001)'' and the undesignated paragraph which follows paragraph (k)(4); and by adding paragraphs (n) and (o) as set forth below.

§ 16.96 Exemptions of Federal Bureau of Investigation Systems—Limited Access, as indicated.

* * * * *

(n) The following system of records is exempt from 5 U.S.C. 552a (c) (3) and (4); (d); (e) (1), (2), and 3; (e)(4) (G) and (H); (e) (5) and (8); and (g):

(1) National DNA Index System (NDIS) (JUSTICE/FBI–017).

(o) These exemptions apply only to the extent that information in the system is subject to exemption pursuant to 5 U.S.C. 552a(j)(2). Exemptions from the particular subsections are justified for the following reasons:

(1) From subsection (c)(3) because making available the accounting of disclosures of records to the subject of the record would prematurely place the subject on notice of the investigative interest of law enforcement agencies, provide the subject with significant information concerning the nature of the investigation, or permit the subject to take measures to impede the investigation (e.g., destroy or alter evidence, intimidate potential witnesses, or flee the area to avoid investigation and prosecution), and result in a serious impediment to law enforcement.

(2)(i) From subsections (c)(4), (d), (e)(4) (G) and (H), and (g) because these provisions concern an individual's access to records which concern him/her and access to records in this system would compromise ongoing investigations. Such access is directed at allowing the subject of the record to correct inaccuracies in it. The vast majority of records in this system are from the DNA records of local and State NDIS agencies which would be inappropriate and not feasible for the FBI to undertake to correct. Nevertheless, an alternate method to access and/or amend records in this system is available to an individual who is the subject of a record pursuant to procedures and requirements specified in the Notice of Systems of Records compiled by the National Archives and Records Administration and published in the Federal Register under the designation: National DNA Index System (NDIS) (JUSTICE/FBI–017)

(ii) In addition, from paragraph (d)(2) of this section, because to require the FBI to amend information thought to be incorrect, irrelevant, or untimely, because of the nature of the information collected and the essential length of time it is maintained, would create an impossible administrative and investigative burden by forcing the agency to continuously retrograde investigations attempting to resolve questions of accuracy, etc.

(iii) In addition, from subsection (g) to the extent that the system is exempt from the access and amendment provisions of subsection (d).

(3) From subsection (e)(1) because:

(i) Information in this system is primarily from State and local records and it is for the official use of agencies outside the Federal Government.

(ii) It is not possible in all instances to determine the relevancy or necessity of specific information in the early stages of the criminal investigative process.

(iii) Relevance and necessity are questions of judgment and timing; what appears relevant and necessary when collected ultimately may be deemed unnecessary, and vice versa. It is only after the information is assessed that its relevancy in a specific investigative activity can be established.

(iv) Although the investigative process could leave in doubt the relevancy and necessity of evidence which had been properly obtained, the same information could be relevant to another investigation or investigative activity under the jurisdiction of the FBI or another law enforcement agency.

(4) From subsections (e)(2) and (3) because it is not feasible to comply with these provisions given the nature of this system. Most of the records in this system are necessarily furnished by State and local criminal justice agencies and not by individuals due to the very nature of the records and the system.

(5) From subsection (e)(5) because the vast majority of these records come from State and local criminal justice agencies and because it is administratively impossible for them and the FBI to insure that the records comply with this provision. Submitting agencies are urged and make every effort to insure records are accurate and complete; however, since it is not possible to predict when information in the indexes of the system (whether submitted by State and local criminal justice agencies or generated by the FBI) will be matched with other information, it is not possible to determine when most of them are relevant or timely.

(6) From subsection (e)(8) because the FBI has no logical manner to determine whenever process has been made public and compliance with this provision would provide an impediment to law enforcement by interfering with ongoing investigations.

[FR Doc. 96–31469 Filed 12–10–96; 8:45 am]

BILLING CODE 4410–02–M

NATIONAL LABOR RELATIONS BOARD

29 CFR Part 101 and 102

Procedures and Rules Governing Summary Judgment Motions and Advisory Opinions

AGENCY: National Labor Relations Board.

ACTION: Final rule.

SUMMARY: The National Labor Relations Board (NLRB) issues a final rule implementing the proposal set forth in its July 5, 1996 Notice of Proposed Rulemaking (NPR) to eliminate provisions in its current rules permitting parties to pending state proceedings to petition for an advisory opinion on whether the Board would assert jurisdiction under its commerce standards. The final rule does not implement the other proposal set forth in the Board's NPR which would have also eliminated provisions in the current rules requiring issuance of a notice to show cause before the Board grants a motion for summary judgment. The Board has decided to withdraw that proposal for further study in light of the comments and other actions recently taken by the Board to streamline the summary judgment process.

EFFECTIVE DATE: January 10, 1997.

FOR FURTHER INFORMATION CONTACT: John J. Toner, Executive Secretary, National Labor Relations Board, 1099 14th Street, NW., Room 11600, Washington, DC 20570. Telephone: (202) 273–1940.

SUPPLEMENTARY INFORMATION: As part of the Agency's ongoing efforts to streamline its operations, on July 5, 1996, the Board issued a Notice of Proposed Rulemaking (NPR) proposing certain changes to its rules and statements of procedure regarding motions for summary judgment and petitions for advisory opinions (61 FR 35172). Specifically, the Board proposed: (1) To eliminate provisions in the current rules and statements of procedure permitting parties to pending state proceedings to petition the Board for an advisory opinion on whether the Board would assert jurisdiction under its commerce standards; and (2) to also eliminate provisions in the current rules requiring the Board to issue a notice to show cause before granting a motion for summary judgment.

Four comments were received in response to the NPR, three from practitioners (Robert J. Janowitz, Kansas City, Missouri; Ira Drogin, New York, New York; and Rayford T. Blankenship, Greenwood, Indiana) and one from a

labor organization (AFL-CIO).[1] Each of these comments are addressed below.

I. Eliminating Party Petitions for Advisory Opinions

Only two of the four comments addressed this proposal. Attorney Robert Janowitz stated that he opposed the proposal on the grounds that the proposal would deny parties an avenue of access to the Board; the current procedure does not substantially burden the Board since only 10–15 petitions for advisory opinion are filed by parties each year; and eliminating the procedure will increase the risk that state agencies will improperly assert jurisdiction, which will require the Board to engage in lengthy, expensive and time-consuming litigation under *NLRB* v. *Nash-Finch Co.*, 404 U.S. 138 (1971), to enjoin the state agency's improper actions.

Attorney Ira Drogin also opposed the proposal. He stated that most of the 10–15 petitions each year appear to be filed by parties before the New York State Employment Relations Board (NYSERB); the NYSERB is understaffed and moves extremely slowly; the current procedure permitting parties to seek an advisory opinion from the Board works well and is expeditious; and this procedure cannot be costly to the Board given the low number of petitions that are filed.

Although we have carefully considered the foregoing comments, we have decided to implement this proposal as set forth in the NPR. As indicated in the NPR, there is no statutory requirement that the Board entertain party petitions for advisory opinions, and the procedure is not widely utilized. Indeed, as indicated in the comments submitted by attorney Drogin, virtually all of the 10–15 petitions received each year are filed by parties to proceedings before the NYSERB.[2] Further, such petitions typically raise issues which have been repeatedly addressed in numerous other published advisory opinions and decisions issued by the Board. Indeed, almost two-thirds of the 22 advisory opinions issued over the last two years addressed essentially the same issue: the Board's jurisdictional standard for building management companies.[3] In short, under the current procedure, the Board has been unnecessarily forced to issue repeated advisory opinions on the same jurisdictional issue with respect to parties before the same state board. In our view, this is clearly not an efficient use of the Board's limited resources.[4]

Further, as indicated in the NPR, there are several other, often more expeditious, avenues for obtaining a jurisdictional determination or opinion. As noted in the NPR, § 101.41 of the Board's Statements of Procedure provides that persons may seek informal opinions on jurisdictional issues from the Regional Offices. And the Regional Office will also make a jurisdictional determination early in its investigation of any representation petition or unfair labor practice charges filed with that office. See NLRB Casehandling Manual, Sec. 11706.

Moreover, as indicated in the NPR, the instant changes do not affect the provisions of current §§ 102.98(b) and 102.99(b) of the Board's rules and § 101.39 of the Board's statements of procedure which permit the state or territorial agency or court itself to file a petition for an advisory opinion on whether the Board would decline to assert jurisdiction based either on its commerce standards or because the employer is not within the jurisdiction of the Act. The provisions permitting such petitions are retained, with minor modification to § 101.39 of the Board's statements of procedure to conform it with Board decisions indicating that the Board will not issue an opinion unless the relevant facts are undisputed or the state agency or court has already made the relevant factual findings. See Correctional Medical Systems, 299 NLRB 654 (1990); University of Vermont, 297 NLRB 291 (1989); and St. Paul Ramsey Medical Center, 291 NLRB 755 (1988). See also Brooklyn Bureau of Community Service, 320 NLRB No. 157 (April 15, 1996).

Given the foregoing alternative procedures, we do not believe, as suggested by attorney Janowitz, that eliminating party petitions for advisory opinion will substantially increase the risk that state agencies will improperly assert jurisdiction. We believe it reasonable to presume that state agencies will act properly, and the alternative procedures outlined above will ensure that they have access to sufficient information to do so in those circumstances where there is a genuine and substantial question as to which agency has jurisdiction and past published Board opinions or decisions do not provide a definitive answer.

II. Eliminating Notice-to-Show-Cause Requirement in Summary Judgment Cases

Three of the four comments addressed this proposal. Attorney Janowitz stated that he had no objection to the proposal, but argued that the rule should make clear that the General Counsel is *required* to postpone the hearing at the time he files a motion for summary judgment with the Board. Management representative Rayford Blankenship, on the other hand, opposed the proposal, stating that he believed elimination of the notice- to-show-cause procedure would ''add [] to the propensity of the NLRB to further abuse respondent[s] by arbitrary and capricious actions.''

Finally, the AFL–CIO also opposed the proposal, but on the opposite ground, i.e. on the ground that the proposed change would greatly increase the burden on parties opposing respondent summary judgment motions. The AFL–CIO argued that under the proposed change the General Counsel and charging party will be forced to file a comprehensive response to such motions in their initial oppositions and will not have the opportunity provided under the current rule to file a further opposition brief in the event the Board decides the motion warrants full consideration and issues a notice to show cause. The AFL–CIO argued that this will give respondents a significant incentive to file summary judgment motions for discovery purposes, which will inevitably result in a sharp rise in the number of respondent motions, thereby increasing the workload not only of the General Counsel, who will be forced to file comprehensive responses to every motion, but also of the Board, which will have to decide the motions. Finally, the AFL–CIO argued that the proposal will also burden the Regions and administrative law judges with the responsibility of postponing the hearing, one of the traditional functions of the notice to show cause.

Having carefully considered the foregoing comments, we have decided not to implement this proposal at this time. We do not necessarily agree with either management representative Blankenship or the AFL–CIO that the proposal would unfairly prejudice either respondents or the General Counsel. However, we are concerned about the AFL–CIO's additional assertions that the proposal would result in more motions for summary

[1] The AFL–CIO's comments were submitted by its General Counsel, Jonathan P. Hiatt.

[2] Ten of the 12 advisory opinions issued by the Board in fiscal year 1995, and all of the 10 opinions issued in fiscal year 1996, involved parties before the NYSERB.

[3] See, e.g., *209 Hull Realty Corp.*, 322 NLRB No. 43 (Sept. 30, 1996); *MCS Equities, Inc.*, 321 NLRB No. 78 (June 20, 1996); *Center County Corp.*, 320 NLRB No. 114 (March 20, 1996); *Phipps Houses Services, Inc., et al.*, 320 NLRB No. 74 (Feb. 28, 1996); and *Valentine Properties et al.*, 319 NLRB N. 5 (Sept. 19, 1995).

[4] Given that only two comments were filed opposing the Board's proposal to eliminate such petitions, it would not appear that the majority of practitioners and the public disagree with this view.

judgment being filed by respondents, thereby placing greater burdens on both the Board and the General Counsel, and that the proposal would also place greater burdens on the Regions and Judges Division with respect to postponement of the hearing. As indicated above and in the NPR, the purpose of the proposal was to expedite the summary judgment process and reduce the administrative burden on the Board and its staff which is responsible for preparing and issuing such notices. If the AFL–CIO's predictions are correct, however, and we cannot say that they are unfounded, the proposal would actually increase the burdens not only on the Board, but also on the Regions and the Judges Division.

Given the Agency's reduced budget and staffing, we believe it would therefore be prudent for the Board to study further the issue before implementing the proposed change. It may be that there are other alternatives available to the Board which could significantly reduce the current burdens associated with issuing such notices. One such alternative, simplifying or streamlining the notice itself by reducing its length and eliminating unnecessary text, has recently been implemented based on the recommendation of Agency staff. Other alternatives will continue to be studied as part of the Agency's ongoing streamlining efforts.

As indicated in the NPR, although the Agency decided to give notice of proposed rulemaking with respect to the proposed rule changes, the changes involve rules of agency organization, procedure or practice and thus no notice of proposed rulemaking was required under section 553 of the Administrative Procedure Act (5 U.S.C. 553). Accordingly, the Regulatory Flexibility Act (5 U.S.C. 602 *et seq.*), does not apply to these rule changes.

List of Subjects in 29 CFR Parts 101 and 102

Administrative practice and procedure, Labor management relations.

For the reasons set forth above, 29 CFR parts 101 and 102 are amended as follows:

PART 101—STATEMENTS OF PROCEDURE

1. The authority citation for 29 CFR part 101 continues to read as follows:

Authority: Sec. 6 of the National Labor Relations Act, as amended (29 U.S.C. 151, 156), and sec. 522(a) of the Administrative Procedure Act (5 U.S.C. 552(a)). Section 101.14 also issued under sec. 2112(a)(1) of Pub. L. 100–236, 28 U.S.C. 2112(a)(1).

2. Section 101.39 is revised to read as follows:

§ 101.39 Initiation of advisory opinion case.

The question of whether the Board will assert jurisdiction over a labor dispute which is the subject of a proceeding in an agency or court of a State or territory is initiated by the filing of a petition with the Board. This petition may be filed only if:

(1) a proceeding is currently pending before such agency or court;

(2) the petitioner is the agency or court itself; and

(3) the relevant facts are undisputed or the agency or court has already made the relevant factual findings.

(b) The petition must be in writing and signed. It is filed with the Executive Secretary of the Board in Washington, DC. No particular form is required, but the petition must be properly captioned and must contain the allegations required by section 102.99 of the Board's Rules and Regulations. None of the information sought may relate to the merits of the dispute. The petition may be withdrawn at any time before the Board issues its advisory opinion determining whether it would or would not assert jurisdiction on the basis of the facts before it.

PART 102—RULES AND REGULATIONS

1. The authority citation for 29 CFR part 102 continues to read as follows:

Authority: Section 6, National Labor Relations Act, as amended (29 U.S.C. 151, 156). Section 102.117(c) 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 section 552a (j) and (k) of the Privacy Act (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)).

§ 102.98 [Amended]

2. Section 102.98, paragraph (a) and the paragraph designation (b) are removed.

§ 102.99 [Amended]

3. In § 102.99, paragraph (a) is removed and paragraphs (b) and (c) are redesignated paragraphs (a) and (b) respectively.

Dated: Washington, DC, December 6, 1996.

By direction of the Board.

John J. Toner,

Executive Secretary.

[FR Doc. 96–31457 Filed 12–10–96; 8:45 am]

BILLING CODE 7545–01–P

29 CFR Part 102

Privacy Act of 1974; Implementation

AGENCY: National Labor Relations Board.

ACTION: Final rule exempting system of records from certain provisions of the Privacy Act.

SUMMARY: The National Labor Relations Board [''NLRB''] issues a final rule exempting a new system of records entitled ''NLRB–20, Agency Disciplinary Case Files (Nonemployees)'' from certain provisions of the Privacy Act of 1974, 5 U.S.C. 552a.

EFFECTIVE DATE: January 10, 1997.

FOR FURTHER INFORMATION CONTACT: John J. Toner, Executive Secretary, National Labor Relations Board, 1099 14th Street, NW., Room 11600, Washington, DC 20570. Phone: (202) 273–1940.

SUPPLEMENTARY INFORMATION: On October 26, 1993, the Board published in the Federal Register a notice of the establishment of a new system of records pursuant to the Privacy Act of 1974, entitled ''NLRB–20, Agency Disciplinary Case Files'' (58 FR 57633). The same day, the Board also published in the Federal Register a proposed rule exempting the new system of records from certain provisions of the Privacy Act (58 FR 57572). Both notices provided for a public comment period.

Thereafter, on March 28, 1996, the Board issued a notice amending the system name to read ''NLRB–20, Agency Disciplniary Case Files (Nonemployees),'' and amending four of the routine uses specified in the original notice (61 FR 13884). In the absence of any comments, the amendments to the system of records became final 30 days thereafter.

No comments were filed regarding the proposed rule exempting the system of records from certain provisions of the Privacy Act. Accordingly, the Board has decided to implement the proposed rule as a final rule.

These rules relate to individuals rather than small business entities, are concerned with the Agency's management of its Privacy Act system of records, and will not have any economic impact. Accordingly, pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601–612, the NLRB certifies that these rules will not have a significant economic impact on a substantial number of small business entities. The NLRB further finds that the rule does not qualify as a ''major rule'' under Executive Order No. 12291 since it will not have an annual effect on the economy of $100 million or more. Finally, the rule is not subject