

OFFICE OF THE GENERAL COUNSEL
Division of Operations-Management

MEMORANDUM OM 91-99

November 19, 1991

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

FROM: William G. Stack, Deputy Associate General Counsel

SUBJECT: NLRB Final Rules

The Board has revised its Rules and Regulations with respect to the filing of various documents with the Agency. Attached is a copy of the Board's final rules and supplementary information as published in the Federal Register on September 27, 1991, effective October 28, 1991.

These new rules cover such matters as providing parties the opportunity to file reply briefs in unfair labor practice cases pending before the Board in Washington; enabling parties under certain circumstances to file certain documents in unfair labor practice cases late; and permitting certain documents previously required to be received by the Board by the due date to be accepted as timely if postmarked at least one day prior to the due date. The rules also make clear that documents not subject to the postmark rule must be filed with the Board on the due date and before the official closing time of the receiving office.

The Board has also revised its Rules to include a provision concerning the minimum-type size that may be utilized in documents filed with the Agency. This new rule, which is also attached, was published in the Federal Register on October 9, 1991 and was effective November 8, 1991.

It should be noted that these rules along with the rules on health care units (54 FR 16336, 4/21/89); filing motions for summary judgment (54 FR 38515, 9/19/89); on rescheduling unfair labor practice hearings (54 FR 51196, 12/13/89); and filing by fax (55 FR 37874, 9/14/90), will all be reprinted in the loose-leaf compilation of the Board's Rules in the near future.

With respect to the latest rules, particular attention should be given to the fact that the rules pertaining to reply briefs (Section 102.46) and to documents that are filed late (Section 102.111) apply only to unfair labor practice cases and not to representation cases. In addition, the only documents that are permitted to be filed late under certain circumstances are motions, exceptions, briefs, and answers to a complaint or backpay specification.

It should also be noted that the Board will now consider as timely filed, representation petitions and objections to elections if they are postmarked at least one day prior to the due date. The Board is also defining the term postmarking to include timely depositing documents with a delivery service.

Special note should also be given to the fact that the Board is revising Section 102.111 to emphasize the present requirement that documents must be filed on the due date by the "close of business" of the receiving office. The Board intends to enforce this rule strictly and to reject documents that are filed and received after the official closing time of Board offices. Of course, this requirement would not apply to documents that are timely postmarked as that term is now defined by the Board.

Finally, special attention should be given to the revision to Section 102.111 which no longer requires that requests for extensions of time invariably be submitted at least three days before the due date. Under the new rule, Section 102.111(b), a request for an extension of time to file a document may be filed on the due date and before the official closing time of the receiving office if the request is based upon circumstances not reasonably foreseeable in advance.

As can be seen from the foregoing and the attachments, the rule changes are quite extensive. Accordingly, a staff meeting should be held as soon as possible to review the new rules.

If you have any questions concerning this memorandum, please contact your Assistant General Counsel.



W.G.S.

Attachments

MEMORANDUM OM 91-99

respect to their on-site manufacture of theatrical flash powder.

Signed: August 20, 1991.

Stephen E. Higgins,

Director.

Approved: September 5, 1991.

Peter K. Nunez,

Assistant Secretary (Enforcement).

[FR Doc. 91-23306 Filed 9-26-91; 8:45 am]

BILLING CODE 4810-31-M

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 in several respects its rules that govern the filing of various papers with the Board. Under the new rules, parties to Board proceedings will be permitted to file reply briefs in cases pending before the Board in Washington, DC. The intended effect of this revision is to provide the parties to a proceeding pending before the Board with an opportunity to narrow the issues in dispute and thus aid in the decisional process. The revisions also will permit certain documents in unfair labor practice cases, required to be filed by a certain date, to be filed late where the reason for the late filing constitutes "excusable neglect" and provided that no undue prejudice would result from the late filing. Further, certain documents, previously required to be received by the Board by a specified due date, now will be accepted as timely if they are "postmarked" at least one day prior to the due date. And, the phrase "postmarking" is redefined to encompass the timely deposit of documents with a delivery service. The intended effect of these revisions is to avoid the inequities that would result from rejecting certain documents that arrive late through no fault of the party filing them. On the other hand, the rules now make clear that documents not subject to the "postmark rule" be filed on the due date: "before the official closing time of the receiving office," a requirement that the Board intends to enforce strictly. Finally, the Board is deleting the present requirement that requests for extensions of time for filing documents be submitted three days in advance of the document's due date and is replacing it with a requirement that

such requests for extensions be submitted on the due date before the official closing time of the receiving office.

EFFECTIVE DATE: October 28, 1991.

FOR FURTHER INFORMATION CONTACT: John C. Truesdale, Executive Secretary, 1717 Pennsylvania Avenue, NW., room 701, Washington, DC 20570, telephone: (202) 254-9430.

SUPPLEMENTARY INFORMATION:

Changes to Section 102.46

The National Labor Relations Board has concluded that permitting parties to file reply briefs in proceedings pending before the Board in Washington, DC, would aid in the decisional process by enabling the parties to narrow the issues in dispute more than is possible in the other briefs or documents presently permitted by the rules.

Accordingly, the Board is revising § 102.46 of its rules in order to permit parties to file reply briefs to any answering brief presently permitted under paragraphs (d) or (f) of § 102.46.

The title of § 102.46 is modified to include reference to the fact that the section now covers the subject of reply briefs. Paragraphs (a) through (f) are retained without modification, except that in paragraphs (a), (d)(3), and (f)(2), the requirement that requests for extensions of time be submitted three days in advance of the due date of the underlying document is deleted to conform the rule to changes in § 102.111 that are discussed below. Former paragraph (h) is renumbered to become paragraph (g) and is otherwise retained without modification.

Former paragraph (g) of § 102.46, which is renumbered to become paragraph (h), is modified to set forth fully the new provision allowing for the filing of reply briefs. It provides that reply briefs may be filed within 14 days of an answering brief filed pursuant to paragraphs (d) or (f) of § 102.46, shall be limited to matters raised in the brief to which it is replying, and shall not exceed 10 pages. Further, the new paragraph (h) provides that no extensions of time for filing reply briefs shall be granted nor shall permission be granted to exceed the page limitation, and it sets forth requirements for filing and service of reply briefs. The remainder of the new paragraph (h), setting forth a requirement that no further briefs shall be filed without permission of the Board, is taken without modification from the former paragraph (g) of § 102.46.

Paragraph (i) of § 102.46 is retained without modification. Paragraph (j) of § 102.46, dealing in part with page

limitations for other briefs, is modified to make clear that the page limitations on reply briefs are governed exclusively by the provisions of the new paragraph (h). Paragraph (j) is retained without modification in all other respects.

Changes to Section 102.111 and Related Changes

At present, the rules of the National Labor Relations Board make no provision for late filing of documents. The Board has concluded that it would be appropriate to include in § 102.111 a formal basis for accepting certain late-filed documents in unfair labor practice cases. This provision is newly added as paragraph (c) of § 102.111. Documents not covered by the new provision may not be filed after the time when they otherwise would be due.

The only documents permitted to be filed late under the rule are motions exceptions, answers to a complaint or a backpay specification, and briefs. There is no provision for late filing of documents in Representation proceedings. Therefore, all documents in Representation cases must be filed within the required time limits.

Under the new rule, the standard for permitting late filings of documents in unfair labor practice cases is "excusable neglect," a standard presently found in Fed. R. Civ. P. 6 (b). No attempt is made to define the myriad situations to which the rule might apply. Rather, this is a matter that is to be left to determination on a case-by-case basis. The provision applies only if no undue prejudice would result from the late filing.

The Board has further concluded that its present rules, requiring that representation petitions and objections to Board representation elections actually be received by the due date, have resulted in documents being rejected as untimely even in circumstances in which the parties filing the documents have acted with all due diligence in attempting to meet the filing deadline. As noted by the Board in John I. Haas, Inc., 301 NLRB No. 45 (January 24, 1991):

Our experience has shown—as indeed the facts of this case demonstrate—that an objecting party acting in good faith and with all due diligence may still find its [election] objections rejected under [the present practice] because they did not arrive at the Regional Office on the due date.

The Board is revising § 102.111 of its rules in order to permit representation petitions and objections to Board representation elections, previously required to be actually received by the Board by a specified due date, to be accepted as timely if they are

"postmarked" at least one day prior to the due date. The Board also is defining the phrase "postmarking" to encompass timely depositing documents with a delivery service that will provide a record showing that the document was tendered to the delivery service in sufficient time for filing by the due date, but in no event any later than the day before the due date.

The Board also is revising § 102.111 to emphasize the present requirement that documents must be filed by the "close of business" on the due date. In the past, some offices have occasionally accepted documents after the actual close of business if someone was present in the office after hours who could take possession of the documents tendered for filing. The rule, however, requires that documents be filed "with the Board or the officer or agent designated to receive such matter before the close of business of the last day of the time limit" To make clear that this requirement will be strictly enforced, the rule is being reworded to provide that documents required to be filed by a particular date are due "before the official closing time of the receiving office on the last day of the time limit." This phrase is then repeated throughout the rule in order to alert parties to the Board's intention to strictly enforce the requirement. Of course, this strict requirement does not apply to documents that are timely "postmarked," as that word is now defined.

Finally, the Board has decided to dispense with the present requirement that requests for extensions of time for filing documents be submitted 3 days in advance of the due date of the document. With the advent of word processors and guaranteed overnight delivery services, it has become much more likely that the reasons why a filing deadline might be missed may not be known until within that 3-day period (e.g., last-minute computer failure). Accordingly, the 3-day requirement is being deleted in the several places where it appears and is being replaced by a statement in § 102.111(b) that a request for an extension of time to file a document be submitted on the document's due date "before the official closing time of the receiving office." Nevertheless, the rule provides that requests for extensions of time filed within three days of the due date must be grounded upon circumstances not reasonably foreseeable in advance.

The deletions from the prior rules of the requirement that requests for extensions of time be filed 3 days in advance of the due date occur in the

following sections: 102.42; 102.46(a); 102.46(d)(3); 102.46(f)(2); 102.48(d)(2); 102.67(k)(3); 102.69(j)(3); and 102.90.

The title of § 102.111 is retained without modification. Paragraph (a) of § 102.111, dealing generally with computation of time for filing papers, is modified to include reference to the requirement that the time for filing documents is "before the official closing time of the receiving office on the last day of the time limit." Paragraph (b) of § 102.111 also has been modified. A sentence has been added defining "postmarking" to encompass timely deposits with a delivery service. The new rule also deletes the requirement that "Objections to elections and revised tallies" and "Petitions filed pursuant to section 9(c) of the Act [representation petitions]" actually be received on or before the close of business of the last day for filing. By deleting this requirement, these documents now become subject to the "postmark" rule generally applicable to most documents. The requirement that documents be filed "before the official closing time of the receiving office," already set forth in the first sentence of § 102.111(b), is repeated for emphasis throughout the rule. Finally, the new requirement that requests for extensions of time to file a document be submitted before the document's due date has been added to this Section, as has the requirement that requests for extensions of time filed "within three days of the due date must be grounded on circumstances not reasonably foreseeable in advance."

Paragraph (c) of § 102.111 is new. It provides that certain documents in unfair labor practice cases may be filed late where the reason for filing constitutes "excusable neglect," provided that no undue prejudice would result from the late filing. It further provides that a party seeking to file a document late must file, along with the document, a motion stating the grounds relied upon for requesting permission to file late, along with an affidavit setting forth the specific facts relied upon in support of the request. Finally, the rule stays the time for responding to any untimely filed document until the date a ruling issues accepting the untimely document.

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: Sec. 6, National Labor Relations Act, as amended (29 U.S.C. 151, 156). Section 102.117(c) also issued under Sec. 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 Sec. 504(c)(1) of the Equal Access to Justice Act, as amended (5 U.S.C. 504(c)(1)).

2. Section 102.42 is revised to read as follows:

§ 102.42 Filings of briefs and proposed findings with the administrative law judge and oral argument at the hearing.

Any party shall be entitled, upon request, to a reasonable period at the close of the hearing for oral argument, which shall be included in the stenographic report of the hearing. Any party shall be entitled, upon request made before the close of the hearing, to file a brief or proposed findings and conclusions, or both, with the administrative law judge, who may fix a reasonable time for such filing, but not in excess of 35 days from the close of the hearing. Requests for further extensions of time shall be made to the chief administrative law judge in Washington, DC, to the deputy chief judge in San Francisco, California, to the associate chief judge in New York, New York, or to the associate chief judge in Atlanta, Georgia, as the case may be. Notice of the request for any extension shall be immediately served on all other parties, and proof of service shall be furnished. Three copies of the brief or proposed findings and conclusions shall be filed with the administrative law judge, and copies shall be served on the other parties, and a statement of such service shall be furnished.

3. Section 102.46 is revised to read as follows:

§ 102.46 Exceptions, cross-exceptions, briefs, answering briefs; time for filing; where to file; service on the parties; extension of time; effect of failure to include matter in exceptions; reply briefs; oral arguments.

(a) Within 28 days, or within such further period as the Board may allow, from the date of the service of the order transferring the case to the Board, pursuant to § 102.45, any party may (in accordance with section 10(c) of the Act and §§ 102.111 and 102.112 of these rules) file with the Board in Washington, DC, exceptions to the administrative law judge's decision or to any other part of the record or proceedings (including rulings upon all motions or objections), together with a brief in support of said

exceptions. Any party may, within the same period, file a brief in support of the administrative law judge's decision. The filing of such exceptions and briefs is subject to the provisions of paragraph (j) of this section. Requests for extension of time to file exceptions or briefs shall be in writing and copies thereof shall be served promptly on the other parties.

(b)(1) Each exception (i) shall set forth specifically the questions of procedure, fact, law, or policy to which exception is taken; (ii) shall identify that part of the administrative law judge's decision to which objection is made; (iii) shall designate by precise citation of page the portions of the record relied on; and (iv) shall concisely state the grounds for the exception. If a supporting brief is filed the exceptions document shall not contain any argument or citation of authority in support of the exceptions, but such matters shall be set forth only in the brief. If no supporting brief is filed the exceptions document shall also include the citation of authorities and argument in support of the exceptions, in which event the exceptions document shall be subject to the 50-page limit as for briefs set forth in § 102.46(j).

(2) Any exception to a ruling, finding, conclusion, or recommendation which is not specifically urged shall be deemed to have been waived. Any exception which fails to comply with the foregoing requirements may be disregarded.

(c) Any brief in support of exceptions shall contain no matter not included within the scope of the exceptions and shall contain, in the order indicated, the following:

(1) A clear and concise statement of the case containing all that is material to the consideration of the questions presented.

(2) A specification of the questions involved and to be argued, together with a reference to the specific exceptions to which they relate.

(3) The argument, presenting clearly the points of fact and law relied on in support of the position taken on each question, with specific page reference to the record and the legal or other material relied on.

(d)(1) Within 14 days, or such further period as the Board may allow, from the last date on which exceptions and any supporting brief may be filed, a party opposing the exceptions may file an answering brief to the exceptions, in accordance with the provisions of paragraph (j) of this section.

(2) The answering brief to the exceptions shall be limited to the questions raised in the exceptions and in the brief in support thereof. It shall present clearly the points of fact and law relied on in support of the position

taken on each question. Where exception has been taken to a factual finding of the administrative law judge and it is proposed to support that finding, the answering brief should specify those pages of the record which, in the view of the party filing the brief, support the administrative law judge's finding.

(3) Requests for extension of time to file an answering brief to the exceptions shall be in writing and copies thereof shall be served promptly on the other parties.

(e) Any party who has not previously filed exceptions may, within 14 days, or such further period as the Board may allow, from the last date on which exceptions and any supporting brief may be filed, file cross-exceptions to any portion of the administrative law judge's decision, together with a supporting brief, in accordance with the provisions of paragraphs (b) and (j) of this section.

(f)(1) Within 14 days, or such further period as the Board may allow, from the last date on which cross-exceptions and any supporting brief may be filed, any other party may file an answering brief to such cross-exceptions in accordance with the provisions of paragraphs (c) and (j) of this section. Such answering brief shall be limited to the questions raised in the cross-exceptions.

(2) Requests for extension of time to file cross-exceptions, or answering brief to cross-exceptions, shall be in writing and copies thereof shall be served promptly on the other parties.

(g) No matter not included in exceptions or cross-exceptions may thereafter be urged before the Board, or in any further proceeding.

(h) Within 14 days from the last date on which an answering brief may be filed pursuant to paragraph (d) or (f) of this section, any party may file a reply brief to any such answering brief. Any reply brief filed pursuant to this subsection shall be limited to matters raised in the brief to which it is replying, and shall not exceed 10 pages. No extensions of time shall be granted for the filing of reply briefs, nor shall permission be granted to exceed the 10 page length limitation. Eight copies of any reply brief shall be filed with the Board, copies shall be served on the other parties, and a statement of such service shall be furnished. No further briefs shall be filed except by special leave of the Board. Requests for such leave shall be in writing and copies thereof shall be served promptly on the other parties.

(i) Should any party desire permission to argue orally before the Board, request therefor must be made in writing to the

Board simultaneously with the statement of any exceptions or cross-exceptions filed pursuant to the provisions of this section with a statement of service on the other parties. The Board shall notify the parties of the time and place of oral argument, if such permission is granted. Oral arguments are limited to 30 minutes for each party entitled to participate. No request for additional time will be granted unless timely application is made in advance of oral argument.

(j) Exceptions to administrative law judges' decisions, or to the record, and briefs shall be printed or otherwise legibly duplicated. Carbon copies of typewritten matter will not be accepted. Eight copies of such documents shall be filed with the Board in Washington, DC, and copies shall also be served promptly on the other parties. All documents filed pursuant to this section shall be double spaced on 8½ by 11-inch paper. Any brief filed pursuant to this section shall not be combined with any other brief, and except for reply briefs whose length is governed by paragraph (h) of this section, shall not exceed 50 pages in length, exclusive of subject index and table of cases and other authorities cited, unless permission to exceed that limit is obtained from the Board by motion, setting forth the reasons therefor, filed not less than 10 days prior to the date the brief is due. Where any brief filed pursuant to this section exceeds 20 pages, it shall contain a subject index with page references and an alphabetical table of cases and other authorities cited.

§ 102.48 (Amended)

4. In § 102.48, paragraph (d)(2) is revised to read as follows:

(d) . . .

(2) Any motion pursuant to this section shall be filed within 28 days, or such further period as the Board may allow, after the service of the Board's decision or order, except that a motion for leave to adduce additional evidence shall be filed promptly on discovery of such evidence. Copies of any request for an extension of time shall be served promptly on the other parties.

§ 102.67 (Amended)

5. In § 102.67, paragraph (k)(3) is revised to read as follows:

(k) . . .

(3) 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 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.

§ 102.69 (Amended)

6. In § 102.69, paragraph (j)(3) is revised to read as follows:

(j)
 (3) Requests for extensions of time to file exceptions to a report, supporting briefs, or answering briefs, as permitted by this section, shall be filed 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, or the Regional Director. A statement of such service shall be filed with the document.

7. Section 102.90 is revised to read as follows:

§ 102.90 Notice of filing of charge; notice of hearing; hearing; proceedings before the Board; briefs; determination of dispute.

If it appears to the Regional Director that the charge has merit and the parties to the dispute have not submitted satisfactory evidence to the Regional Director that they have adjusted, or have agreed upon methods for the voluntary adjustment of, the dispute out of which such unfair labor practice shall have arisen, he shall cause to be served on all parties to such dispute a notice of hearing under section 10(k) of the Act before a hearing officer at a time and place fixed therein which shall be not less than 10 days after service of the notice of the filing of said charge. The notice of hearing shall contain a simple statement of the issues involved in such dispute. Such notice shall be issued promptly, and, in cases in which it is deemed appropriate to seek injunctive relief pursuant to section 10(l) of the Act, shall normally be issued within 5 days of the date upon which injunctive relief is first sought. Hearings shall be conducted by a hearing officer, and the procedure shall conform, insofar as applicable, to the procedure set forth in §§ 102.64 to 102.63, inclusive. Upon the close of the hearing, the proceeding shall be transferred to the Board and the Board shall proceed either forthwith upon the record, or after oral argument, or the submission of briefs, or further hearing, to determine the dispute or make other disposition of the matter. Should any party desire to file a brief with the Board, eight copies thereof

shall be filed with the Board in Washington, DC, within 7 days after the close of the hearing: *Provided, however*, That in cases involving the national defense and so designated in the notice of hearing no briefs shall be filed, and the parties, after the close of the evidence, may argue orally upon the record their respective contentions and positions: *Provided further*, That, in cases involving the national defense, upon application for leave to file briefs expeditiously made to the Board in Washington, DC, after the close of the hearing, the Board may for good cause shown grant such leave and thereupon specify the time for filing. Immediately upon such filing, a copy shall be served on the other parties. Such brief shall be printed or otherwise legibly duplicated: *Provided, however*, That carbon copies of typewritten matter shall not be filed and if submitted will not be accepted. Requests for extension of time in which to file a brief under authority of this section shall be in writing with copies thereof served on the other parties. No reply brief may be filed except upon special leave of the Board.

8. Section 102.111 is revised to read as follows:

§ 102.111 Time computation.

(a) In computing any period of time prescribed or allowed by these rules, the day of the act, event, or default after which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included, unless it is a Saturday, Sunday, or a legal holiday, in which event the period runs until the official closing time of the receiving office on the next Agency business day. When the period of time prescribed or allowed is less than 7 days, intermediate Saturdays, Sundays, and holidays shall be excluded in the computation.

(b) When the Act or any of these rules require the filing of a motion, brief, exception, or other paper in any proceeding, such document must be received by the Board or the officer or agent designated to receive such matter before the official closing time of the receiving office on the last day of the time limit, if any, for such filing or extension of time that may have been granted. A request for an extension of time to file a document shall be filed no later than the official closing time of the receiving office on the date on which the document is due. Requests for extensions of time filed within three days of the due date must be grounded upon circumstances not reasonably foreseeable in advance. In construing this section of the rules, the Board will accept as timely filed any document

which is hand delivered to the Board on or before the official closing time of the receiving office on the due date or postmarked on the day before (or earlier than) the due date; documents which are postmarked on or after the due date are untimely. "Postmarking" shall include timely depositing the document with a delivery service that will provide a record showing that the document was tendered to the delivery service in sufficient time for delivery by the due date, but in no event later than the day before the due date. *Provided, however*, the following documents must be received on or before the official closing time of the receiving office on the last day for filing:

- (1) Charges filed pursuant to section 10(b) of the Act (see also § 102.14).
- (2) Applications for awards and fees and other expenses under the Equal Access to Justice Act.
- (3) Petitions to revoke subpoenas.
- (4) Requests for extensions of time to file any document for which such an extension may be granted.

(c) In unfair labor practice proceedings, motions, exceptions, answers to a complaint or a backpay specification, and briefs may be filed within a reasonable time after the time prescribed by these rules only upon good cause shown based on excusable neglect and when no undue prejudice would result. A party seeking to file such motions, exceptions, answers, or briefs beyond the time prescribed by these rules shall file, along with the document, a motion that states the grounds relied on for requesting permission to file untimely. The specific facts relied on to support the motion shall be set forth in affidavit form and sworn to by individuals with personal knowledge of the facts. The time for filing any document responding to the untimely document shall not commence until the date a ruling issues accepting the untimely document. In addition, cross-exceptions shall be due within 14 days, or such further period as the Board may allow, from the date a ruling issues accepting untimely filed exceptions.

Dated, Washington, DC, September 19, 1991.

By direction of the Board,
 John C. Truesdale,

Executive Secretary, National Labor Relations Board.

[FR Doc. 91-23076 Filed 9-26-91; 8:45 am]

BILLING CODE 7545-01-8

Accordingly, 24 CFR part 200 is amended as follows:

Part 200—INTRODUCTION

1. The authority citation for 24 CFR part 200 continues to read as follows:

Authority: Titles I, II, National Housing Act (12 U.S.C. 1701-1715z-18); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

2. In § 200.213, paragraph (c)(3) and paragraph (e) are revised to read as follows:

§ 200.213 Applicability of procedure.

(c) . . .
(3) Housing assistance payments under section 8 of the United States Housing Act of 1937 (with the exception of the programs described in 24 CFR part 882, subparts A, B, C and F, and in 24 CFR part 887, which are tenant-based programs);

(e) Sales of projects by the Secretary, including "all cash" sales.

3. In § 200.215, paragraph (e)(1) is revised and a new paragraph (h) is added, to read as follows:

§ 200.215 Definitions.

(e) *Principal.* (1) An individual, joint venture, partnership, corporation, trust, nonprofit association, or any other public or private entity proposing to participate, or participating, in a project as sponsor, owner, prime contractor, Turnkey Developer, management agent, nursing home administrator or operator, packager, or consultant; and architects and attorneys who have any interest in the project other than an arms-length fee arrangement for professional services.

(h) *Risk.* In order to determine whether a participant's participation in a project would constitute an unacceptable risk, the following factors must be considered: Financial stability; previous performance in accordance with HUD statutes, regulations, and program requirements; general business practices; or other factors which indicate to the MPRC that the principal could not be expected to operate the project in a manner consistent with furthering the Department's purpose of supporting and providing decent, safe and affordable housing for the public.

4. In § 200.230, paragraphs (c) introductory text and (c)(1) are revised, and current paragraph (f) is redesignated as paragraph (g) and a new paragraph (f) is added, to read as follows:

§ 200.230 Standards for disapproval.

(c) Unless the Review Committee finds mitigating or extenuating circumstances that enable it to make a risk determination for approval, any of the following occurrences attributable or legally imputable to a principal may be the basis for disapproval, whether or not the principal was actively involved in the project:

(1) Mortgage defaults, assignments or foreclosures, unless the Review Committee determines that the default, assignment or foreclosure was caused by circumstances beyond the principal's control;

(f) Submission of a false or materially incomplete form 2530 certification application.

5. In § 200.243, paragraph (a) is revised to read as follows:

§ 200.243 Hearing rules—How and when to apply.

(a) A principal who has been disapproved, conditionally approved, or who has had approval withheld by the Review Committee, either initially or after reconsideration, or who is disapproved by the Participation Control Officer, may request a hearing before a Hearing Officer. The hearing will be conducted in accordance with the provisions of 24 CFR part 26, except as modified by this section. Requests for hearing must be made within 30 days from the date of receipt of notice of the adverse determination.

(1) Except as provided in paragraphs (a)(2) and (3) of this section, a principal may request an oral hearing before a hearing officer.

(2) Where a disapproval is based solely on a suspension or debarment that has been previously adjudicated, the hearing shall be limited to the opportunity to submit documentary evidence and written briefs for consideration by a hearing officer.

(3) Where a disapproval is based on a suspension and an appeal is pending, the hearing shall be stayed pending the outcome of the suspension, unless the parties and the hearing officer agree that the matter should be consolidated with the suspension for hearing.

Dated: June 18, 1991.

Arthur J. Hill,
Assistant Secretary for Housing-Federal
Housing Commissioner.
(FR Doc. 91-24226 Filed 10-8-91; 8:45 am)

BILLING CODE 4210-27-M

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 to provide for a minimum type size that may be utilized in documents filed with the Agency. The intended effect of the change is to prevent parties to Board proceedings from circumventing page limitation requirements by filing documents utilizing substandard type sizes and to help insure the legibility of other documents for which no page limitation exists.

EFFECTIVE DATE: November 8, 1991.

FOR FURTHER INFORMATION CONTACT: John C. Truesdale, Executive Secretary, 1717 Pennsylvania Avenue, NW., room 701, Washington, DC 20570, Telephone: (202) 254-9430.

SUPPLEMENTARY INFORMATION: The National Labor Relations Board has concluded that parties to Board proceedings occasionally have attempted to circumvent page limitations by filing papers utilizing small type or narrow margins. Accordingly, the Board is revising section 102.114 of its rules in order to establish a minimum type size and margin width that may be utilized in documents filed with the Board. The change also will help insure the legibility of other documents for which no page limitation exists.

The title of § 102.114 is modified to include reference to the fact that the section now covers the subject of the form of papers to be filed with the Board. Paragraph (a) is retained without modification. The present paragraph (b) is renumbered to become paragraph (c) and is otherwise unchanged. A new paragraph (b) is added. This new paragraph establishes a minimum type size of "elite" type or its equivalent (12 typewritten characters per inch), the size type presently utilized in Board slip opinions. The other commonly employed type, known as "pica," is larger (10 typewritten characters per inch), and so is also permitted. So far as the Board is aware, elite and pica typewriters and printers are commonly employed throughout the country, so the rule should have no adverse impact on any party appearing before the Agency.

The new rule also provides that documents be filed on 8½ by 11-inch

plain white paper, have margins no smaller than one inch on any side, and be double spaced (except that quotations and footnotes may be single spaced). Finally, the rule specifies that carbon copies shall not be filed.

No special attempt has been made to accommodate typographically printed documents. Typographic printing methods typically compress far more words onto a single page than is possible with typewriters or with standard computer printers that print in the manner of a typewriter. Accordingly, if the Board were to establish an acceptable typographic type size, it would have to reduce the page size of the document to prevent parties who used that method from circumventing the intent of applicable page limitations. See, e.g., Supreme Court Rules 33 and 34, setting different page limits and page sizes for documents depending on whether they are typographically printed or typewritten. Because virtually all documents filed with the National Labor Relations Board are typewritten, the Board has opted not to attempt to formulate the complex set of rules that would be necessary to accommodate traditional typographic printing methods. Parties wishing to submit typographically printed documents may do so, but the type must be set to conform with the requirement that it be the equivalent of elite or larger typewriting.

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.

PART 102—[AMENDED]

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. In § 102.114, the heading and paragraphs (b) and (c) are revised to read as follows:

§ 102.114 **Service of papers by parties; form of papers; proof of service.**

(b) Papers filed with the Board, General Counsel, Regional Director, Administrative Law Judge, or Hearing Officer shall be typewritten or otherwise legibly duplicated on 8½ by 11-inch plain white paper, shall have margins no less than one inch on each side, shall be in a typeface no smaller than 12 characters-per-inch (elite or the equivalent), and shall be double spaced (except that quotations and footnotes may be single spaced). Carbon copies shall not be filed and will not be accepted. Nonconforming papers may, at the Agency's discretion, be rejected.

(c) The person or party serving the papers or process on other parties in conformance with §§ 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 § 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.

Dated, Washington, DC, October 2, 1991.

By direction of the Board:

John C. Truesdale,

Executive Secretary, National Labor Relations Board.

[FR Doc. 91-24318 Filed 10-8-91; 8:45 am]

BILLING CODE 7545-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 414

[BPD-742-IFC]

RIN 0938-AF57

Medicare Program; Continuous Use of Durable Medical Equipment

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Interim final rule with comment period.

SUMMARY: We are setting forth in this interim final rule with comment period the Secretary's determination, required under section 1834(a)(7)(A) of the Social Security Act, of the meaning of the term "continuous" as that term is used in defining a period of continuous use for which we make payments for durable medical equipment.

DATES: *Effective Date:* This final rule is effective November 8, 1991.

Comment Date: Comments will be considered if we receive them at the appropriate address, as provided below, by 5 p.m. on November 25, 1991.

ADDRESSES: Mail comments to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: BPD-742-IFC, P.O. Box 26676, Baltimore, Maryland 21207.

If you prefer, you may deliver your comments to one of the following addresses:

Room 309-G, Hubert H. Humphrey Building, 200 Independence Ave., SW., Washington, DC 20201.

Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland 21207.

Due to staffing and resource limitations, we cannot accept facsimile (FAX) copies of comments. If comments concern information collection recordkeeping requirements, please address a copy of comments to: Office of Management and Budget, Office of Information and Regulatory Affairs, Room 3001, New Executive Office Building, Washington DC 20503. Attention: Allison Herron Eydt

In commenting, please refer to file code BPD-742-IFC. Comments received timely will be available for public inspection as they are received, beginning approximately three weeks after publication of this document, in room 309-G of the Department's offices at 200 Independence Ave., SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (phone: 202-245-7890).

FOR FURTHER INFORMATION CONTACT: William Long, (301) 966-5655.

SUPPLEMENTARY INFORMATION:

I. Background

Section 4062(b)(1) of the Omnibus Budget Reconciliation Act of 1987 (Pub. L. 100-203) added section 1834 to the Social Security Act (the Act) to provide for a completely restructured Medicare payment methodology for durable medical equipment (DME) and orthotic and prosthetic devices. Section 1834 of the Act, as amended by section 411(g)(1) of the Medicare Catastrophic Coverage Act of 1988 (Pub. L. 100-360), section 608(d)(22)(A) of the Family Support Act of 1988 (Pub. L. 100-485), and sections 6112 and 6140 of the Omnibus Budget Reconciliation Act of 1989 (Pub. L. 101-239), provides special payment rules for DME, prosthetics, and orthotics furnished on or after January 1, 1989. Section 4152 of the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101-508) amends the payment rules for DME