Tylosin grams/ton	Combination in grams/ton	Indications for use	Limitations	Sponsors
(viii) 8 to 10	Monensin, 10 to 40 plus lubabegron fumarate, 1.25 to 4.54.	Beef steers and heifers fed in confinement for slaughter: For reduction of ammonia gas emissions per pound of live weight and hot carcass weight, for reduction of incidence of liver abscesses associated with *Fusobacterium necrophorum* and *Arcanobacterium pyogenes,* and for prevention and control of coccidiosis due to *Eimeria bovis* and *E. zuernii* during the last 14 to 91 days on feed.	Feed continuously as sole ration to provide 13 to 90 mg lubabegron/head/day, 0.14 to 0.42 mg monensin/lb body weight per day, depending upon severity of coccidiosis challenge, up to 480 mg/head/day, and 60 to 90 mg tylosin/head/day during the last 14 to 91 days on feed. A decrease in dry matter intake may be noticed in some animals receiving lubabegron. Lubabegron has not been approved for use in breeding animals because safety and effectiveness have not been evaluated in these animals. Do not allow horses or other equines access to feed containing lubabegron and monensin. Ingestion of monensin by horses has been fatal. Monensin medicated cattle and goat feeds are safe for use in cattle and goats only. Consumption by unapproved species may result in toxic reactions. Feeding undiluted or mixing errors resulting in high concentrations of monensin has been fatal to cattle and could be fatal to goats. Must be thoroughly mixed in feeds before use. Do not exceed the levels of monensin recommended in the feeding directions, as reduced average daily gains may result. If feed refusals containing monensin are fed to other groups of cattle, the concentration of monensin in the refusals and amount of refusals fed should be taken into consideration to prevent monensin overdosing. A withdrawal period has not been established for this product for preruminating calves. Do not use in calves to be processed for veal.	016592 058198
*	*	*	* * * *	*

■ 44. In § 558.635, redesignate paragraphs (e)(1)(vii) through (ix) as paragraphs (e)(1)(ix) through (xi), respectively, and add new paragraphs (e)(1)(vii) and (viii) to read as follows:

§ 558.635 Virginiamycin.

* * * * *

(e) * * *

(1) * * *

Virginiamycin grams/ton	Combination in grams/ton	Indications for use	Limitations	Sponsors
*	*	*	* * *	*
(vii) 20	Narasin, 54 to 90	Broiler chickens: For prevention of necrotic enteritis caused by *Clostridium perfringens* susceptible to virginiamycin and for the prevention of coccidiosis caused by *Eimeria necatrix, E. tenella, E. acervulina, E. brunetti, E. mivati,* and *E. maxima.*	Feed as the sole ration for broiler chickens. Do not feed to chickens producing eggs for human consumption. Do not allow adult turkeys, horses, or other equines access to narasin formulations. Ingestion of narasin by these species has been fatal. Naracin as provided by No. 066104 in § 510.600(c) of this chapter.	066104
(viii) 20	Narasin, 27 to 54 plus nicarbazin, 27 to 54.	Broiler chickens: For prevention of necrotic enteritis caused by *Clostridium perfringens* susceptible to virginiamycin and for the prevention of coccidiosis caused by *Eimeria necatrix, E. tenella, E. acervulina, E. brunetti, E. mivati,* and *E. maxima.*	Feed as the sole ration for broiler chickens. Do not feed to chickens producing eggs for human consumption. Nicarbazin medicated broilers may show reduced heat tolerance if exposed to high temperature and high humidity. Provide adequate drinking water and ventilation during these periods. Do not allow adult turkeys, horses, or other equines access to narasin formulations. Ingestion of narasin by these species has been fatal. Naracin as provided by No. 066104 in § 510.600(c) of this chapter.	066104
*	*	*	* * *	*

* * * * *

Dated: February 15, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023–03649 Filed 3–9–23; 8:45 am]

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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.

SUMMARY: This final rule rescinds four provisions from the Board's Rules and Regulations contained in the final rule published on December 18, 2019, entitled ''Representation-Case Procedures.'' This action is in compliance with a decision of the United States Court of Appeals for the District of Columbia Circuit vacating the four provisions.

DATES: This rule is effective March 10, 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 National Labor Relations Board published a final rule amending various aspects of its representation case procedures. (84 FR 69524, Dec. 18, 2019.) The Board published the Final Rule as a procedural rule ''exempt from notice and public comment, pursuant to 5 U.S.C. 553(b)(3)(A), as a rule of 'agency organization, procedure, or practice.' '' 84 FR at 69587. On March 30, 2020, the Board delayed the effective date of the final rule to May 31, 2020. (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 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 in nature, not procedural, and therefore required notice and comment rulemaking prior to promulgation under the Administrative Procedure Act. Id. at 92.

On January 17, 2023, the United States Court of Appeals for the District of Columbia Circuit issued a decision and order affirming the District Court as to three of the five provisions. *AFL–CIO* v. *NLRB,* 57 F.4th 1023, 2023 U.S. App. LEXIS 990 (D.C. Cir. Jan. 17, 2023). The three provisions that remain vacated are: (1) amendments to 29 CFR 102.62(d) and 102.67(l) giving employers up to 5 business days to furnish the voter list following the direction of election; [1] (2) an amendment to 29 CFR 102.69(a)(5) limiting a party's selection of election observers to individuals who are current members of the voting unit whenever possible; [2] and (3) an amendment to 29 CFR 102.69(b), (c), and (h) precluding Regional Directors from issuing certifications following elections if a request for review is pending or before the time has passed during which a request for review could be filed.[3]

The Court of Appeals also found that a fourth amendment, located at 29 CFR 102.67(c), (h), and (i)(3),[4] imposing an automatic impoundment of ballots under certain circumstances when a petition for review was pending with the Board, was contrary to Section 3(b) of the National Labor Relations Act. 57 F.4th 1023, 2023 U.S. App. LEXIS 990, at *59–*64. It accordingly vacated that portion of the Final Rule. *Id.* at *65.[5]

The Board is promulgating this rule to remove references in the regulations to the four provisions set aside and vacated by the Court of Appeals' decision and to revert the language of the regulations amended by the 2019 Final Rule to that which existed prior to the Final Rule as necessary to comply with the Court's decision. This rule is not subject to the requirement to provide notice and an opportunity for public comments because it falls under the good cause exception at 5 U.S.C. 553(b)(B). The good cause exception is satisfied when notice and comment is ''impracticable, unnecessary, or contrary to the public interest.'' Id. The four provisions of the 2019 Final Rule identified above have already been vacated by a court of law and no party has sought further review. This rule is simply an administrative step that reverts the language of the relevant regulations to their pre-2019 versions, to reflect the court order vacating those four provisions of the 2019 Final Rule.[6]

Additionally, because this rule implements a court order, the Board has good cause to waive the 30-day effective date under 5 U.S.C. 553(d). It would be contrary to the public interest to fail to keep the public informed of the accurate state of the Board's rules and regulations, especially now that these provisions have been ruled upon by the D.C. Circuit. See *Action on Smoking & Health* v. *Civil Aeronautics Bd.,* 713 F.2d 795, 797 (D.C. Cir. 1983) (judgment of court vacating rule ''had the effect of reinstating the rules previously in force''); *Mobil Oil Corp.* v. *EPA,* 35 F.3d 579, 584 (D.C. Cir. 1994) (same); see also Administrative Conference of the United States, *Improving Notice of Regulatory Changes, https://www.acus.gov/recommendation/improving-notice-regulatory-changes* (June 16, 2022); 5 U.S.C. 552(a)(1)(D), (E) (reading-room requirements under FOIA). In addition, it is unnecessary to take public comment on provisions that the D.C. Circuit has vacated.

Dissenting Opinion of Member Kaplan

In 2019, the Board issued a final rule [7] amending certain provisions of its representation-case rules, which had been extensively modified in a final rule enacted in 2014.[8] It did so without first issuing a notice of proposed rulemaking because it deemed the amendments rules of agency procedure exempt from notice-and-comment requirements under 5 U.S.C. 553(b)(3)(A). The AFL–CIO challenged the 2019 Rule in Federal District Court for the District of Columbia on several grounds, including that five provisions of the 2019 Rule were not procedural and therefore not exempt from notice-and-comment rulemaking. The district court agreed with the AFL–CIO and vacated all five.[9] Recently, a divided Court of Appeals for the District of Columbia Circuit (''D.C. Circuit'') reversed in part, holding that two of the five are procedural but three are not.[10] ''Those three provisions,'' said the court, ''must remain vacated unless and until the Board repromulgates them with notice and comment.'' [11] In dissent, Judge Rao said that the majority had applied an ''obsolete legal standard'' and that ''[u]nder the correct standard,'' all five ''are classic procedural rules.'' [12]

My colleagues have decided not to ask the Solicitor General to file a petition for certiorari with the Supreme Court. I dissented from their decision. The court's decision turned on its interpretation of what the controlling legal test should be for determining when rulemaking is procedural and therefore exempt from notice-and-comment requirements under the Administrative Procedure Act. Given that the D.C. Circuit is often the venue for cases involving federal rulemaking, all federal agencies that engage in rulemaking would be well served to have the Supreme Court decide whether the standard applied by the court in this matter was the appropriate test. Accordingly, unlike my colleagues, I consider this to be ''an important question of federal law that has not been, but should be, settled by'' the Supreme Court.[13]

That leaves the other possibility the court pointed out: repromulgating the three vacated provisions of the 2019 Rule in a notice of proposed rulemaking. But from my colleagues' rule rescinding those provisions,[14] you

[1] 84 FR at 69590, 69596–69597.

[2] 84 FR at 69597.

[3] 84 FR at 69597–69599.

[4] 84 FR at 69595–96.

[5] After careful consideration, the Board has decided not to seek rehearing or further review of the decision of the Court of Appeals. We note that the decision does not present a colorable conflict with the decision of another Circuit or with Supreme Court precedent. Nor do we believe that pursuing further litigation would represent the best use of the Board's resources or serve any overriding purpose of the National Labor Relations Act.

[6] Member Kaplan dissents from this final rule because he would issue a notice of proposed rulemaking for the three provisions that the Court of Appeals concluded were improperly promulgated without notice and comment, rather than rescind them. In our opinion, however, the Board's first priority should be to rescind the vacated rules so that the Board's rules and regulations accurately state agency practices in light of the Court's decision, regardless of whether the rules should be proposed again with notice and comment. Doing so promotes clarity for the benefit of parties before the Board who have to follow the rules as they existed prior to 2020, which the Court's decision implicitly reinstates and which we explicitly reinstate now.

In dissenting from our repeal of the fourth vacated provision, the impoundment rule, Member Kaplan does not suggest that the Court's opinion that the impoundment rule is inconsistent with Sec. 3(b) of the Act is appropriate for Supreme Court review, and he acknowledges that the Board could not reissue it under the Court's decision.

[7] ''Representation-Case Procedures,'' 84 FR 69524 (Dec. 18, 2019) (the ''2019 Rule'').

[8] ''Representation-Case Procedures,'' 79 FR 74307 (Dec. 15, 2014) (the ''2014 Rule'').

[9] *AFL–CIO* v. *NLRB,* 466 F. Supp. 3d 68 (D.D.C. 2020).

[10] *AFL–CIO* v. *NLRB,* 57 F.4th 1023, 2023 U.S. App. LEXIS 990, at *22–*56 (D.C. Cir. Jan. 17, 2023).

[11] Id. at *64–*65.

[12] Id. at *65–*66 (Rao, J., concurring in the judgment in part and dissenting in part).

[13] Supreme Court Rule 10(c).

[14] The D.C. Circuit majority also vacated a fourth provision of the 2019 Rule, which mandated

Continued

would not know that this is even an option. ''This rule,'' my colleagues say, ''is simply an administrative step that reverts the language of the relevant regulations to reflect the court order vacating'' them, adding that their rulemaking is ''necessary to comply with the Court's decision.'' It is clear, however, that rescinding the three provisions is *not* ''necessary to comply with the Court's decision.'' As the D.C. Circuit made clear, there is another option: repromulgating the three provisions in a notice of proposed rulemaking and inviting public comment. The Board should pursue that option. Accordingly, I dissent.

The three provisions at issue are these: (1) a rule providing that the employer must file and serve a list of eligible voters within 5 business days of the regional director's approval of an election agreement or issuance of a decision and direction of election (the ''voter-list rule''); (2) a rule providing that, in their choice of individuals to serve as election observers, the parties shall select, whenever possible, current members of the voting unit, and when this is not possible, a party should select a current nonsupervisory employee (the ''election-observers rule''); and (3) a rule providing that the regional director will only issue a certification of the results of an election—including, where appropriate, a certification of representative—after the deadline for filing a request for review of a decision and direction of election has passed without such a request being filed, and if a request for review is timely filed, the certification will issue only after the Board has ruled on that request (the ''certification-timing rule'').

The voter-list rule and the certification-timing rule amended corresponding provisions of the 2014 Rule, and the Board set forth persuasive reasons for doing so. The election-observers rule did not amend a provision of the 2014 Rule but rather was promulgated to bring transparency and uniformity to an area of Board law that was ''riddled with inconsistencies.'' 84 FR 69552. I believe, subject to comments, that each of these provisions in the 2019 Rule should be preserved. In my view, therefore, the Board should propose readopting them in a notice of proposed rulemaking and invite public comment.[15]

The voter-list rule: Prior to the 2014 Rule, an employer's duty to furnish a list of eligible voters was governed by *Excelsior Underwear, Inc.,* 156 NLRB 1236 (1966). Under that precedent, an employer was required to file with the regional director a list of the names and addresses of employees eligible to vote in an upcoming representation election within 7 calendar days after the regional director approved an election agreement or issued a decision and direction of election. Id. at 1239–1240. The 2014 Rule shrank 7 calendar days to 2 business days and added a number of other requirements, including by requiring the employer to furnish employees' personal email addresses and home and cellphone numbers. The 2019 Rule left most of those additional requirements intact, but it increased the amount of time the employer has to furnish the voter list from 2 business days to 5 business days.

The Board's explanation of its reasons for making this change was thorough and persuasive.

First, the main reason the 2014 Rule cut the time to 2 business days—namely, to speed the election—was no longer a relevant consideration. Under another provision of the 2019 Rule—one the D.C. Circuit agreed was procedural and therefore did not require notice and comment—regional directors will not normally schedule an election before the 20th business day following issuance of the decision and direction of election. Accordingly, directed elections will not take place any sooner with the 2-day deadline imposed by the 2014 Rule than with a 5-day deadline. And while this rationale is only pertinent to directed elections, applying the same 5-day deadline for all elections, including those conducted pursuant to stipulated election agreements, promotes uniformity.

Second, the Board's 2019 Rule stated several reasons why allowing employers 5 business days to furnish the voter list is superior as a matter of policy to allotting just 2 business days. To begin with, although technological changes since *Excelsior Underwear* make it easier for some employers to compile the necessary information rapidly, this is not the case for all employers. The information may not be computerized, or it may be kept in multiple locations. Assembling the voter list can be challenging for large or decentralized employers, and it may pose special problems for employers in the construction industry, where the Board's voter-eligibility formula is based on the fact that employment in that industry is often sporadic.[16] Moreover, one of the reasons stated in the 2014 Rule for the 2-day deadline raised questions of transparency and fairness. There, the Board justified the 2-day limit partly on the basis that employers may begin assembling the voter list before the regional director approves the election agreement or issues the decision and direction of election. The Board criticized this rationale in the 2019 Rule, and justly so. No duty to assemble the voter list attaches *until* the election agreement is approved or the decision and direction issues. ''It is anything but transparent,'' the Board observed, ''to state that a procedural requirement attaches at a certain point yet defend a truncated timeline for meeting that requirement by opining that employers have ample time to comply with the requirement before it has even attached to begin with.'' 84 FR 69532. I agree.

Finally, giving employers three more days to compile the voter list reduces the potential for inaccurate lists. And because an unacceptably incomplete list is grounds to set aside the results of an election, reducing the potential for inaccuracy also reduces litigation and resulting costs for the parties and the Agency.

For these reasons and those set forth more fully in the 2019 Rule, the Board should repromulgate the voter-list rule in a notice of proposed rulemaking.

The election-observers rule: The Board should do likewise with the election-observers rule.

Beginning in 1946, the Board's Rules and Regulations broadly provided that ''[a]ny party may be represented by observers of [its] own selection, subject to such limitations as the Regional Director may prescribe.'' 11 FR 177A–602–612 (Sept. 11, 1946). Thereafter, however, the Board imposed certain limitations decisionally. Employers may

impoundment of ballots if a request for review of a regional director's decision and direction of election is filed within 10 days of issuance of the decision and direction. The court held this provision unlawful as contrary to Sec. 3(b) of the Act. Interpreting Sec. 3(b) differently than the majority, Judge Rao would have upheld this provision as well. Although I agree with Judge Rao's interpretation, I recognize that repromulgating the ballot-impoundment provision for notice and comment is not an option.

[15] The following remarks summarize more detailed discussions of these three provisions in the 2019 Rule itself. For the voter-list rule, see 84 FR 69531–69532. For the election-observers rule, see 84 FR 69551–69553. For the certification-timing rule, see 84 FR 69554–69556.

[16] Under the *Steiny-Daniel* eligibility formula applicable to employers in the construction industry, employees eligible to vote in a representation election include (a) those employed by the employer during the payroll period immediately preceding the date of the decision and direction of election, and (b) those employed by the employer for a total of 30 working days in the preceding 12 months or 45 working days in the preceding 24 months. See *Steiny & Co.,* 308 NLRB 1323 (1992), and *Daniel Construction Co.,* 133 NLRB 264 (1961), modified at 167 NLRB 1078 (1967). It is self-evident why a construction-industry employer may be hard pressed to compile a list of eligible voters under the *Steiny/Daniel* formula in just 2 days.

not use individuals closely identified with management.[17] Unions may not use supervisors,[18] and they may not use nonemployee union officials in decertification elections.[19] The Board encouraged the use of nonsupervisory employees,[20] and a past edition of its Casehandling Manual even mandated this practice, declaring that absent written agreement, the parties *must* use nonsupervisory employees of the employer as election observers.[21] Moreover, even though the standard wording of stipulated election agreements provides for the parties to station equal numbers of ''nonsupervisory-employee observers'' at the polls, Board precedent since 1993 had held that it was not a material breach of the agreement for the union to use a nonemployee.[22]

Because Board law concerning the selection of observers was ''riddled with inconsistencies,'' 84 FR 69552, the Board included a new election-observers provision in the 2019 Rule. The rule provided that any party may be represented by observers of its own selection; that whenever possible, a party ''shall'' select a current member of the voting unit; and that, when no such individual is available, a party ''should'' select a current nonsupervisory employee. To effectively overrule precedent permitting unions to use their agents (who are employees *of the union*) as observers, the Board also clarified that (a) the ''nonsupervisory-employee'' wording of the standard election agreement refers to nonsupervisory employees of the employer that is party to the election, and (b) any use of an observer not employed by that employer is a material breach of the election agreement.

The Board justified the election-observers rule on several grounds. It promotes transparency by codifying the historical preference for using nonsupervisory employees as observers. It further promotes transparency by making clear that this preference applies to *any* party, not just to employers as certain decisions had suggested. It promotes uniformity by setting forth a clear framework under which all parties select their observers. And it promotes efficiency by eliminating wasteful litigation over the identity of election observers.

These are sound justifications for a sound rule. Rather than rescind it as my colleagues have done, the better course would be for the Board to repromulgate it in a notice of proposed rulemaking and invite public comment.

The certification-timing rule: Before the 2014 Rule issued, regional directors issued certifications of election results—including, where appropriate, certifications of representative—only in limited circumstances. Under the 2014 Rule, they were effectively required to do so in almost all cases. Moreover, they were required to do so regardless of whether a request for review of the decision and direction of election remained pending or the time within which to file a request for review had not yet elapsed. As a result, a union would be certified as the representative of a bargaining unit, even though a pending or yet-to-be-filed request for review could result in the certification being vacated. This could have untoward consequences, especially for employers, since the duty to bargain attaches when the union is certified. Thus, under the 2014 Rule, an employer could be found to have violated Section 8(a)(5) by refusing to bargain, at a time when its pending or to-be-filed request for review could yet result in the union's representative status being undone.[23]

To fix this state of affairs, the 2019 Rule specified that regional directors will only issue certifications after the time for filing a request for review has passed without any request being filed, and that, if a request for review is filed, certification will issue only after the Board rules on the request. The Board provided several justifications for this certification-timing rule. It ''advances transparency by eliminating confusion and complications occasioned by certifications that issue prior to the Board's ruling on a request for review.'' 84 FR 69554. It promotes finality, since the duty to bargain will attach only after the Board has ruled on a request for review or the time for filing one has passed. And since the Board's ruling on a request for review may nullify a previously issued certification, waiting to issue the certification until after the Board rules ''is a far more orderly way of proceeding'' and thus promotes efficiency. 84 FR 69555.

For these reasons and all the reasons stated more fully in the 2019 Rule, the certification-timing rule makes eminent sense—far better sense than the 2014–Rule framework it replaced. I would not rescind it as my colleagues do, but rather repromulgate it—and with it, the voter-list and election-observers rules—for notice-and-comment rulemaking.

List of Subjects in 29 CFR Part 102

Administrative practice and procedure, Labor management relations.

For the reasons stated in the preamble, the National Labor Relations Board amends 29 CFR part 102 as follows:

PART 102—RULES AND REGULATIONS, SERIES 8

■ 1. The authority citation for part 102 continues to read as follows:

Authority: Sections 1, 6, National Labor Relations Act (29 U.S.C. 151, 156). Section 102.117 also issued under section 552(a)(4)(A) of the Freedom of Information Act, as amended (5 U.S.C. 552(a)(4)(A)), and § 102.117a also issued under section 552a(j) and (k) of the Privacy Act of 1974 (5 U.S.C. 552a(j) and (k)). Sections 102.143 through 102.155 also issued under section 504(c)(1) of the Equal Access to Justice Act, as amended (5 U.S.C. 504(c)(1)).

■ 2. In § 102.62, revise paragraph (d) to read as follows:

§ 102.62 Election agreements; voter list; Notice of Election.

* * * * *

(d) *Voter list.* Absent agreement of the parties to the contrary specified in the election agreement or extraordinary circumstances specified in the direction of election, within 2 business days after the approval of an election agreement pursuant to paragraph (a) or (b) of this section, or issuance of a direction of election pursuant to paragraph (c) of this section, the employer shall provide to the Regional Director and the parties named in the agreement or direction a list of the full names, work locations, shifts, job classifications, and contact information (including home addresses, available personal email addresses, and

[17] See, *e.g., Peabody Engineering Co.,* 95 NLRB 952, 953 (1951).

[18] See *Family Service Agency,* 331 NLRB 850 (2000).

[19] See *Butera Finer Foods, Inc.,* 334 NLRB 43 (2001).

[20] See id.; *Jat Transportation Corp.,* 131 NRLB 122, 126 (1961).

[21] CHM Sec. 11310 (1989).

[22] See *Embassy Suites Hotel,* 313 NLRB 302 (1993); cf. *E–Z Davies Chevrolet,* 161 NLRB 1380, 1382–1383 (1966) (rejecting employer's contention that the presence of a union agent not employed by the employer as an election observer constituted objectionable conduct), enfd. 395 F.2d 191 (9th Cir. 1968).

[23] It was even possible that an unfair labor practice charge and the underlying representation case on which the charge was based could end up pending before the Board *at the same time.* This would happen if the employer refused to bargain while its request for review remained pending, the certified union filed an unfair labor practice charge, and the region issued complaint and moved for summary judgment. The Board acknowledged in the 2019 Rule that this scenario was ''largely hypothetical,'' given that regional directors typically held such charges in abeyance until the Board ruled on the request for review. 84 FR 69555. Nevertheless, the 2014 Rule allowed for this—and the regional directors' practical solution to the problem the 2014 Rule created was problematic in another respect, since it meant delaying vindication of the union's rights.

available home and personal cellular ''cell'' telephone numbers) of all eligible voters. The employer shall also include in separate sections of that list the same information for those individuals who will be permitted to vote subject to challenge. In order to be timely filed and served, the list must be received by the Regional Director and the parties named in the agreement or direction respectively within 2 business days after the approval of the agreement or issuance of the direction unless a longer time is specified in the agreement or direction. The list of names shall be alphabetized (overall or by department) and be in an electronic format approved by the General Counsel unless the employer certifies that it does not possess the capacity to produce the list in the required form. When feasible, the list shall be filed electronically with the Regional Director and served electronically on the other parties named in the agreement or direction. A certificate of service on all parties shall be filed with the Regional Director when the voter list is filed. The employer's failure to file or serve the list within the specified time or in proper format shall be grounds for setting aside the election whenever proper and timely objections are filed under the provisions of § 102.69(a)(8). The employer shall be estopped from objecting to the failure to file or serve the list within the specified time or in the proper format if it is responsible for the failure. The parties shall not use the list for purposes other than the representation proceeding, Board proceedings arising from it, and related matters.

* * * * *

■ 3. In § 102.67, revise paragraphs (c), (h), (i)(3), and (l) to read as follows:

§ 102.67 Proceedings before the Regional Director; further hearing; action by the Regional Director; appeals from actions of the Regional Director; statement in opposition; requests for extraordinary relief; Notice of Election; voter list.

* * * * *

(c) *Requests for Board review of Regional Director actions.* Upon the filing of a request therefor with the Board by any interested person, the Board may review any action of a Regional Director delegated to him/her under Section 3(b) of the Act except as the Board's Rules provide otherwise, but such a review shall not, unless specifically ordered by the Board, operate as a stay of any action by the Regional Director. The request for review may be filed at any time following the action until 10 business days after a final disposition of the proceeding by the Regional Director. No party shall be precluded from filing a request for review of the direction of election within the time provided in this paragraph because it did not file a request for review of the direction of election prior to the election.

* * * * *

(h) *Grant of review; briefs.* The grant of a request for review shall not stay the Regional Director's action unless otherwise ordered by the Board. Except where the Board rules upon the issues on review in the order granting review, the appellants and other parties may, within 10 business days after issuance of an order granting review, file briefs with the Board. Such briefs may be reproductions of those previously filed with the Regional Director and/or other briefs which shall be limited to the issues raised in the request for review. No reply briefs may be filed except upon special leave of the Board. Where review has been granted, the Board may provide for oral argument or further hearing. The Board will consider the entire record in the light of the grounds relied on for review and shall make such disposition of the matter as it deems appropriate. Any request for review may be withdrawn with the permission of the Board at any time prior to the issuance of the decision of the Board thereon.

(i) * * *

(3) *Extensions.* Requests for extensions of time to file requests for review, statements in opposition to a request for review, or briefs, as permitted by this section, shall be filed pursuant to § 102.2(c) with the Board or the Regional Director, as the case may be. The party filing the request for an extension of time shall serve a copy thereof on the other parties and, if filed with the Board, on the Regional Director. A statement of such service shall be filed with the document.

* * * * *

(l) *Voter list.* Absent extraordinary circumstances specified in the direction of election, the employer shall, within 2 business days after issuance of the direction, provide to the Regional Director and the parties named in such direction a list of the full names, work locations, shifts, job classifications, and contact information (including home addresses, available personal email addresses, and available home and personal cellular ''cell'' telephone numbers) of all eligible voters. The employer shall also include in separate sections of that list the same information for those individuals who will be permitted to vote subject to challenge. In order to be timely filed and served, the list must be received by the Regional Director and the parties named in the direction respectively within 2 business days after issuance of the direction of election unless a longer time is specified therein. The list of names shall be alphabetized (overall or by department) and be in an electronic format approved by the General Counsel unless the employer certifies that it does not possess the capacity to produce the list in the required form. When feasible, the list shall be filed electronically with the Regional Director and served electronically on the other parties named in the direction. A certificate of service on all parties shall be filed with the Regional Director when the voter list is filed. The employer's failure to file or serve the list within the specified time or in proper format shall be grounds for setting aside the election whenever proper and timely objections are filed under the provisions of § 102.69(a)(8). The employer shall be estopped from objecting to the failure to file or serve the list within the specified time or in the proper format if it is responsible for the failure. The parties shall not use the list for purposes other than the representation proceeding, Board proceedings arising from it, and related matters.

■ 4. In § 102.69, revise paragraphs (a)(5), (b), (c)(1)(i) and (iii), (c)(2), and (h) to read as follows:

§ 102.69 Election procedure; tally of ballots; objections; certification by the Regional Director; hearings; Hearing Officer reports on objections and challenges; exceptions to Hearing Officer reports; Regional Director decisions on objections and challenges.

(a) * * *

(5) When the election is conducted manually, any party may be represented by observers of its own selection, subject to such limitations as the Regional Director may prescribe.

* * * * *

(b) *Certification in the absence of objections, determinative challenges and runoff elections.* If no objections are filed within the time set forth in paragraph (a)(8) of this section, if the challenged ballots are insufficient in number to affect the results of the election, and if no runoff election is to be held pursuant to § 102.70, the Regional Director shall forthwith issue to the parties a certification of the results of the election, including certification of representative where appropriate, with the same force and effect as if issued by the Board.

(c) *Regional director's resolution of objections and challenges*—(1) *Regional director's determination to hold a hearing*—(i) *Decisions resolving*

objections and challenges without a hearing. If timely objections are filed to the conduct of an election or to conduct affecting the results of the election, and the Regional Director determines that the evidence described in the accompanying offer of proof would not constitute grounds for setting aside the election if introduced at a hearing, and the Regional Director determines that any determinative challenges do not raise substantial and material factual issues, the Regional Director shall issue a decision disposing of the objections and determinative challenges, and a certification of the results of the election, including certification of representative where appropriate.

* * * * *

(iii) *Hearings; Hearing Officer reports; exceptions to Regional Director.* The hearing on objections and challenges shall continue from day to day until completed unless the Regional Director concludes that extraordinary circumstances warrant otherwise. Any hearing pursuant to this section shall be conducted in accordance with the provisions of §§ 102.64, 102.65, and 102.66, insofar as applicable. Any party shall have the right to appear at the hearing in person, by counsel, or by other representative, to call, examine, and cross-examine witnesses, and to introduce into the record evidence of the significant facts that support the party's contentions and are relevant to the objections and determinative challenges that are the subject of the hearing. The Hearing Officer may rule on offers of proof. Any party desiring to submit a brief to the Hearing Officer shall be entitled to do so within 5 business days after the close of the hearing. Prior to the close of the hearing and for good cause the Hearing Officer may grant an extension of time to file a brief not to exceed an additional 10 business days. Upon the close of such hearing, the Hearing Officer shall prepare and cause to be served on the parties a report resolving questions of credibility and containing findings of fact and recommendations as to the disposition of the issues. Any party may, within 10 business days from the date of issuance of such report, file with the Regional Director an original and one copy of exceptions to such report, with supporting brief if desired. A copy of such exceptions, together with a copy of any brief filed, shall immediately be served on the other parties and a statement of service filed with the Regional Director. Within 5 business days from the last date on which exceptions and any supporting brief may be filed, or such further time as the Regional Director may allow, a party opposing the exceptions may file an answering brief with the Regional Director. An original and one copy shall be submitted. A copy of such answering brief shall immediately be served on the other parties and a statement of service filed with the Regional Director. Extra copies of electronically-filed papers need not be filed. The Regional Director shall thereupon decide the matter upon the record or make other disposition of the case. If no exceptions are filed to such report, the Regional Director, upon the expiration of the period for filing such exceptions, may decide the matter forthwith upon the record or may make other disposition of the case.

(2) *Regional Director decisions and Board review.* The decision of the Regional Director disposing of challenges and/or objections may include a certification of the results of the election, including certification of representative where appropriate, and shall be final unless a request for review is granted. If a consent election has been held pursuant to §§ 102.62(a) or (c), the decision of the Regional Director is not subject to Board review. If the election has been conducted pursuant to § 102.62(b), or by a direction of election issued following any proceeding under § 102.67, the parties shall have the right to Board review set forth in § 102.67, except that in any proceeding wherein a representation case has been consolidated with an unfair labor practice proceeding for purposes of hearing and the election was conducted pursuant to §§ 102.62(b) or 102.67, the provisions of § 102.46 shall govern with respect to the filing of exceptions or an answering brief to the exceptions to the Administrative Law Judge's decision, and a request for review of the Regional Director's decision and direction of election shall be due at the same time as the exceptions to the Administrative Law Judge's decision are due.

* * * * *

(h) *Final Disposition.* For the purposes of filing a request for review pursuant to § 102.67(c) or to paragraph (c)(2) of this section, a case is considered to have reached final disposition when the Regional Director dismisses the petition or issues a certification of results (including, where appropriate, a certification of representative).

Dated: March 6, 2023.

Roxanne L. Rothschild,

Executive Secretary.

[FR Doc. 2023–04840 Filed 3–9–23; 8:45 am]

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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.

SUMMARY: The National Labor Relations Board (Board) is staying two provisions of its 2019 final rule (''Final Rule'') amending its representation case procedures to account for new court decisions. The two provisions, which have never been in effect, are stayed until September 10, 2023. This stay is necessary to accommodate pending litigation over remaining challenges to the Final Rule and because the Board is currently considering whether to revise or repeal the Final Rule, including potential revisions to the two provisions.

DATES: As of March 10, 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, are stayed from May 31, 2020, until September 10, 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 National Labor Relations Board published a final rule amending various aspects of its representation-case procedures. (84 FR 69524, Dec. 18, 2019.) The Board published the Final Rule as ''a procedural rule which is exempt from notice and public comment, pursuant to 5 U.S.C. 553(b)(3)(A), as a rule of 'agency organization, procedure, or practice.' '' 84 FR at 69587. On March 30, 2020, the Board delayed the effective date of the final rule to May 31, 2020, upon request of the United States District Court for the District of Columbia and to ''facilitate the resolution of the legal challenges that have been filed with respect to the rule.'' (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 Final Rule and enjoining their implementation. 466 F. Supp. 3d 68 (D.D.C. 2020). The District