

OFFICE OF THE GENERAL COUNSEL  
Division of Operations-Management

MEMORANDUM OM 09-34

February 13, 2009

TO: All Regional Directors, Officers-in-Charge  
and Resident Officers

FROM: Richard A. Siegel, Associate General Counsel

SUBJECT: Changes to Electronic Filing of Documents Requirements

Effective February 19, 2009, the Agency will be implementing several changes to its electronic filing requirements.

Deadline for Electronic Filing

The Agency has changed the deadline when documents are filed electronically (E-file) with the Board, Division of Judges, Office of Appeals and Regional Offices. A document will now be considered timely filed if the transmission of the entire document through the Agency's website is accomplished before midnight in the time zone of the receiving office on the due date.<sup>1</sup> Filings accomplished by any other means, e.g., mail, personal delivery or facsimile (if allowed) still must be received by close of business in the receiving office on the due date.

If the Agency's E-filing system is unable to receive documents for an intermittent or continuous period of more than 2 hours after 12 noon (in the time zone of the receiving office), the site will be declared to be in technical failure. Notice of the technical failure determination will be posted on the website as soon as possible. Scheduled service, system maintenance or upgrades or when the system will be unavailable to receive filings will also be posted. If the system is determined to be in technical failure on the due date for the filing of a document and the failure prohibited a party from E-filing, the document must be filed by the close of business of the receiving office on the next business day.

Problems with the user's telephone lines, internet service provider, hardware, or software, user problems in understanding or following the E-filing instructions and rejection of a document because it contains a virus do not constitute a technical failure and will not excuse an untimely filing. A filer who cannot E-file a document because of any of these user problems must file conventionally and timely. Thus, a user who waits until after the close of business on the due date to attempt to E-file does so at his/her peril. When a

---

<sup>1</sup> Midnight is considered the beginning of a new day.

filer is unsure whether the problem is a technical failure or a user problem, it should be assumed that it is a user problem.

If a timely conventional filing is impossible because the user problem developed after the close of business on the due date, the Agency's website states that the user should attempt to E-file using another computer with internet access, such as another computer in the office, a home computer, a computer at a public library, or a computer at a commercial business service center.

The verification that a document has been successfully transmitted to the Agency's website does not indicate actual filing and timely receipt by the receiving office. The user will be sent an E-mail notification when the document has been received by the receiving office. The date and time of receipt specified on this notification will be used to determine whether the submission is timely. This E-mail receipt will be delivered to the E-mail address listed on the E-Filing Form.

Although the Agency's E-filing system is designed to receive filings 24 hours a day, it is strongly encouraged that documents be submitted in advance of the filing deadline and during the normal business hours of the receiving office in the event problems are encountered and alternate means of filing become necessary.

Since the deadline to file both an extension of time to file an appeal and the appeal itself is now prior to midnight on the date due, appropriate revisions have been made to the Access Code Certificate and the "Appeal Due Date" language in the dismissal letter. See Attachments A and B.

#### Notification of E-Filing

Another change to the E-filing process will be that parties or party representatives who have registered for E-Service will receive, simultaneously with an E-filing, an E-mail notice that a document has been filed with the Board. This E-mail notice will provide a link to the document that was electronically filed. This E-mail notice does not relieve the General Counsel or the outside parties from service on the other parties as required by the Board's Rules and Regulations. See Memorandum OM 09-30. Moreover, the E-mail notice does not mean that the E-filing was timely and properly filed with the Board so as to preclude, for example, a motion to strike the document in appropriate situations. Similar notification for documents E-filed with the Division of Judges is scheduled to commence in April.

Since all Regional Offices have been registered for E-service, E-mail notice of documents that were E-filed with the Board or the Division of Judges will be sent to the appropriate Region's Outlook E-mail box. Regions should already have systems in place for checking this Regional Outlook E-mail box on

a daily basis. When a Regional employee opens the E-mail notice from the Board, the employee will click on the link and then a dialogue box will open requiring the employee to enter the Region's user name and password. Regional employees will enter the same user name and password used by each Region for the E-service process. After entering this information, the document that was E-filed will automatically open up. The staff member may print a copy of the document and/or click on Save As under the File Menu to download a copy of the document to the Region's shared network. The E-filed document should then be routed in the same manner as when the Region received a hard copy of the document. If Regions have any questions about their E-service username and password, please contact AGC Jim Paulsen or the Help Desk for assistance.

#### Submission of Paper Copies of Electronically Filed Documents

The requirement that paper copies of electronically filed documents over 15 pages in length must be transmitted to the appropriate Agency office has been eliminated. With respect to Answers to Complaints or Compliance Specifications, however, the Board's Rules and Regulations require that such answers be signed by counsel or non-attorney representative for represented parties or by the party if not represented. See Sections 102.21 and 102.56(a). If the document being filed electronically is a pdf document containing the required signature, no paper copy of the document needs to be transmitted to the Regional Office. However, if the electronic version of an Answer to a Complaint or a Compliance Specification is not a pdf file containing the required signature, then the E-filing rules will require that such answer containing the required signature continue to be submitted to the Regional Office by traditional means within three (3) business days after the date of electronic filing.

#### Limitation on the File Size of E-Filed Documents

The E-filing requirements previously provided that documents that are more than ten (10) megabytes in size may not be filed electronically. A size limitation is being retained, but the limitation has been changed to exclude from E-filing documents that are more than twenty (20) megabytes in size.

Any questions concerning this matter should be addressed to your Assistant General Counsel or Deputy.

/s/  
R.A.S.

Attachments

cc: NLRBU  
Release to the Public