed through the Board's case management system, it is considered received by the office of the Clerk of the Board as of the date and time recorded by the system under § 802.221(c).

6. Add § 802.223 to subpart B to read as follows:

§ 802.223 Service requirements

This section prescribes rules and procedures for serving pleadings (including notices of appeal, petitions for review, and response briefs, additional briefs, and motions), exhibits, and other documents including routine correspondence on other parties and representatives.

(a) A copy of any document filed with the Board must be served on each party and the Solicitor of Labor by the party filing the document.

(b) *Manner of service.* (1) Nonelectronic service may be completed by:

(i) Personal delivery;

(ii) Mail; or

(iii) Commercial delivery.

(2) Electronic service may be completed by:

(i) Electronic mail, if consented to in writing by the person served; or

(ii) Sending it to a user registered with the Board's electronic case management system by filing via this system. A person who registers to use the Board's case management system is deemed to have consented to accept service through the system.

(c) *When service is effected.* (1) Service by personal delivery is effected on the date the document is delivered to the recipient.

(2) Service by mail or commercial carrier is effected on mailing or delivery to the carrier.

(3) Service by electronic means is effected on sending.

(d) *Date of receipt for electronic documents.* Unless the party making service is notified that the document was not received by the party served—

(1) A document filed via the Board's case management system is considered received by registered users on the date it is sent by the system; and

(2) A document served via electronic mail is considered received by the recipient on the date it is sent.

Signed on this 14th day of December, 2020, in Washington, D.C.

EUGENE SCALIA
Secretary of Labor

[FR Doc. 2020-28058 Filed: 1/8/2021 8:45 am; Publication Date: 1/11/2021]