



## **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:** Direct final rule; withdrawal.

**SUMMARY:** Due to the receipt of significant adverse comment on the conforming Office of Administrative Law Judges (OALJ) rulemaking in which commenters noted that they also practice before the Benefits Review Board (BRB), the Department of Labor is withdrawing the January 11, 2021 direct final rule (DFR) that would have provided for electronic filing (e-filing) and electronic service (e-service) of papers and required e-filing for persons represented by attorneys or non-attorney representatives unless good cause is shown justifying a different form of filing.

**DATES:** Effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], the direct final rule published at 86 FR 1795 on January 11, 2021, is withdrawn.

**FOR FURTHER INFORMATION CONTACT:** Mr. Thomas Shepherd, Clerk of the Appellate Boards, at (202) 693-6319 or [Contact-Boards@dol.gov](mailto:Contact-Boards@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:** In the DFR, the Department stated that if a significant adverse comment was submitted by February 10, 2021, the Department would publish a timely withdrawal in the Federal Register informing the public that the DFR will not take effect. The Department also issued an identical notice of proposed rulemaking (NPRM) on the same day (86 FR 1857). The Department received significant adverse comment prior to the close of the

comment period on the conforming Office of Administrative Law Judges (OALJ) rulemaking (86 FR 1862) in which commenters noted that they also practice before the Benefits Review Board (BRB). Therefore, out of an abundance of caution, the Department is withdrawing the DFR. The Department also received a request to extend the comment period of the OALJ rule and will reopen the comment period for the BRB NPRM for 15 days in a future document. In issuing a final action, the Department will consider comments received on the DFR and NPRM during the initial comment period as well as comments received during the subsequent comment period. The Department will also provide at least 30 days' notice between promulgating a final rule that requires e-filing and the date on which e-filing will become mandatory under such a rule. Furthermore, the Department notes that several comments raised concerns with the Department's electronic filing system and not the requirements of the proposed or direct final rules. To better understand and address these concerns, the Department plans to hold listening sessions during the coming weeks for users to provide feedback on the system. Information about those sessions will be announced at <https://efile.dol.gov>.

### **List of Subjects in 20 CFR Part 802**

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

### **PART 802—RULES OF PRACTICE AND PROCEDURE**

Accordingly, the amendments to 20 CFR part 802, published in the *Federal Register* on January 11, 2021 (86 FR 1795), are withdrawn as of [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

Milton A. Stewart,

Acting Secretary of Labor.

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