

their defense in any way, squander valuable and limited agency resources, and frustrate implicit statutory goals. The administration of justice necessitates regulations that vest judges with the authority to secure compliance with procedural requirements, and the authority to expeditiously conclude proceedings that are abandoned by a respondent.

Accordingly, as amended, § 904.212 permits the Judge to fashion any order, short of dismissal, that may be appropriate in the event a party fails to participate as required by these regulations. Such order may include, but is not limited to, sanctions consistent with those set forth in § 904.240(f).

#### Discovery Sanctions

Under § 904.240(f), the opportunity for a hearing also may be forfeited if a respondent fails to comply with discovery that is ordered by the Judge. Separate and apart from the authority found at § 904.212, the Judge may impose a wide array of sanctions for failure to obey any subpoena or order concerning discovery. Sanctions include striking all or part of a pleading (including a hearing request) (see 15 CFR 904.240(f)(5)), and rendering a decision of the proceeding against a party (see 15 CFR 904.240(f)(6)).

Consistent with the intent of Congress as set forth in the Oceans Act, NOAA is amending this provision. Under this amendment, the Judge may strike any pleading (except a hearing request), motion, or other submission concerning any matter covered by a subpoena or order defied by a respondent. Section 904.240(f)(6) is deleted entirely. The effect of these changes is that a respondent cannot be denied an in-person hearing as a sanction for failing to comply with a subpoena or order concerning discovery.

As with respondents who fail to pursue their claims, NOAA understands the need for effective sanctions that will ensure compliance with prehearing discovery requirements. To that end, all other sanctions set forth in § 904.240(f) remain in effect and may be used to penalize respondents that either fail or refuse to obey subpoenas or orders concerning discovery.

#### Submission of Written Materials

Finally, respondents also may lose the opportunity for an in-person hearing if the Judge believes that the filing of written submissions obviates the need for oral hearing. Pursuant to § 904.250, a Judge may order that all or part of a proceeding be heard on submissions or affidavits, if it appears that all issues of

material fact may be resolved by means of written submissions, without the need of oral testimony. Unlike § 904.210, which applies to summary decisions, the Judge may forego an in-person hearing even if material facts are genuinely in dispute. The decision to proceed by way of written submissions rests exclusively with the Judge.

Consistent with the intent of Congress, NOAA is amending this provision. As amended, the Judge may hear a proceeding by way of written submissions only if acceptable to each party to the proceeding. By requiring the unanimous concurrence of each party to the proceeding, the opportunity for an in-person hearing will not be lost, unless voluntarily waived by a respondent.

#### Classification

This final rule is a rule of agency procedure, which amends regulations governing civil administrative enforcement proceedings. As such, NOAA finds that pursuant to 5 U.S.C. 553(b)(A), prior notice and opportunity for public comment are not required. Additionally, because notice and opportunity for comment are not required under 5 U.S.C. 553 or any other law, there is no need to comply with the provisions of the Regulatory Flexibility Act. 5 U.S.C. 601 *et seq.*

Because this is not a substantive rule, it is not subject to the 30-day delay in effective date required by 5 U.S.C. 553(d).

#### List of Subjects in 15 CFR Part 904

Fisheries, Enforcement.

Dated: October 8, 1996.

Terry D. Garcia,

*General Counsel, National Oceanic and Atmospheric Administration.*

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

#### PART 904—CIVIL PROCEDURES

1. The authority citation for part 904 is revised to read as follows:

Authority: 16 U.S.C. 1801–1882; 16 U.S.C. 1531–1543; 16 U.S.C. 1361–1407; 16 U.S.C. 3371–3378; 16 U.S.C. 1431–1439; 16 U.S.C. 773–773k; 16 U.S.C. 951–961; 16 U.S.C. 1021–1032; 16 U.S.C. 3631–3644; 42 U.S.C. 9101 *et seq.*; 30 U.S.C. 1401 *et seq.*; 16 U.S.C. 971–971i; 16 U.S.C. 781 *et seq.*; 16 U.S.C. 2401–2412; 16 U.S.C. 2431–2444; 16 U.S.C. 972–972h; 16 U.S.C. 916–916l; 16 U.S.C. 1151–1175; 16 U.S.C. 3601–3608; 16 U.S.C. 1851 note; 15 U.S.C. 4201 *et seq.*; Pub. L. 102–587, 106 Stat. 5039.

2. Section 904.210 is revised to read as follows:

#### § 904.210 Summary decision.

The Judge may render a summary decision disposing of all or part of the proceeding if:

(a) Jointly requested by every party to the proceeding; and

(b) There is no genuine issue as to any material fact and a party is entitled to summary decision as a matter of law.

3. Section 904.212 is revised to read as follows:

#### § 904.212 Failure to prosecute or defend.

Whenever the record discloses the failure of either party to file documents, respond to orders or notices from the Judge, or otherwise indicates an intention on the part of either party not to participate further in the proceeding, the Judge may issue any order, except dismissal, that is necessary for the just and expeditious resolution of the case.

4. Section 904.240 is amended by revising paragraph (f)(5) and removing paragraph (f)(6):

#### § 904.240 Discovery generally.

\* \* \* \* \*

(f) \* \* \*

(5) Strike part or all of a pleading (except a request for hearing), a motion or other submission by the party, concerning the matter or matters covered by the order or subpoena.

5. Section 904.250 is amended by revising paragraph (c) to read as follows:

#### § 904.250 Notice of time and place of hearing.

\* \* \* \* \*

(c) Upon the consent of each party to the proceeding, the Judge may order that all or part of a proceeding be heard on submissions or affidavits if it appears that substantially all important issues may be resolved by means of written materials and that efficient disposition of the proceeding can be made without an in-person hearing. For good cause, the Judge may, in his sole discretion, order that the testimony of witnesses be taken by telephone.

[FR Doc. 96–26944 Filed 10–21–96; 8:45 am]

BILLING CODE 3510–22–F

#### COMMODITY FUTURES TRADING COMMISSION

#### 17 CFR Part 4

#### Interpretation Regarding Use of Electronic Media by Commodity Pool Operators and Commodity Trading Advisors

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Extension of comment period and effective date of interpretation.

**SUMMARY:** On August 8, 1996, the Commodity Futures Trading Commission ("Commission") issued an Interpretation Regarding Use of Electronic Media by Commodity Pool Operators and Commodity Trading Advisors, 61 FR 42146 (August 14, 1996). The deadline for the submission of comments and the effective date was originally October 15, 1996. The Commission has determined to extend the period for public comment for thirty days, or until November 14, 1996. In addition, the Commission has determined to delay the effective date for a period of sixty days, or until December 16, 1996, to allow the Commission sufficient time to consider any additional comments that may be received during the extended comment period. The Pilot Program for electronic filing of commodity pool operator and commodity trading advisor disclosure documents will commence on October 15, 1996, as originally provided.

**DATES:** The Interpretative Release referenced herein is effective on December 16, 1996. Written comments must be received on or before November 14, 1996.

**ADDRESSES:** Comments should be submitted to Jean A. Webb, Secretary of the Commission, Commodity Futures Trading Commission, 1155 21st Street, N.W., Washington, D.C. 20581. In addition, comments may be sent by facsimile transmission to facsimile number (202) 418-5521, or by electronic mail to [secretarycftc.gov](mailto:secretarycftc.gov).

**FOR FURTHER INFORMATION CONTACT:** Susan C. Ervin, Deputy Director/Chief Counsel, or Gary L. Goldsholle, Attorney/Advisor, Division of Trading and Markets, Commodity Futures Trading Commission, 1155 21st Street, N.W., Washington, D.C. 20581. Telephone number: (202) 418-5450. Facsimile number: (202) 418-5536. Electronic mail: [tmcftc.gov](mailto:tmcftc.gov).

**SUPPLEMENTARY INFORMATION:** On August 8, 1996, the Commission issued an Interpretation Regarding Use of Electronic Media by Commodity Pool Operators and Commodity Trading Advisors ("Interpretative Release" or "Release"). The Interpretative Release was designed to provide commodity pool operators ("CPOs"), commodity trading advisors ("CTAs"), and associated persons ("AP") thereof, with guidance concerning the application of the Commodity Exchange Act and regulations thereunder to activities involving electronic media. The Commission sought comment on all issues discussed in the release, and any related issues, and provided that the effective date of the Interpretative

Release would be October 15, 1996 and that comments should be received on or before that date. On October 7, 1996, the Managed Futures Association requested that the Commission postpone the effective date of the Interpretative Release until the Commission has completed its review of all comments received on the Release. The Commission has also received a second request to extend the comment period and the effective date.

The Commission has determined to extend the comment period on the Interpretative Release for an additional thirty days and the effective date of the release for an additional sixty days. These postponements will provide additional time both for public comment on relevant issues and for the Commission's review of such comments prior to the effective date of the Release. The Commission emphasizes, however, that this deferment does not affect the statutory and regulatory requirements applicable to persons acting as CPOs and CTAs, whether by means of electronic media or otherwise. As noted in the Interpretative Release, "persons using electronic media are subject to the same statutory and regulatory requirements under the Commission's regulatory framework as persons employing other modes of communication." 61 FR at 42150. The Commission sought to assist such persons in the use of electronic media by publishing guidance as to specific applications of existing requirements in the Interpretative Release. The Commission also sought comment in various sections as to whether alternative methodologies would be acceptable.<sup>1</sup> The Commission also notes that the Commission staff letters and advisories cited in the Release, as stated therein, "represent interpretations by the Commission's staff and do not necessarily represent interpretations by the Commission." 61 FR at 42149 n.24. These staff statements provide relevant precedent and guidance.

Finally, although the Commission is delaying the effective date of the Interpretative Release pending the receipt and review of additional comments, CPOs and CTAs may continue to rely on the positions stated therein as "safe harbor" positions to aid CTAs and CPOs making use of electronic media pending further statements of the Commission's views. Additionally, the Pilot Program for

electronic filing of CPO and CTA disclosure documents will commence on October 15, 1996, as originally proposed and is not affected by these extensions.

Issued in Washington, D.C. on October 15, 1996, by the Commission.

Jean A. Webb,

*Secretary of the Commission.*

[FR Doc. 96-26949 Filed 10-21-96; 8: 45am]

BILLING CODE 6351-01-M

## RAILROAD RETIREMENT BOARD

### 20 CFR Part 368

#### RIN 3220-AB20

### Prohibition of Cigarette Sales to Minors

**AGENCY:** Railroad Retirement Board.

**ACTION:** Final rule.

**SUMMARY:** The Railroad Retirement Board (Board) adds regulations to implement the Prohibition of Cigarette Sales to Minors in Federal Buildings and Lands Act which prohibits the sale of tobacco through vending machines and the distribution of free tobacco samples on Federal property.

**DATES:** *Effective Date:* This regulation will be effective October 22, 1996.

**ADDRESSES:** Secretary to the Board, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611.

**FOR FURTHER INFORMATION CONTACT:** Thomas W. Sadler, Assistant General Counsel, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611, telephone (312) 751-4513, TTD (312) 751-4701.

**SUPPLEMENTARY INFORMATION:** The Board conducts its business in real property owned or leased by the General Services Administration. All property occupied or reserved for Board use must comply with Public Law 104-52. This law provides that tobacco products may not be sold in vending machines and free samples of tobacco products may not be distributed in or around property occupied and maintained by the Board. The Board will permit the sale of tobacco products to individuals 18 and older by staffed concession stands on property occupied and maintained by the Board.

The agency has determined that this is not a significant regulatory action for purposes of Executive Order 12866; therefore, no regulatory impact analysis is required. There are no information collections associated with this rule.

The Board published this rule as an interim final rule on March 4, 1996 (61

<sup>1</sup> For example, with respect to the use of personal identification numbers to substitute for manually signed acknowledgments, the Commission welcomed comment "concerning other procedures for electronic acknowledgment that are consistent with the objectives stated above." 61 FR at 42160.