''estimated city mpg'' and the ''estimated highway mpg'' of such new automobile,[2] must be disclosed;

(ii) A representation regarding only city or only highway fuel economy, only the corresponding EPA estimate must be disclosed; [3]

(iii) A general fuel economy claim without reference to either city or highway, or if the representation refers to any combined fuel economy number, the ''estimated city mpg'' must be disclosed; [4] and

(2) That the U.S. Environmental Protection Agency is the source of the ''estimated city mpg'' and ''estimated highway mpg'' and that the numbers are estimates.[5]

(b) If an advertisement for a new automobile cites:

(1) The ''estimated in-use fuel economy range,'' the advertisement must state with equal prominence both the upper and lower number of the range, an explanation of the meaning of the numbers (*i.e.*, city mpg range or highway mpg range or both), and that the U.S. Environmental Protection Agency is the source of the figures.

(2) The ''range of estimated fuel economy values for the class of new automobiles'' as a basis for comparing the fuel economy of two or more automobiles, such comparison must be made to the same type of range (*i.e.*, city or highway).[6]

(c) Fuel economy estimates derived from a non-EPA test may be disclosed provided that:

(1) The advertisement also discloses the ''estimated city mpg'' and/or the ''estimated highway mpg,'' as required by § 259.2(a), and the disclosure required by § 259.2(a), and gives the ''estimated city mpg'' and/or the ''estimated highway mpg'' figure(s) substantially more prominence than any other estimate; [7] provided, however, for radio and television advertisements in which any other estimate is used only in the audio, equal prominence must be given the ''estimated city mpg'' and/or the ''estimated highway mpg'' figure(s); [8]

(2) The source of the non-EPA test is clearly and conspicuously identified;

(3) The driving conditions and variables simulated by the test which differ from those used to measure the ''estimated city mpg'' and/or the ''estimated highway mpg,'' and which result in a change in fuel economy, are clearly and conspicuously disclosed.[9] Such conditions and variables may include, but are not limited to, road or dynamometer test, average speed, range of speed, hot or cold start, and temperature; and

(4) The advertisement clearly and conspicuously discloses any distinctions in ''vehicle configuration'' and other equipment affecting mileage performance (*e.g.*, design or equipment differences which distinguish subconfigurations as defined by EPA) between the automobiles tested in the non-EPA test and the EPA tests.

By direction of the Commission.

Donald S. Clark,

Secretary.

Concurring Statement of Commissioner Mary L. Azcuenaga, New Automobile Mileage Guide, Matter No. P844508

Today, the Commission issues amendments to the Fuel Economy Advertising Guide. I join the Commission in issuing the amended Guide because the amendments are needed to conform the Guide to the Environmental Protection Agency's rules concerning fuel economy and because the amendments otherwise appear to be improvements. The Commission proposed these amendments to the Guide and received comments on them in 1985. Given that the record on which the amendments are based closed a decade ago, I would have preferred, before finalizing the amendments, to reopen the comment period for thirty days to ascertain whether the amendments should be issued as is or should be revised to reflect any new information.[1]

When the proposed amendments were published for comment, the Commission stated that it would not consider advertising that complied with the amendments to violate Section 5 of the FTC Act. It is my understanding that most fuel economy advertising since 1985 has been consistent with the proposed amendments to the Guide. It is also my understanding that fuel economy advertising has become less prevalent since 1985. The decrease in fuel economy advertising may be due to changes in the relative importance that consumers attach to fuel economy information when making a new automobile purchase. In the alternative, fuel economy advertising may have become less prevalent because the standards contained in the amended Guide are overly regulatory and have deterred truthful as well as deceptive advertising. The record supporting the amendments, having closed a decade ago, sheds no light on why fuel economy advertising has decreased during the ensuing years. Given the potential value of truthful fuel economy advertising, it would have been worthwhile to seek public comment again before issuing the amended Guide to ensure that it not only helps to prevent deception but also does not deter truthful advertising.

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[2] For purposes of § 259.2(a), the ''estimated city mpg'' and the ''estimated highway mpg'' must be those applicable to the specific nameplate being advertised. Fuel economy estimates assigned to ''unique nameplates'' (see 40 CFR 600.207–86(a)(2)) apply only to such unique car lines. For example, if a manufacturer has a model named the ''XZA'' that has fuel economy estimates assigned to it and a derivative model named the ''Econo-XZA'' that has separate, higher fuel economy estimates assigned to it, these higher numbers assigned to the ''Econo-XZA'' cannot be used in advertisements for the ''XZA.''

[3] For example, if the representation clearly refers only to highway fuel economy, only the ''estimated highway mpg'' need be disclosed.

[4] Nothing in this section should be construed as prohibiting disclosure of both the city and highway estimates.

[5] The Commission will regard the following as the minimum disclosure necessary to comply with § 259.2(a)(2), regardless of the media in which the advertisement appears: ''EPA estimate(s).''

For television, if the estimated mpg appears in the video, the disclosure must appear in the video; if the estimated mpg is audio, the disclosure must be audio.

[6] For example, an advertisement could not state that ''according to EPA estimates new automobiles in this class get as little as X mpg (citing a figure from the city range) while EPA estimates that this automobile gets X + mpg (citing the EPA highway estimates or a number from the EPA estimated in-use fuel economy highway range for the automobile).

[7] The Commission will regard the following as constituting ''substantially more prominence:''

For television only: If the estimated city and/or highway mpg and any other mileage estimate(s) appear only in the visual portion, the estimated city and/or highway mpg must appear in numbers twice as large as those used for any other estimate, and must remain on the screen at least as long as any other estimate. If the estimated city and highway mpg appear in the audio portion, visual broadcast of any other estimate must be accompanied by the simultaneous, at least equally prominent, visual broadcast of the estimated city and/or highway mpg. Each visual estimated city and highway mpg must be broadcast against a solid color background that contrasts easily with the color used for the numbers when viewed on both color and black and white television.

For print only: The estimated city and/or highway mpg must appear in clearly legible type at least twice as large as that used for any other estimate. Alternatively, if the estimated city and highway mpg appear in type of the same size as such other estimate, they must be clearly legible and conspicuously circled. The estimated city and highway mpg must appear against a solid color, contrasting background. They may not appear in a footnote unless all references to fuel economy appear in a footnote.

[8] The Commission will regard the following as constituting equal prominence. For radio and television when any other estimate is used in the audio: The estimated city and/or highway mpg must be stated, either before or after each disclosure of such other estimate at least as audibly as such other estimate.

[9] For dynamometer tests any difference between the EPA and non-EPA tests must be disclosed. For in-use tests, the Commission realizes that it is impossible to duplicate the EPA test conditions, and that in-use tests may be designed to simulate a particular driving situation. It must be clear from the context of the advertisement what driving situation is being simulated (*e.g.*, cold weather driving, highway driving, heavy load conditions). Furthermore, any driving or vehicle condition must be disclosed if it is significantly different from that which an appreciable number of consumers (whose driving condition is being simulated) would expect to encounter.

[1] Reopening the comment period would have been consistent with the Commission's ongoing regulatory review program under which its rules and guides are reviewed at least once every ten years.

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 filing and service of papers. The principal revisions include permitting parties to file unfair labor practice charges, petitions in representation proceedings, and objections to elections by facsimile transmission, to permit the Board to serve certain documents by regular mail, rather than by other more expensive means, and generally to reorganize and modify certain portions of the rules pertaining to filing and service. The revisions are being adopted in order to expand the use of facsimile technology to the service of charges, representation petitions, and election objections, to reduce the cost to the agency of the prior requirements that certain documents be served by certified or registered mail, and to update certain other procedural aspects of the filing and service requirements. The intended effect of the revisions is to permit parties and the Board to take greater advantage of facsimile technology, to reduce the cost of serving certain documents, and to update the rules in other respects.

EFFECTIVE DATE: December 8, 1995.

FOR FURTHER INFORMATION CONTACT: John J. Toner, Acting Executive Secretary, 1099 14th Street, N.W., Room 11602, Washington, D.C. 20570–0001; Telephone: (202) 273–1934.

SUPPLEMENTARY INFORMATION: In 1990, the National Labor Relations Board recognized that the use of facsimile systems was becoming more prevalent in both the private and public sectors by modifying § 102.114 of its rules to permit certain documents to be served by facsimile transmission. The Board's approach at that time was to move cautiously into this new technological arena, taking into account the limited number of facsimile machines then available throughout the Agency. Thus, the rule permitted facsimile transmissions of requests for extensions of time, prohibited facsimile transmissions of most other formal documents, and permitted facsimile transmissions of all other documents subject to advance approval, in each instance, by the receiving office. At that time, the Board contemplated that the subject of facsimile transmissions would be revisited periodically and reevaluated based on experience, technological improvements, and current costs.

Having had several years of experience under this rule, the Board now has determined that it would be appropriate to permit unfair labor practice charges, petitions in representation proceedings, and objections to elections to be filed by facsimile transmission. These documents tend to be short, usually only one or a few pages in length, so their permitted transmission would not interfere with the Agency's use of its machines for its own purposes. Moreover, filing of unfair labor practice charges sometimes is time-sensitive, particularly in statutory priority cases since a Region needs to have a charge before it can begin its investigation. Modifying the rules to permit these three types of documents to be filed by facsimile transmission will have the salutary effect of according parties faster means of access to the Board's processes.

Additionally, the Board recently has been studying means by which it can reduce the cost of the services it renders without reducing the quality of those services. One means of accomplishing this objective is to utilize regular mail, rather than certified or registered mail, in appropriate circumstances. Sending a piece of correspondence by certified mail costs $1.00 in addition to the regular first class postage. The U.S. Postal Service charges $1.10 for a return receipt in addition to the certified and first class postage costs. In Fiscal Year 1992 the Agency spent approximately $321,304 for the use of certified mail, of which approximately $145,546 was attributable to return receipt expenses. In an era of diminishing resources, a reduction in these costs was quickly identified as a goal to be pursued.

The National Labor Relations Act, 29 U.S.C. 161(4), provides that:

> Complaints, orders and other process and papers of the Board, its member, agent, or agency, may be served either personally or by registered or certified mail or by telegraph or by leaving a copy thereof at the principal office or place of business of the person required to be served.

This section of the Act never has been understood to require that every piece of paper that the Board issues be served by one of these methods. Nevertheless, under the Board's present rules certain documents, such as unfair labor practice charges, traditionally have been served by certified mail even though the statute does not require it. The new rules change this by more clearly delineating the circumstances under which various formal or informal methods of service are to be utilized.

In drawing distinctions between the types of documents required to be served by the formal methods required by the statute and documents that may be served by less formal methods, the Board has been guided by the dictates of due process. Accordingly, the rules will continue to require use of the statutorily prescribed methods to serve: complaints and accompanying notices of hearing, compliance specifications, and amendments to either complaints or to compliance specifications, upon all parties (§ 102.113(a)); final orders of the Board in unfair labor practice cases, and administrative law judges' decisions, upon all parties (§ 102.113(b)); and subpoenas upon the recipient (§ 102.113(c)). All other documents, including unfair labor practice charges (see § 102.14), may be served by other methods, including regular mail (§ 102.113(d)).

Finally, during the course of preparing the foregoing revisions, the Board identified several other areas in which the filing and service requirements should be updated. These are discussed under the specific sections in which the changes are included.

Section 102.14, dealing with service of unfair labor practice charges, is being divided into three subsections. New § 102.14(a) continues, without change, the requirement that it is the responsibility of the charging party to timely serve a copy of the charge upon the person against whom the charge is made. To this provision is added a sentence detailing the means by which a charge can be served. This provision, formerly contained in § 102.114(a), is moved here in an effort to keep provisions relating to the service of charges in a single section. At the same time, the means by which a charge may be served are expanded to include regular mail and, with the permission of the charged party, facsimile transmission or any other means.

New § 102.14(b) is taken from the second sentence in former § 102.14. That provision is modified to make perfectly clear that service of a copy of the unfair labor practice charge by the Regional Director is a matter of courtesy, rather than of right, and to add a provision allowing the Regional Director to serve this copy of the charge by facsimile transmission.

New § 102.14(c) incorporates provisions from § 102.112 with respect to the date of service of a document. Like the new § 102.112, this provision addresses the use of private delivery

services or facsimile transmission, as well as personal service or service by mail.

Section 102.112, dealing with dates of service and dates of filing, is modified to include references to service by private delivery service or facsimile transmission. When documents are served by private delivery service the date of service is, like with the use of United States mail, the date of deposit with the delivery service. When service is by facsimile transmission, the date of service is the date on which the transmission is received.

Section 102.113 is modified in several respects. Former § 102.113(a) is divided into five parts, renumbered as §§ 102.113(a) through 102.113(e). The new §§ 102.113(a) through 102.113(d) demarcate the situations in which service is or is not required to be made by registered or certified mail, telegraph, or personal service. While the former § 102.113(a) set forth the means by which the Agency would serve unfair labor practice charges, that provision now has been moved to § 102.14, where other provisions relating to service of unfair labor practice charges were and still are contained. Further, as noted above, that provision is modified so that unfair labor practice charges may be served by various means, including regular mail.

The new § 102.113(e) carries forward provisions formerly contained in § 102.113(a) relating to methods for proving service. In addition, this new subsection now makes clear that these methods are not exclusive, and that ''any sufficient proof may be relied upon to establish service.''

The new § 102.113(f) carries forward the provisions of former § 102.113(b) regarding service by the Agency upon the attorneys or other representatives of a party. The language is revised to make clear that service by the Board on such attorneys or other representatives ''may be accomplished by any means of service permitted by these rules, including regular mail.''

Section 102.114 is modified in several respects. Subsection 102.114(a) is modified to delete the provision for other means of service provided for ''in a civil action by the law of the State . . .'' In its place, the new rule provides for service by regular mail or private delivery service and, with the permission of the person receiving the service, any other means including facsimile transmission. With regard to the methods of service when filing is done by hand, the new rule omits the provision that service be by mail or telegraph and substitutes a requirement that service be by a means that would ensure receipt by the next business day. Finally, the new rule makes clear that once a complaint issues the General Counsel, as a party to the proceeding, is subject to the same service requirements as any other party, except to the extent that §§ 102.113(a) and 102.113(c) provide otherwise. As noted under the discussion of § 102.113, above, the Agency is required, in certain circumstances, to utilize more formal means of service than is permitted for other parties.

The new § 102.114(b) carries forward provisions from the former § 102.114(a) with respect to means for proving service, modified in light of changes in the methods of service that are permitted under the new rules. In addition, this new subsection now makes clear that these methods are not exclusive, and that ''any sufficient proof may be relied upon to establish service.''

The new § 102.114(c) was formerly part of § 102.114(a). It is now moved to its own subsection, but without any substantive changes.

Former §§ 102.114(b) and 102.114(c) are renumbered to become new §§ 102.114(d) and 102.114(e), respectively. They are not changed in any other respect.

Former § 102.114(d) is renumbered to become new § 102.114(f). This subsection is amended to provide that unfair labor practice charges, petitions in representation cases, and objections to elections may be filed by facsimile transmission as a matter of right. Formerly, facsimile filings of these documents were prohibited. The section further provides that filing of these documents by facsimile is effective on the date of receipt by the agency. Finally, a provision is added admonishing persons attempting to file by facsimile transmission that a ''failure to timely file or serve a document will not be excused on the basis of a claim that transmission could not be accomplished because the receiving machine was off-line or busy or unavailable for any other reason.''

Former § 102.114(e) is renumbered to become new § 102.114(g). This subsection is amended to delete the current prohibition on filing unfair labor practice charges, representation petitions, or objections to elections by facsimile transmission.

Former § 102.114(f) is renumbered to become new § 102.114(h). This subsection is amended to conform to the new provisions in § 102.114(a) under which parties may, under certain circumstances, refuse to accept facsimile transmissions.

Further changes related to the filing by facsimile of charges, representation petitions, and election objections are being made to §§ 102.11, 102.60, and 102.69. These sections currently require that unfair labor practice charges, representation petitions, and election objections, respectively, must be in writing and signed, and that an original and four copies be filed (five copies in the case of election objections under § 102.69). These sections are being modified so that when someone files an unfair labor practice charge, a representation petition, or election objections by facsimile transmission, they ''shall also file an original for the Agency's records, but failure to do so shall not affect the validity of the filing by facsimile, if otherwise proper.'' The extra copies, still required when filing is accomplished by other means, need not be filed when filing is by facsimile transmission. Sections 102.11 and 102.60 also are being amended to delete the general reference to declarations made ''under the penalties of the Criminal Code,'' and to substitute therefor a specific reference to declarations pursuant to 28 U.S.C. 1746.

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:

PART 102—RULES AND REGULATIONS, SERIES 8

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 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 102.11 is revised to read as follows:

§ 102.11 Forms; jurat; or declaration.

Such charges shall be in writing and signed, and either shall be sworn to before a notary public, Board agent, or other person duly authorized by law to administer oaths and take acknowledgments or shall contain a declaration by the person signing it, under the penalty of perjury that its contents are true and correct (see 28

U.S.C. 1746). An original and four copies of such charge shall be filed together with one copy for each additional charged party named. A party filing a charge by facsimile pursuant to § 102.114(f) shall also file an original for the Agency's records, but failure to do so shall not affect the validity of the filing by facsimile, if otherwise proper. In addition, extra copies need not be filed if the filing is by facsimile pursuant to § 102.114(f).

3. Section 102.14 is revised to read as follows:

§ 102.14 Service of charge.

(a) *Charging party's obligation to serve; methods of service.* Upon the filing of a charge, the charging party shall be responsible for the timely and proper service of a copy thereof upon the person against whom such charge is made. Service may be made personally, or by registered mail, certified mail, regular mail, or private delivery service. With the permission of the person receiving the charge, service may be made by facsimile transmission or by any other agreed-upon method.

(b) *Service as courtesy by Regional Director.* The Regional Director will, as a matter of courtesy, cause a copy of such charge to be served by regular mail on the person against whom the charge is made. Such charges may, with the permission of the person receiving the charge, be served by the Regional Director by facsimile transmission. In this event the receipt printed upon the Agency's copy by the Agency's own facsimile machine, showing the phone number to which the charge was transmitted and the date and time of receipt shall be proof of service of the same. However, whether serving by facsimile, by regular mail, or otherwise, the Regional Director shall not be deemed to assume responsibility for such service.

(c) *Date of service of charge.* In the case of service of a charge by mail or private delivery service, the date of service is the date of deposit with the post office or other carrier. In the case of service by other methods, including hand delivery or facsimile transmission, the date of service is the date of receipt.

4. In § 102.60, paragraph (a) is revised to read as follows:

§ 102.60 Petitions.

(a) *Petition for certification or decertification; who may file; where to file; withdrawal.* A petition for investigation of a question concerning representation of employees under paragraphs (1)(A)(i) and (1)(B) of section 9(c) of the Act (hereinafter called a petition for certification) may be filed by an employee or group of employees or any individual or labor organization acting in their behalf or by an employer. A petition under paragraph (1)(A)(ii) of section 9(c) of the Act, alleging that the individual or labor organization which has been certified or is being currently recognized as the bargaining representative is no longer such representative (hereinafter called a petition for decertification), may be filed by any employee or group of employees or any individual or labor organization acting in their behalf. Petitions under this section shall be in writing and signed, and either shall be sworn to before a notary public, Board agent, or other person duly authorized by law to administer oaths and take acknowledgments or shall contain a declaration by the person signing it, under the penalty of perjury, that its contents are true and correct (see 28 U.S.C. 1746). An original and four copies of the petition shall be filed. A person filing a petition by facsimile pursuant to § 102.114(f) shall also file an original for the Agency's records, but failure to do so shall not affect the validity of the filing by facsimile, if otherwise proper. In addition, extra copies need not be filed if the filing is by facsimile pursuant to § 102.114(f). Except as provided in § 102.72, such petitions shall be filed with the Regional Director for the Region wherein the bargaining unit exists, or, if the bargaining unit exists in two or more Regions, with the Regional Director for any of such Regions. Prior to the transfer of the case to the Board, pursuant to § 102.67, the petition may be withdrawn only with the consent of the Regional Director with whom such petition was filed. After the transfer of the case to the Board, the petition may be withdrawn only with the consent of the Board. Whenever the Regional Director or the Board, as the case may be, approves the withdrawal of any petition, the case shall be closed.

* * * * *

5. In § 102.69, paragraph (a) is revised to read as follows:

§ 102.69 Election procedure; tally of ballots; objections; certification by the regional director; report on challenged ballots; report on objections; exceptions; action of the Board; hearing.

(a) Unless otherwise directed by the Board, all elections shall be conducted under the supervision of the Regional Director in whose Region the proceeding is pending. All elections shall be by secret ballot. Whenever two or more labor organizations are included as choices in an election, either participant may, upon its prompt request to and approval thereof by the Regional Director, whose decision shall be final, have its name removed from the ballot: *Provided, however,* That in a proceeding involving an employer-filed petition or a petition for decertification the labor organization certified, currently recognized, or found to be seeking recognition may not have its name removed from the ballot without giving timely notice in writing to all parties and the Regional Director, disclaiming any representation interest among the employees in the unit. Any party may be represented by observers of its own selection, subject to such limitations as the Regional Director may prescribe. Any party and Board agents may challenge, for good cause, the eligibility of any person to participate in the election. The ballots of such challenged persons shall be impounded. Upon the conclusion of the election the ballots will be counted and a tally of ballots prepared and immediately made available to the parties. Within 7 days after the tally of ballots has been prepared, any party may file with the Regional Director an original and five copies of objections to the conduct of the election or to conduct affecting the results of the election, which shall contain a short statement of the reasons therefor. Such filing must be timely whether or not the challenged ballots are sufficient in number to affect the results of the election. A person filing objections by facsimile pursuant to § 102.114(f) shall also file an original for the Agency's records, but failure to do so shall not affect the validity of the filing by facsimile, if otherwise proper. In addition, extra copies need not be filed if the filing is by facsimile pursuant to § 102.114(f). The Regional Director will cause a copy of the objections to be served on each of the other parties to the proceeding. Within 7 days after the filing of objections, or such additional time as the Regional Director may allow, the party filing objections shall furnish to the Regional Director the evidence available to it to support the objections.

* * * * *

6. Section 102.112 is revised to read as follows:

§ 102.112 Date of service; date of filing.

The date of service shall be the day when the matter served is deposited in the United States mail, or is deposited with a private delivery service that will provide a record showing the date the document was tendered to the delivery service, or is delivered in person, as the case may be. Where service is made by facsimile transmission, the date of service shall be the date on which

transmission is received. The date of filing shall be the day when the matter is required to be received by the Board as provided by § 102.111.

7. Section 102.113 is revised to read as follows:

§ 102.113 Methods of service of process and papers by the Agency; proof of service.

(a) *Service of complaints and compliance specifications.* Complaints and accompanying notices of hearing, compliance specifications, and amendments to either complaints or to compliance specifications, shall be served upon all parties either personally or by registered or certified mail or by telegraph, or by leaving a copy thereof at the principal office or place of business of the person required to be served.

(b) *Service of final orders and decisions.* Final orders of the Board in unfair labor practice cases and administrative law judges' decisions shall be served upon all parties either personally or by registered or certified mail or by telegraph, or by leaving a copy thereof at the principal office or place of business of the person required to be served.

(c) *Service of subpoenas.* Subpoenas shall be served upon the recipient either personally or by registered or certified mail or by telegraph, or by leaving a copy thereof at the principal office or place of business of the person required to be served.

(d) *Service of other documents.* Other documents may be served by the Agency by any of the foregoing methods as well as regular mail or private delivery service. Such other documents may be served by facsimile transmission with the permission of the person receiving the document.

(e) *Proof of service.* In the case of personal service, or delivery to a principal office or place of business, the verified return by the individual so serving the same, setting forth the manner of such service, shall be proof of the same. In the case of service by mail or telegraph, the return post office receipt or telegraph receipt therefor when registered or certified and mailed or when telegraphed shall be proof of service of the same. However, these methods of proof of service are not exclusive; any sufficient proof may be relied upon to establish service.

(f) *Service upon representatives of parties.* Whenever these rules require or permit the service of pleadings or other papers upon a party, a copy shall also be served on any attorney or other representative of the party who has entered a written appearance in the proceeding on behalf of the party. If a party is represented by more than one attorney or representative, service upon any one of such persons in addition to the party shall satisfy this requirement. Service by the Board or its agents of any documents upon any such attorney or other representative may be accomplished by any means of service permitted by these rules, including regular mail.

8. Section 102.114 is revised to read as follows:

§ 102.114 Filing and service of papers by parties; form of papers; manner and proof of filing or service.

(a) Service of papers by a party on other parties may be made personally, or by registered mail, certified mail, regular mail, or private delivery service. Service of papers by a party on other parties by any other means, including facsimile transmission, is permitted only with the consent of the party being served. Unless otherwise specified elsewhere in these rules, 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 done by hand, the other parties shall be promptly notified of such action by telephone, followed by service of a copy in a manner designed to insure receipt by them by the close of the next business day. The provisions of this section apply to the General Counsel after a complaint has issued, just as they do to any other party, except to the extent that the provisions of §§ 102.113(a) or 102.113(c) provide otherwise.

(b) 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 by a private delivery service, the receipt from that service showing delivery shall be proof of service. However, these methods of proof of service are not exclusive; any sufficient proof may be relied upon to establish service.

(c) 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.

(d) 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.

(e) The person or party serving the papers or process on other parties in conformance with § 102.113 and paragraph (a) of this section 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 paragraph (a) of this section 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.

(f) Unfair labor practice charges, petitions in representation proceedings, objections to elections, and requests for extensions of time for filing documents will be accepted by the Agency if transmitted to the facsimile machine of the appropriate office. Other documents, except those specifically prohibited in paragraph (g) of this section, will be accepted by the Agency 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. When filing a charge, a petition in a representation proceeding, or election objections by facsimile transmission pursuant to this section, receipt of the transmitted document by the Agency constitutes filing with the Agency. A failure to timely file or serve a document will not be excused on the basis of a claim that transmission could not be accomplished because the receiving machine was off-line or busy or unavailable for any other reason.

(g) Facsimile transmissions of the following documents will not be accepted for filing: 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 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.

(h) Documents and other papers filed through facsimile transmission shall be served on all parties in the same way as used to serve the office where filed, or in a more expeditious manner, in conformance with paragraph (a) of this section. Thus, facsimile transmission shall be used for this purpose whenever possible. When a party cannot be served by this method, or chooses not to accept service by facsimile as provided for in paragraph (a) of this section, 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, November 2, 1995.

By direction of the Board.

John J. Toner,

Acting Executive Secretary, National Labor Relations Board.

[FR Doc. 95–27627 Filed 11–7–95; 8:45 am]

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DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972; Amendment

AGENCY: Department of the Navy, DoD.

ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Deputy Assistant Judge Advocate General (Admiralty) of the Navy has determined that USS JOHN S. McCAIN (DDG 56) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with certain provisions of the 72 COLREGS without interfering with its special functions as a naval ship. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

EFFECTIVE DATE: 24 July 1995.

FOR FURTHER INFORMATION CONTACT: Commander K.P. McMahon, JAGC, U.S. Navy, Admiralty Counsel, Office of the Judge Advocate General, Navy Department, 200 Stovall Street, Alexandria, VA 22332–2400. Telephone number: (703) 325–9744.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605, the Department of the Navy amends 32 CFR Part 706. This amendment provides notice that the Deputy Assistant Judge Advocate General (Admiralty) of the Navy, under authority delegated by the Secretary of the Navy, has certified that USS JOHN S. McCAIN (DDG 56) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with the following specific provision of 72 COLREGS without interfering with its special function as a naval ship: Annex I, paragraph 3(a), pertaining to the horizontal distance between the forward and after masthead lights. The Deputy Assistant Judge Advocate General (Admiralty) has also certified that the lights involved are located in closest possible compliance with the applicable 72 COLREGS requirements.

Moreover, it has been determined, in accordance with 32 CFR Parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this vessel in a manner differently from that prescribed herein will adversely affect the vessel's ability to perform its military functions.

List of Subjects in 32 CFR Part 706

Marine safety, Navigation (Water), and Vessels.

PART 706—[AMENDED]

Accordingly, 32 CFR Part 706 is amended as follows:

1. The authority citation for 32 CFR Part 706 continues to read:

Authority: 33 U.S.C. 1605.

2. Table Five of § 706.2 is amended by revising the following entry as set forth below:

§ 706.2 Certifications of the Secretary of the Navy under Executive Order 11964 and 33 U.S.C. 1605.

* * * * *

TABLE FIVE

Vessel	No.	Masthead lights not over all other lights and obstructions. annex I, sec. 2(f)	Forward masthead light not in forward quarter of ship. annex I, sec. 3(a)	After masthead light less than ½ ship's length aft of forward masthead light. annex I, sec. 3(a)	Percentage horizontal separation attained
USS JOHN S. McCAIN	DDG 56	X	X	X	19.6