

Replacement of PBGC interest rate. A participant's accrued benefit is not considered to be reduced in violation of section 411(d)(6) merely because of a plan amendment that changes any interest rate or mortality assumption used to calculate the present value of a participant's benefit under the plan (even if the amendment provides for temporary additional benefits to accommodate a more gradual transition from the plan's old interest rate to the new rules), if the following conditions are satisfied—

(1) The amendment replaces the PBGC interest rate (or an interest rate or rates based on the PBGC interest rate) as the interest rate used under the plan in determining the present value of a participant's benefit under this paragraph (d); and

(2) After the amendment is effective, the present value of a participant's benefit under the plan cannot be less than the amount calculated using the applicable mortality table and the applicable interest rate for the first full calendar month preceding the calendar month that contains the annuity starting date.

(B) *Replacement of non-PBGC interest rate.* The section 411(d)(6) relief provided in paragraph (d)(10)(iii)(A) of this section does not apply to a plan amendment that replaces an interest rate other than the PBGC interest rate (or an interest rate or rates based on the PBGC interest rate) as an interest rate used under the plan in determining the present value of a participant's benefit under this paragraph (d). Thus, the accrued benefit determined using that interest rate and the associated mortality table is protected under section 411(d)(6). For purposes of paragraphs (d)(10)(iii)(A) and (B) of this section, an interest rate is based on the PBGC interest rate if the interest rate is defined as a specified percentage of the PBGC interest rate or as the PBGC interest rate minus a specified number of basis points.

(C) *Plan amendment providing for prior determination date or up to two months earlier.* If the special rule of paragraph (d)(10)(iii)(A) of this section would apply to a plan except that the applicable interest rate is determined for a month other than the first full calendar month preceding the calendar month that contains the annuity starting date, a participant's accrued benefit is not considered to be reduced in violation of section 411(d)(6) if the applicable interest rate is determined for the calendar month that contains the date as of which the PBGC interest rate was determined immediately before the amendment, or for one of the two

calendar months immediately preceding that month, or if the plan amendment satisfies the conditions of paragraph (d)(10)(ii) of this section.

(D) *Examples.* The provisions of this paragraph (d)(10)(iii) are illustrated by the following examples:

Example 1. On December 31, 1994, Plan A provided that all single-sum distributions were to be calculated using the UP-1984 Mortality Table and 100% of the PBGC interest rate for the date of distribution. On January 4, 1995, and effective on February 1, 1995, Plan A was amended to provide that all single-sum distributions are calculated using the applicable mortality table and the annual interest rate on 30-year Treasury securities for the first full calendar month preceding the calendar month that contains the annuity starting date. This amendment of Plan A is not considered to reduce the accrued benefit of any participant in violation of section 411(d)(6).

Example 2. On December 31, 1994, Plan B provided that all single-sum distributions were to be calculated using the UP-1984 Mortality Table and an interest rate equal to the lesser of 100% of the PBGC interest rate for the date of distribution, or 6%. On January 4, 1995, and effective on February 1, 1995, Plan B was amended to provide that all single-sum distributions are calculated using the applicable mortality table and the annual interest rate on 30-year Treasury securities for the second full calendar month preceding the calendar month that contains the annuity starting date. The 6% interest rate provided for under the plan is not based on the PBGC interest rate. Therefore, to satisfy the requirements of section 411(d)(6), the plan must provide that the single-sum distribution payable to any participant must be no less than the single-sum distribution calculated using the UP-1984 Mortality Table and an interest rate of 6%, based on the participant's benefits under the plan accrued through January 31, 1995, and based on the participant's age at the annuity starting date.

Example 3. (a) Employer X maintains Plan C, a calendar year plan. As of December 7, 1994, Plan C provided for single-sum distributions to be calculated using the PBGC interest rate as of the annuity starting date for distributions not greater than \$25,000, and 120% of that interest rate (but not an interest rate producing a present value less than \$25,000) for distributions over \$25,000. Employer X wishes to delay the effective date of the RPA '94 rules for a year, and to provide for an extended transition from the use of the PBGC interest rate to the new applicable interest rate under section 417(e)(3). On December 1, 1995, and effective on January 1, 1996, Employer X amends Plan C to provide that single-sum distributions are determined as the sum of—

(i) The single-sum distribution calculated based on the applicable mortality table and the annual interest rate on 30-year Treasury securities for the first full calendar month preceding the calendar month that contains the annuity starting date; and

(ii) A transition amount.

(b) The amendment provides that the transition amount for distributions in the

years 1996-99 is a transition percentage of the excess, if any, of the amount that the single-sum distribution would have been under the plan provisions in effect prior to this amendment over the amount of the single sum described in paragraph (a)(i) of this *Example 3*. The transition percentages are 80% for 1996, decreasing to 60% for 1997, 40% for 1998 and 20% for 1999. The amendment also provides that the transition amount is zero for plan years beginning on or after the year 2000. Plan C is not considered to have reduced the accrued benefit of any participant in violation of section 411(d)(6) by reason of this plan amendment.

Margaret Milner Richardson,
Commissioner of Internal Revenue.

Approved: March 15, 1995.

Leslie Samuels,
Assistant Secretary of the Treasury.
[FR Doc. 95-8229 Filed 4-4-95; 8:45 am]

BILLING CODE 4830-01-U

DEPARTMENT OF LABOR

Wage and Hour Division

29 CFR Part 580

Civil Money Penalties—Procedures for Assessing and Contesting Penalties

AGENCY: Wage and Hour Division, Employment Standards Administration, Labor.

ACTION: Final rule.

SUMMARY: The purpose of this document is to change the address listed in § 580.6 of Regulations 29 CFR part 580, which is used for administrative hearing requests. This revision is being made in order to streamline the process by which hearing requests are acknowledged by consolidating all aspects of processing hearing requests into the operations of the office which issued the administrative determination upon which the request for a hearing is based.

EFFECTIVE DATE: This rule is effective April 5, 1995.

FOR FURTHER INFORMATION CONTACT: J. Dean Speer, Director, Division of Policy and Analysis, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Room S-3506, 200 Constitution Avenue NW., Washington, DC 20210. Telephone (202) 219-8412. This is not a toll free number.

SUPPLEMENTARY INFORMATION:

I. Paperwork Reduction Act

This rule imposes no reporting or recordkeeping requirements on the public.

II. Background

Section 580.6 of the regulations requires that any person desiring to request an administrative hearing on a notice of determination issued by the Department of Labor (assessing civil money penalties for violations under section 12 of the FLSA relating to child labor, or repeated and willful violations of sections 6 and 7 relating to the minimum wage and overtime requirements of the FLSA) must do so in writing within 15 days after the date of receipt of the notice. Additionally, section 580.6 specifies that the written hearing request shall be made to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor.

This revision is being made in order to streamline the process by which hearing requests are acknowledged by consolidating all aspects of processing hearing requests into the operations of the office which issued the administrative determination upon which the request for a hearing is based. Accordingly, all such hearing requests are not to be made to the Wage and Hour official that issued the determination in care of the address of the office that originated the determination.

III. Summary of Rule

Section 580.6 of regulations, 29 CFR part 580, is amended to provide for a new address for purposes of requesting administrative hearings. Hearing requests are now directed to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor. Under the amended regulation, these requests will be directed to the Wage and Hour Division official who issued the determination, at the address appearing on the determination notice.

Executive Order 12866

This rule is not a "significant regulatory action" within the meaning of Executive Order 12866. The rule merely adopts a technical address change, which will facilitate the timeliness and handling of the hearing process. Accordingly, these changes are not expected to result in a rule that may: (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere

with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866. Therefore, no regulatory impact analysis has been prepared.

Regulatory Flexibility Act

Because no notice of proposed rulemaking is required for the rule under 5 U.S.C. 553(b), the requirements of the Regulatory Flexibility Act, Public Law 96-354, 94 Stat. 1165, 5 U.S.C. 601 *et seq.* pertaining to regulatory flexibility analysis, do not apply to this rule. See 5 U.S.C. 601(2). The rule simplifies the handling of hearing requests and will not have a significant economic impact on a substantial number of small entities.

Administrative Procedure Act

This regulation is procedural in nature. Accordingly, the Secretary, for good cause, finds pursuant to 5 U.S.C. 553(b)(3), that prior notice and public comment are unnecessary, impracticable, and contrary to the public interest.

The Secretary also for good cause finds, pursuant to 5 U.S.C. 553(d)(3), that this rule should take effect immediately because it is merely a technical procedural change which does not affect any substantive rights.

Document Preparation: This document was prepared under the direction and control of Maria Echaveste, Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor.

List of Subjects in 29 CFR Part 580

Administrative practice and procedure, Child labor, Employment, Labor, Law enforcement, Penalties.

For the reasons set forth above, 29 CFR part 580 is amended as set forth below.

Signed at Washington, DC, on this 30th day of March, 1995.

Maria Echaveste,

Administrator, Wage and Hour Division.

PART 580—CIVIL MONEY PENALTIES—PROCEDURES FOR ASSESSING AND CONTESTING PENALTIES

1. The authority citation for part 580 continues to read as follows:

Authority: 29 U.S.C. 9a, 203, 211, 212, 216; Reorg. Plan No. 6 of 1950, 64 Stat. 1263, 5 U.S.C. App.; secs. 25, 29, 88 Stat. 72, 76; Secretary of Labor's Order No. 13-71, 36 FR

8755; 5 U.S.C. 500, 503, 551, 559; sec. 9, Pub. L. 101-157, 103 Stat. 938; sec. 3103, Pub. L. 101-508.

2. Paragraph (a) of § 580.6 is revised to read as follows:

§ 580.6 Exception to determination of penalty and request for hearing.

(a) Any person desiring to take exception to the determination of penalty shall request an administrative hearing pursuant to this part. The exception shall be in writing to the official who issued the determination at the Wage and Hour Division address appearing on the determination notice, and must be received no later than 15 days after the date of receipt of the notice referred to in § 580.3 of this part. No additional time shall be added where service of the determination of penalties or of the exception thereto is made by mail.

* * * * *

[FR Doc. 95-8335 Filed 4-4-95; 8:45 am]

BILLING CODE 4510-27-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 3

[CGD 94-107]

RIN 2115-AF00

Ninth District Marine Inspection and Captain of the Port Zone Boundaries

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is amending the descriptions of several Marine Inspection and Captain of the Port zone boundaries in the Ninth Coast Guard District to reflect recent organizational changes. These changes will clarify Coast Guard responsibilities with the Ninth District. These changes will not impact the type or level of Coast Guard services performed.

EFFECTIVE DATE: May 5, 1995.

ADDRESSES: Unless otherwise indicated, documents referred to in this preamble are available for inspection or copying at the office of the Executive Secretary, Marine Safety Council, (G-LRA/3406), U.S. Coast Guard Headquarters, 2100 Second Street SW., Room 3406, Washington, DC 20593-0001, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267-1477.

FOR FURTHER INFORMATION CONTACT: ENS Harry E. George, Office of Marine Safety, Security and Environmental