

National Labor Relations Board Plan for Retrospective Analysis of Existing Rules

I. Executive Summary of Plan

Executive Orders 13579 and 13563 recognize the importance of maintaining a consistent culture of retrospective review and analysis throughout the federal government. This Plan of the National Labor Relations Board (NLRB) sets out a method and schedule for reviewing regulations and determining whether they are obsolete, unnecessary, unjustified, excessively burdensome, or counterproductive. The review process will facilitate the repeal, modification, strengthening, complementing, or modernizing of rules where necessary or appropriate.

II. Scope of Plan

The NLRB's Rules and Regulations, which set out the practice and procedures of case processing under the National Labor Relations Act (NLRA), have been subject to periodic review in the past and will continue to be periodically reviewed under this Plan.

Notably, the NLRB administers, interprets and enforces the NLRA more often through adjudication than through rulemaking. Over its 76-year history, the NLRB has engaged relatively infrequently in substantive rulemaking. Typically, the NLRB has used the rulemaking process to issue, amend or modify its largely procedural Rules and Regulations as they relate to the processing of cases under the NLRA.

III. Rules for Retrospective Review

See Part V.

IV. Public Access and Participation

The NLRB has posted this Plan on its public website at <http://www.nlr.gov/publications/reports> and provided an electronic mailbox, rules@nlrb.gov, to receive comments about the Plan.

V. Current Agency Efforts Already Underway Independent of Executive Orders 13579 and 13563

In addition to its standing Rules Revision Committee, further discussed in Part VI, the NLRB established various other committees to review specific NLRB Rules and Regulations, all of which are available to the public at <http://www.nlr.gov/publications/rules-regulations>.

Review of Filing and Service Rules

Beginning in February 2011, a committee comprised of field and headquarters personnel has reviewed NLRB rules related to filing and service. The committee's recommendations involve eliminating requirements to file multiple copies and outdated references, as well as pursuing revisions in light of technological advances. For example, many provisions require filing eight copies of documents, yet as documents are now submitted and saved electronically, the need for filing multiple copies no longer exists. Further, the committee believes that revisions of the rules are necessary to address e-service and permit e-filing of documents that currently may not be electronically filed.

Review of Appeals Notification Rule

This same committee also seeks to modify a rule that requires a charging party to notify other parties of its appeal of an unfair labor practice charge dismissal. Charging parties often misunderstood the rule and sent their actual appeal document to the other parties, rather than merely sending an appeal form notifying the other parties of the charging party's decision to appeal the dismissal. Since the rules provide that the failure to notify the other parties does not invalidate the appeal and the Office of Appeals routinely immediately notifies all parties when a charging party's appeal is received, the committee determined that the rule should be modified to remove the requirement that the charging party notify the other parties of the decision to appeal.

Revision of FOIA Rules

Another committee recently reviewed the NLRB's FOIA Rules and Regulations and recommended amending the NLRB's procedures for filing initial Freedom of Information Act (FOIA) requests. The current rules advise that requests for records in the Office of the General Counsel and located in Washington, DC should be made to the Freedom of Information Officer, Office of the General Counsel, Washington, DC, and that requests for records in the offices of the Board or the Inspector General in Washington, DC should be made to the Executive Secretary of the Board, Washington, DC. The revised rule would require that all FOIA requests for records located in Washington, DC be made to the NLRB FOIA Officer in Washington, DC since frequently a requester does not know the location of the records and, accordingly, may misdirect the request creating delays in responding.

Representation Case Procedures

On June 22, 2011, as part of the NLRB's ongoing efforts to more effectively administer the NLRA, the NLRB issued a Notice of Proposed Rulemaking (NPRM) proposing changes to its rules governing the filing and processing of petitions relating to the representation of employees for purposes of collective bargaining with their employer. These proposed amendments would, among other things, simplify representation-case procedures, render them more transparent and uniform across regions, eliminate unnecessary litigation, and consolidate requests for NLRB review of regional directors' pre- and post-election determinations into a single, post-election request. The proposed amendments would allow the NLRB to more promptly determine if there is a question concerning representation and, if so, to resolve it by conducting a secret ballot election.

VI. Elements of Plan

The NLRB currently maintains a standing body, the Rules Revision Committee, that sometimes reviews existing procedural rules and regulations and proposes revisions or modifications. If approved by the Presidentially-appointed Board, the proposed modified or new rule is published in the Federal Register through a Notice of Proposed Rulemaking for public comment or through a Notice of Final Rule, as appropriate, and depending on the nature of the modifications or new rule. If not approved, the proposed modifications or new rule may be returned to the Committee for further consideration.

In the past, the Committee has met on an ad hoc basis. In the future, the Committee will meet at least once per year to review existing procedural rules and, if necessary, propose modifications or new rules. Any aspect of the Board's Rules and Regulations may also be referred to the Rules

Revision Committee or another working group for review and recommendations. This process furthers the objectives of the Executive Orders since it will allow the NLRB to determine on a more regularly scheduled basis whether any existing regulations should be modified, streamlined, expanded, or repealed and/or whether any new rule should be adopted. In addition, the Board will continue to receive and consider regulatory proposals from agency committees and employees as well as outside entities and the public. The Board is always willing to consider proposals that will reduce paperwork, lower costs, and streamline its procedures.

In addition to publishing revised regulations in the Federal Register, in cases where public comment is solicited, the NLRB will give the public timely online access to its rulemaking docket at www.regulations.gov. The Board has done this for its recent notice-and-comment rulemaking efforts, and has received thousands of comments from the public.

VII. Components of Retrospective Analysis

The NLRB's limited number of rules will require varying levels of analysis depending on their subject and scope. The Rules Revision Committee will take into account all relevant factors, including public comments, in recommending whether rules should be modified or repealed or whether new rules should be adopted.

VIII. Publishing the Agency's Plan Online See Part IV.