

Granbury, TX, Granbury Rgnl, RNAV (GPS) RWY 14, Orig
 La Porte, TX, La Porte Muni, Takeoff Minimums and Obstacle DP, Amdt 5
 Lago Vista, TX, Lago Vista TX—Rusty Allen, Takeoff Minimums and Obstacle DP, Orig
 Seminole, TX, Gaines County, RNAV (GPS) RWY 35, Amdt 1
 South Hill, VA, Mecklenburg-Brunswick Rgnl, GPS RWY 19, Orig, CANCELLED
 South Hill, VA, Mecklenburg-Brunswick Rgnl, RNAV (GPS) RWY 1, Orig
 South Hill, VA, Mecklenburg-Brunswick Rgnl, RNAV (GPS) RWY 19, Orig
 South Hill, VA, Mecklenburg-Brunswick Rgnl, Takeoff Minimums and Obstacle DP, Amdt 2
 Burlington, VT, Burlington Intl, Takeoff Minimums and Obstacle DP, Amdt 13
 Douglas, WY, Converse County, RNAV (GPS) RWY 11, Orig
 Douglas, WY, Converse County, RNAV (GPS) RWY 29, Amdt 1
 On June 09, 2010 (75 FR 32654) the FAA published an Amendment in Docket No. 30727, Amdt 3376 to Part 97 of the Federal Aviation Regulations under section 97.23 and 97.33. The following entry effective 29 July 2010 is hereby *rescinded*:
 Childress, TX, Childress Muni, Takeoff Minimums and Obstacle DP, Amdt 1

[FR Doc. 2010-14983 Filed 6-22-10; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 904

[Docket No. 100216090-0205-02]

RIN 0648-AY66

Regulations to Amend the Civil Procedures

AGENCY: Office of General Counsel (OGC), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: This rule amends the procedures governing NOAA's administrative proceedings for the assessment of civil penalties; suspension, revocation, modification, or denial of permits; issuance and use of written warnings; and release or forfeiture of seized property. The principal change removes the requirement that an Administrative Law Judge state good reason(s) for departing from the civil penalty or permit sanction assessed by NOAA in its charging document. This revision eliminates any presumption in favor of the civil penalty or permit sanction assessed by NOAA. The other change corrects a clerical error in a citation to rules pertaining to

protective orders issued by Administrative Law Judges.

DATES: This rule becomes effective June 23, 2010.

FOR FURTHER INFORMATION CONTACT: Frank Spirtel, 301-427-2202.

SUPPLEMENTARY INFORMATION: A summary of the changes proposed for regulations at 15 CFR part 904 is found in the proposed rule that NOAA published in the **Federal Register** at 75 FR 13050 (March 18, 2010) and is not repeated here.

Public Comments Received

NOAA received two comments from the public during the comment period for the proposed rule. Those comments are summarized here, and are directly followed by NOAA's response to them.

Comment 1: One commenter wrote generally in support of the proposed changes. While the commenter felt that the proposed changes were a good start, the commenter offered the view that they do not go far enough in bringing greater balance into NOAA's civil administrative process. The commenter encouraged NOAA to examine what other Federal agencies do in similar proceedings, and to make further changes to its civil procedure regulations as a result of this review. Finally, the commenter addressed the enforcement provisions of pending Senate Bill 2870, the International Fisheries Stewardship and Enforcement Act.

Response: NOAA is not, at this time, changing its civil procedures beyond the revisions described in this rule. NOAA continues to evaluate whether other provisions in the civil procedures found at 15 CFR part 904 should be revised. As NOAA conducts this evaluation, it will consider as appropriate the processes and procedures of other Federal agencies. As for the comments concerning Senate Bill 2870, NOAA has no response here, as the comments are beyond the scope of this rulemaking.

Comment 2: Another commenter also offered support for the proposed changes, but stated that this one regulatory change was not enough to address other problems that the commenter perceived exist in NOAA's civil enforcement procedures under the Magnuson-Stevens Fishery Conservation and Management Act. The commenter asserted that NOAA enforcement attorneys should be available to testify as to the basis for penalty assessments in any particular case, because they are the individuals responsible for determining the penalty amount. The commenter expressed the view that, if NOAA continues to

authorize its enforcement attorneys to assess fines and permit sanctions, then they should be produced as witnesses in administrative proceedings, and it is up to the individual NOAA enforcement attorney involved in the case to decide whether or not to withdraw from the case based on that consideration.

The commenter also believes that the changes finalized by this rule will not address concerns the commenter expressed regarding NOAA's current penalty schedules, or language in NOAA's Notices of Violation Assessment (NOVAs) that suggests that the Administrative Law Judge may increase the proposed penalty assessments or permit sanctions. Finally, the commenter requested that NOAA address its seizure policies, permit restrictions, and several other approaches to law enforcement that the commenter believes should be changed.

Response: As noted above, NOAA is not, at this time, changing its civil procedures beyond the revisions described in this rule. NOAA continues to evaluate whether other provisions in the civil procedures found at 15 CFR part 904 should be revised. As for the comments concerning application of NOAA's penalty schedules, language in NOAA's NOVAs, seizure policies, permit restrictions, and other issues related to NOAA's approaches to law enforcement raised by the commenter, NOAA has no response here, as these comments are beyond the scope of this rulemaking.

With respect to the commenter's contention that NOAA attorneys should be available to testify at hearings before an Administrative Law Judge as to the basis for penalty assessments in any particular case, we disagree. NOAA is changing its regulations at 15 CFR part 904 to remove the requirement in 15 CFR § 904.204(m) that an Administrative Law Judge state good reason(s) for departing from the civil penalty or permit sanction, condition, revocation, or denial of permit application (collectively, "civil penalty or permit sanction") assessed by NOAA in its charging document. This revision eliminates any presumption in favor of the civil penalty or permit sanction assessed by NOAA in its charging document (see "In the Matter of: AGA Fishing Corp.", 2001 WL 34683852 (NOAA Mar. 17, 2001)). It requires instead that NOAA justify at a hearing provided for under this Part that its proposed penalty or permit sanction is appropriate, taking into account all the factors required by applicable law. Respondents have a full and fair opportunity to challenge the proposed Agency action as set forth in detail in

NOAA's procedural regulations. It appears that the commenter is seeking to probe the NOAA attorney's thought processes in deciding what facts and arguments to present. As the U.S. Supreme Court established in *Hickman v. Taylor*, 329 U.S. 495 (1947), such thought processes are protected from disclosure absent a compelling need, which is not present here. See also *Shelton v. American Motors Corp.*, 805 F.2d 1323 (8th Cir. 1986) (party seeking to depose opposing counsel in a pending case must show that (1) no other means exist to obtain the information than to depose opposing counsel; (2) the information sought is relevant and nonprivileged; and (3) the information is crucial to the preparation of the case); *Nationwide Mut. Ins. Co. v. Home Ins. Co.*, 278 F.3d 621, 628 (6th Cir. 2002) (adopting the Eight Circuit test in *Shelton*).

Classification

This final rule has been determined to be not significant for purposes of Executive Order 12866.

There are no reporting, recordkeeping or other compliance requirements in this rule. Nor does this rule contain an information-collection request that would implicate the Paperwork Reduction Act, 44 U.S.C. § 3501, *et seq.*

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration during the proposed rule stage that this action would not have a significant economic impact on a substantial number of small entities. The factual basis for the certification was published in the proposed rule and is not repeated here. No comments were received regarding this certification. As a result, a regulatory flexibility analysis was not required and none was prepared.

Pursuant to 5 U.S.C § 553(d)(3), NOAA finds that there is good cause to waive the 30-day delay in the effective date of this rule. This rule is purely procedural in nature: it does not affect the substantive requirements of the regulations at 15 CFR part 904, nor does it modify, add, or revoke any existing rights and obligations of affected parties or the public. NOAA, therefore, finds that there is good cause, within the meaning of 5 U.S.C § 553(d)(3) and in accordance with the Congressional Review Act, 5 U.S.C § 808(2), to make this rule effective immediately.

List of Subjects in 15 CFR Part 904

Administrative practice and procedure, fisheries, fishing, fishing vessels, penalties, seizures and forfeitures.

Dated: June 14, 2010.

Lois J. Schiffer,

General Counsel, National Oceanic and Atmospheric Administration.

■ For reasons set forth in the preamble, 15 CFR part 904 is amended as follows:

PART 904—CIVIL PROCEDURES

■ 1. The authority citation for part 904 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*, 16 U.S.C. 1531–1544, 16 U.S.C. 1361 *et seq.*, 16 U.S.C. 3371–3378, 16 U.S.C. 1431–1445c–1, 16 U.S.C. 773–773k, 16 U.S.C. 951–962, 16 U.S.C. 5001–5012, 16 U.S.C. 3631–3645, 42 U.S.C. 9101 *et seq.*, 30 U.S.C. 1401 *et seq.*, 16 U.S.C. 971–971k, 16 U.S.C. 781–785, 16 U.S.C. 2401–2413, 16 U.S.C. 2431–2444, 16 U.S.C. 972–972h, 16 U.S.C. 916–916l, 16 U.S.C. 1151 *et seq.*, 16 U.S.C. 3601–3608, 16 U.S.C. 3631–3645, 16 U.S.C. 1851 note; 15 U.S.C. 5601 *et seq.*, Pub. L. 105–277, 16 U.S.C. 1822 note, Section 801(f), 16 U.S.C. 2465(a), 16 U.S.C. 5103(b), 16 U.S.C. 1385 *et seq.*, 16 U.S.C. 1822 note (Section 4006), 16 U.S.C. 4001–4017, 22 U.S.C. 1980(g), 16 U.S.C. 5506(a), 16 U.S.C. 5601–5612, 16 U.S.C. 1822, 16 U.S.C. 973–973R, 15 U.S.C. 330–330(e)

■ 2. Section 904.204 to subpart C is amended by revising paragraphs (f) and (m) to read as follows:

Subpart C—Hearing and Appeal Procedures

§ 904.204 Duties and powers of Judge.

* * * * *

(f) Rule on contested discovery requests, establish discovery schedules, and, whenever the ends of justice would thereby be served, take or cause depositions or interrogatories to be taken and issue protective orders under § 904.251(h);

* * * * *

(m) Assess a civil penalty or impose a permit sanction, condition, revocation, or denial of permit application, taking into account all of the factors required by applicable law;

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 260

[Docket No. RM07–10–002; Order No. 704–C]

Transparency Provisions of Section 23 of the Natural Gas Act

Issued June 17, 2010.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule; order granting clarification.

SUMMARY: In this Order Granting Clarification, the Commission addresses pending requests to clarify Form No. 552, under which natural gas market participants must annually report information regarding physical natural gas transactions that use an index or that contribute to or may contribute to the formation of a gas index. Order No. 704 required market participants to file these reports in order to provide greater transparency concerning the use of indices to price natural gas and how well index prices reflect market forces.

Order No. 704–C revises Form No. 552 so as to exempt from reporting any unexercised options to take gas under a take-or-release contract; clarify the definition of exempt unprocessed natural gas transactions as those involving gas that is both not yet processed (to separate and recover natural gas liquids), and still upstream of a processing facility; exempt from reporting cash-out and imbalance transactions, since they were burdensome to report and provided little market information; strike the form's references to the blanket sales certificates issued under § 284.402 or § 284.284, since they were burdensome to report and provided little market information, so as to also exempt small entities who were obligated to report solely by virtue of possessing a blanket sales certificate; and make several non-substantive modifications to Form No. 552 in an effort to make it more user-friendly.

DATES: *Effective Date:* This rule will become effective September 30, 2010.

FOR FURTHER INFORMATION CONTACT:

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