

TABLE 6 TO PARAGRAPH (b)(5)—Continued

Title	Number
Legal Adviser Attorney Employment Application Records	STATE-20.
Office of Inspector General Investigation Management System	STATE-53.
Overseas Citizens Services Records	STATE-25.
Personality Cross-Reference Index to the Secretariat Automated Data Index	STATE-28.
Records Maintained by the Office of Civil Rights	STATE-09.
Records of the Office of White House Liaison	STATE-34.
Risk Analysis and Management Records	STATE-78.
Rover Records	STATE-41.
Security Records	STATE-36.
Senior Personnel Appointments Records	STATE-47.

(6) *Exempt under 5 U.S.C. 552a(k)(6).* Records contained within the following systems of records are exempt under this section to the extent that they consist of testing or examination material used solely to determine individual qualifications for appointment or promotion in the Federal service the disclosure of which would compromise the objectivity or fairness of the testing or examination process.

TABLE 7 TO PARAGRAPH (b)(6)

Title	Number
Foreign Service Institute Records	STATE-14.
Human Resources Records	STATE-31.
Information Access Programs Records	STATE-35.
Records Maintained by the Office of Civil Rights	STATE-09.
Security Records	STATE-36.

(7) *Exempt under 5 U.S.C. 552a(k)(7).* Records contained within the following systems of records are exempt under this section to the extent that they consist of evaluation material used to determine potential for promotion in the armed services, but only to the extent that such disclosure would reveal the identity of a confidential informant.

TABLE 8 TO PARAGRAPH (b)(7)

Title	Number
Human Resources Records	STATE-31.
Information Access Programs Records	STATE-35.
Overseas Citizens Services Records	STATE-25.
Personality Cross-Reference Index to the Secretariat Automated Data Index	STATE-28.
Personality Index to the Central Foreign Policy Records	STATE-29.
Security Records	STATE-36.

Eric F. Stein,
Deputy Assistant Secretary, Global Information Services (A/GIS), Department of State.
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NATIONAL LABOR RELATIONS BOARD
29 CFR Part 102
RIN 3142-AA12
Representation Case Procedures
AGENCY: National Labor Relations Board.
ACTION: Final rule; stay of effective date.

SUMMARY: On March 10, 2023, the National Labor Relations Board (Board) stayed two provisions of its 2019 final

rule (“2019 Final Rule”) amending its representation case procedures. The two provisions, which have never been in effect, were stayed until September 10, 2023 to account for new court decisions and because the Board was considering whether to revise or rescind the 2019 Final Rule, including potential revisions to the two provisions. In a rule that published in this edition of the **Federal Register**, the Board rescinds those provisions, among other changes. In light the new rule, and to ensure the two provisions do not go into effect for only a short period of time, the September 10, 2023 stay of the two provisions is extended to December 26, 2023, the date on which the rule repealing the two provisions is effective.

DATES: As of August 25, 2023, the amendments to 29 CFR 102.64(a) and 29 CFR 102.67(b) in the final rule that

published at 84 FR 69524, on December 18, 2019, and delayed at 85 FR 17500 (March 30, 2020) and 88 FR 14913 (March 10, 2023), are stayed from September 10, 2023, until December 26, 2023.

FOR FURTHER INFORMATION CONTACT: Roxanne L. Rothschild, Executive Secretary, National Labor Relations Board, 1015 Half St. SE, Washington, DC 20570-0001, (202) 273-2940 (this is not a toll-free number), 1-866-315-6572 (TTY/TDD).

SUPPLEMENTARY INFORMATION: On December 18, 2019, the Board published the 2019 Final Rule amending various aspects of its representation case procedures. *Representation-Case Procedures*, 84 FR 69524 (Dec. 18, 2019). The Board published the 2019 Final Rule as “a procedural rule which is exempt from notice and public

comment . . . as a rule of ‘agency organization, procedure, or practice.’” Id. at 69587. On March 30, 2020, the Board delayed the effective date of the 2019 Final Rule to May 31, 2020. *Representation Case Procedures*, 85 FR 17500 (Mar. 30, 2020).

On May 30, 2020, the United States District Court for the District of Columbia issued an order in *AFL-CIO v. NLRB*, Civ. No. 20-cv-0675, vacating five provisions of the 2019 Final Rule and enjoining their implementation. 466 F. Supp. 3d 68 (D.D.C. 2020). The District Court concluded that each of the five provisions was substantive, not procedural, in nature, and that the Board therefore violated the Administrative Procedure Act by failing to use notice and comment rulemaking. Id. at 92.

On January 17, 2023, the United States Court of Appeals for the District of Columbia Circuit issued a decision and order reversing the District Court as to two of the five provisions, agreeing with the Board that those provisions were procedural in nature and not subject to notice and comment rulemaking. *AFL-CIO v. NLRB*, 57 F. 4th 1023, 1043–1046 (D.C. Cir. 2023). The two provisions are: (1) an amendment to 29 CFR 102.64(a) allowing the parties to litigate disputes over unit scope and voter eligibility prior to the election;¹ and (2) an amendment to 29 CFR 102.67(b) instructing Regional Directors not to schedule elections before the 20th business day after the date of the direction of election.² The D.C. Circuit remanded the case to the District Court to consider two counts in the complaint that challenge those two provisions and that remain viable in light of its decision.

Due to the District Court’s injunction, these two provisions had never taken effect. Accordingly, before the D.C. Circuit’s mandate issued on March 13, 2023 and the District Court’s injunction was lifted, the Board changed the effective date of the two provisions from the original May 31, 2020 effective date to September 10, 2023, approximately six months from the D.C. Circuit’s mandate. *Representation Case Procedures*, 88 FR 14913 (Mar. 10, 2023). The Board determined that a delayed effective date was necessary and appropriate, in part, because it was considering whether to revise or repeal the 2019 Final Rule, including potential revisions to the two provisions. Id.

In a final rule published in this issue of the **Federal Register**, the Board has decided to repeal those two provisions,

as well as other provisions in the 2019 Final Rule. In light of today’s rule, the Board has decided to stay the effective date of the two provisions from September 10, 2023 to December 26, 2023, the effective date of the rule repealing the two provisions. A further stay of these provisions will avoid the possible waste of administrative resources and public uncertainty if the provisions were to go into effect only for a short period of time before their repeal. Because the two provisions have never been in effect, the amendment to their effective date merely extends the status quo.

This change in effective date is published as a final rule. The Board considers this rule to be a procedural rule that is exempt from notice and public comment, pursuant to 5 U.S.C. 553(b)(A), because it concerns a rule of “agency organization, procedure, or practice.”

Dissenting Opinion of Member Kaplan

Today, my colleagues once again stay the implementation of the unit-scope-and-eligibility and 20-days rules, both of which were part of the 2019 Final Rule. They do so because, in a companion final rule issued today, they have decided to repeal these two provisions, along with other provisions of the 2019 Final Rule. I disagree with my colleagues’ decision to rescind these two provisions and with their concomitant decision to stay implementation for the reasons stated in my dissent to their earlier stay, *Representation Case Procedures*, 88 FR 14913, 14914–14916 (March 10, 2023), and my dissent to the companion final rule issued today.

Dated: August 18, 2023.

Roxanne L. Rothschild,
Executive Secretary.

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NATIONAL LABOR RELATIONS BOARD

29 CFR Part 102

RIN 3142–AA18

Representation-Case Procedures

AGENCY: National Labor Relations Board.

ACTION: Direct final rule.

SUMMARY: The National Labor Relations Board has decided to issue this final rule for the purpose of carrying out the National Labor Relations Act, which protects the exercise by workers of full freedom of association, self-

organization, and designation of representatives of their own choosing for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection. While retaining the essentials of existing representation case procedures, this rule substantially rescinds the amendments made by a rule the Board promulgated in 2019 (which has been the subject of ongoing litigation) and thereby substantially returns representation case procedures to those that existed following the Board’s promulgation of a rule concerning representation case procedures in 2014 (which was uniformly upheld by the federal courts). By doing so, this rule effectuates what the Board deems to be appropriate policy choices that enhance the fair, efficient, and expeditious resolution of representation cases.

DATES: This rule is effective December 26, 2023.

FOR FURTHER INFORMATION CONTACT:

Roxanne L. Rothschild, Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570–0001, (202) 273–2917 (this is not a toll-free number), 1–866–315–6572 (TTY/TDD).

SUPPLEMENTARY INFORMATION:

I. Background on the Rulemaking

The National Labor Relations Board (the Board) administers the National Labor Relations Act (the Act) which, among other things, governs the formation of collective-bargaining relationships between employers and groups of employees in the private sector. Section 7 of the Act, 29 U.S.C. 157, gives employees the right to bargain collectively through representatives of their own choosing and to refrain from such activity.

When employees and employers are unable to agree whether employees should be represented for purposes of collective bargaining, Section 9 of the Act, 29 U.S.C. 159, gives the Board the authority to resolve the question of representation. The Supreme Court has recognized that “Congress has entrusted the Board with a wide degree of discretion in establishing the procedure and safeguards necessary to insure the fair and free choice of bargaining representatives by employees.” *NLRB v. A.J. Tower Co.*, 329 U.S. 324, 330 (1946). “The control of the election proceeding, and the determination of the steps necessary to conduct that election fairly were matters which Congress entrusted to the Board alone.” *NLRB v. Waterman Steamship Corp.*, 309 U.S. 206, 226 (1940); see *Southern Steamship Co. v. NLRB*, 316 U.S. 31, 37 (1942).

¹ 84 FR at 69593.

² 84 FR at 69595.