

OFFICE OF THE GENERAL COUNSEL
Division of Operations-Management

MEMORANDUM OM 90-73

September 25, 1990

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

FROM: Joseph E. DeSio, Associate General Counsel

SUBJECT: Revision of Section 102.114 of the Rules
and Regulations Regarding Facsimile Transmissions

The Board has revised Section 102.114 of the Rules and Regulations which govern the service of papers by the parties and proof of service. The intended result of this rule change is to establish some measure of uniformity throughout the Agency in the practices for accepting facsimile transmissions.

A copy of the revised rule as it appeared in the Federal Register, on September 14, 1990, is attached. The rule will become effective on October 1, 1990, and we will be forwarding to each office additional copies of the rule in the near future.

As noted in the supplementary information, the Board will permit facsimile transmission for requests for extensions of time, will not permit facsimile transmission of most formal documents, and will permit such transmission for all other documents subject to advance approval, in each instance, by the receiving office.

Any questions with respect to this rule, should be addressed to the Executive Secretary's Office.


J.E.D.

Attachment

cc: NLRBU

MEMORANDUM OM 90-73

(h) The proceeds of any sale of impounded livestock shall be applied as follows:

(1) To the payment of all expenses incurred by the United States in gathering, impounding, and feeding or pasturing the livestock;

(2) Trespass penalties assessed pursuant to § 700.725 shall be paid to a separate account to be administered by the Commissioner for use as a range improvement fund for the New Lands;

(3) Any remaining amount shall be paid over to the owner of said livestock upon his submitting proof of ownership.

Any proceeds remaining after payment of the first and second items noted above not claimed within one year from the date of sale, will be credited to the United States.

§ 700.729 Amendments.

These regulations may be amended or superseded as needed.

Dated: September 7, 1990.

Carl J. Kunasek,

Commissioner on Navajo and Hopi Indian Relocation.

[FR Doc. 90-21666 Filed 9-13-90; 8:45 am]

BILLING CODE 7560-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 35a

Temporary Employment Tax Regulations Under the Interest and Dividend Tax Compliance Act of 1983

CFR Correction

In title 26 of the Code of Federal Regulations, parts 30 to 39, revised as of April 1, 1990, in § 35a.3406-1 the old text of paragraph (f) was inadvertently printed. The old text beginning with the first complete paragraph in column one, line 9, on page 339, and ending with column one, line 17, on page 341 should be removed.

BILLING CODE 1505-01-D

NATIONAL LABOR RELATIONS BOARD

29 CFR Part 102

Procedural Rules

AGENCY: National Labor Relations Board.

ACTION: Final rules.

SUMMARY: The National Labor Relations Board is revising its rules that govern service of papers by parties to permit,

under certain circumstances, transmissions of documents to the Agency's facsimile machines. The revisions are being adopted in order to accommodate the use by parties of this rapidly growing form of technology while taking into account the limited number of facsimile machine presently available throughout the Agency. The intended effect of the revisions is to establish some measure of uniformity in the practices for accepting facsimile transmissions.

EFFECTIVE DATE: October 1, 1990.

FOR FURTHER INFORMATION CONTACT: John C. Truesdale, Executive Secretary, 1717 Pennsylvania Avenue NW., room 701, Washington, DC 20570. Telephone: (202) 254-0430.

SUPPLEMENTARY INFORMATION: The National Labor Relations Board recognizes that the use of facsimile systems is becoming more prevalent in both the private and public sectors. Yet, at the present time, the Board has no rule setting forth the circumstances under which it will accept facsimile transmissions from parties. Therefore, determinations whether to accept particular documents that have been transmitted by a facsimile system have been made on a case-by-case basis by the receiving office.

The Board is revising § 102.114 of its rules in order to establish some measure of uniformity in the practices for accepting facsimile transmissions while taking into account the limited number of facsimile machines presently available throughout the Agency. The overall approach is to permit facsimile transmissions of requests for extensions of time, prohibit facsimile transmissions of most other formal documents, and permit facsimile transmissions of all other documents subject to advance approval, in each instance, by the receiving office.

The title of § 102.114 is changed to include specific reference to the subject of facsimile transmissions. Subsections (a) and (b) of § 102.114, dealing generally with service of papers and proof of service, are retained without modification. Subsections (c), (d), and (e) of this section are new.

Subsections (c) and (d) of § 102.114 set forth the documents that will or will not be permitted to be filed by facsimile transmission, and the procedures to be followed in filing documents by facsimile and in securing permission to file those documents whose receipt is left to the discretion of the receiving office.

Subsection (e) of § 102.114 sets forth the requirements for service of copies on other parties when a document is served

upon the Board by facsimile transmission.

Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), the NLRB certifies that this rule will not have a significant impact on a substantial number of small businesses.

List of Subjects in 29 CFR Part 102

Administrative practice and procedure, Labor management relations.

Accordingly, 29 CFR part 102 is amended as follows:

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)). 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. Section 102.114 is revised to read as follows:

§ 102.114 Service of papers by parties; proof of service; filing and serving documents and papers by facsimile transmission.

(a) Service of papers by a party on the other parties shall be made by registered mail, or by certified mail, or in any manner provided for the service of papers in a civil action by the law of the State in which the hearing is pending. Except for charges, petitions, exceptions, briefs, and other papers for which a time for both filing and response has been otherwise established, service on all parties shall be made in the same manner as that utilized in filing the paper with the Board, or in a more expeditious manner, however, when filing with the Board is accomplished by personal service the other parties shall be promptly notified of such action by telephone, followed by service of a copy by mail or telegraph. When service is made by registered mail, or by certified mail, the return post office receipt shall be proof of service. When service is made in any manner provided by the law of a State, proof of service shall be made in accordance with such law. Failure to comply with the requirements of this section relating to timeliness of service on other parties shall be a basis for either

(1) A rejection of the document or

(2) withholding or reconsidering any ruling on the subject matter raised by the document until after service has been made and the served party has had reasonable opportunity to respond.

(b) The person or party serving the papers or process on other parties in

conformance with sections 102.113 and 102.114(a) shall submit a written statement of service thereof to the Board stating the names of the parties served and the date and manner of service. Proof of service as defined in section 102.114(a) shall be required by the Board only if subsequent to the receipt of the statement of service a question is raised with respect to proper service. Failure to make proof of service does not affect the validity of the service.

(c) Requests for extensions of time for filing documents will be accepted if transmitted to the facsimile machine of the office designated to receive such requests. Other documents, except those specifically prohibited in paragraph (d) of this section, will be accepted if transmitted to the facsimile machine of the office designated to receive them only with advance permission from the receiving office which may be obtained by telephone. Advance permission must be obtained for each such filing. At the discretion of the receiving office, the person submitting a document by facsimile may be required simultaneously to serve the original and any required copies on the office by overnight delivery service.

(d) Facsimile transmissions of the following documents will not be accepted: Unfair Labor Practice Charges; Representation Petitions, including Decertification Petitions; Showing of Interest in Support of Representation Petitions, including Decertification Petitions; Answers to Complaints; Exceptions or Cross-Exceptions; Briefs; Requests for Review of Regional Director Decisions; Administrative Appeals from Dismissal of Petitions or Unfair Labor Practice Charges; Objections to Elections; Objections to Settlements; EAJA Applications; Motions for Summary Judgment; Motions to Dismiss; Motions for Reconsideration; Motions to Clarify; Motions to Reopen the Record; Motions to Intervene; Motions to Transfer, Consolidate or Sever; or Petitions for Advisory Opinions. Facsimile transmissions in contravention of this rule will not be filed.

(e) Documents and other papers filed through facsimile transmission shall be served on all parties in the same or faster way as used to serve the office where filed, in conformance with § 102.114(a). Thus, facsimile transmission shall be used for this purpose whenever possible. When a party cannot be served by this method, the party shall be notified personally or by telephone of the substance of the transmitted document and a copy of the

document shall be served by personal service or overnight delivery service.

Dated, Washington, DC, September 10, 1990.

By direction of the Board,
John C. Tansdale,
Executive Secretary, National Labor
Relations Board.
[FR Doc. 90-21631 Filed 9-13-90; 8:45 am]
BILLING CODE 7540-01-01

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 2619

Valuation of Plan Benefits in Single-Employer Plans: Amendment Adopting Additional PBGC Rates

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This amendment to the regulation on Valuation of Plan Benefits in Single-Employer Plans contains the interest rates and factors for the period beginning October 1, 1990. The use of these interest rates and factors to value benefits is mandatory for some terminating single-employer pension plans and optional for others. The Pension Benefit Guaranty Corporation adjusts the interest rates and factors periodically to reflect changes in financial and annuity markets. This amendment adopts the rates and factors applicable to plans that terminate on or after October 1, 1990 and will remain in effect until the PBGC issues new interest rates and factors.

EFFECTIVE DATE: October 1, 1990.

FOR FURTHER INFORMATION CONTACT: J. Ronald Goldstein, Senior Counsel, Office of the General Counsel, Code 22500, Pension Benefit Guaranty Corporation, 2020 K Street, NW., Washington, DC 20006, 202-778-8850 (202-778-6859 for TTY and TDD only). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: The Pension Benefit Guaranty Corporation's ("PBGC's") regulation of Valuation of Plan Benefits in Single-Employer Plans (29 CFR Part 2619) sets forth the methods for valuing plan benefits of terminating single-employer plans covered under title IV of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"). Under ERISA section 4041(c), all plans wishing to terminate in a distress termination must value guaranteed benefits and "benefit liabilities", i.e., all benefits provided under the plan as of the plan termination date, using the formulas set

forth in Part 2619. Plans terminating in a standard termination may, for purposes of the Standard Termination Notice filed with PBGC, use these formulas to value benefit liabilities, although this is not required. (Such plans may value benefit liabilities that are payable as annuities on the basis of a qualifying bid obtained from an insurer.)

Appendix B in part 2619 sets forth the interest rates and factors that are to be used in the formulas contained in the regulation. Because these rates and factors are intended to reflect current conditions in the financial and annuity markets, it is necessary to update the rates and factors periodically.

The rates and factors currently in use have been in effect since September 1, 1990. This amendment adds to appendix B a new set of interest rates and factors for valuing benefits in plans that terminate on or after October 1, 1990, which set reflects an increase of ¼ percent in the immediate interest rate from 7¼ to 7½ percent.

Generally, the interest rates and factors will be in effect for at least one month. However, any published rates and factors will remain in effect until such time as the PBGC publishes another amendment changing them. Any change in the rates normally will be published in the Federal Register by the 15th of the month preceding the effective date of the new rates or as close to that date as circumstances permit.

The PBGC has determined that notice and public comment on this amendment are unpracticable and contrary to the public interest. This finding is based on the need to determine and issue new interest rates and factors promptly so that the rates can reflect, as accurately as possible, current market conditions.

Because of the need to provide immediate guidance for the valuation of benefits in plans that will terminate on or after October 1, 1990, and because no adjustment by ongoing plans is required by this amendment, the PBGC finds that good cause exists for making the rates set forth in this amendment effective less than 30 days after publication.

The PBGC has determined that this is not a "major rule" under the criteria set forth in Executive Order 12291, because it will not result in an annual effect on the economy of \$100 million or more, a major increase in costs for consumers or individual industries, or significant adverse effects on competition, employment, investment, productivity, or innovation.

List of Subjects in 29 CFR Part 2619

Employee benefit plans, Pension insurance, Pensions.