

DEPARTMENT OF JUSTICE

28 CFR Part 5

[AG Order No. 2229-99]

RIN 1105-AA45

Foreign Agents Registration Act

AGENCY: Department of Justice.

ACTION: Proposed rule.

SUMMARY: The Department of Justice proposes to amend its existing regulations implementing the Foreign Agents Registration Act of 1938, as amended (FARA or the Act). The proposed rule would establish new regulations needed as a result of the passage of the Lobbying Disclosure Act of 1995 (LDA) and the Lobbying Disclosure Technical Amendments Act of 1998 (LDTAA), both of which amended FARA. The proposed regulations clarify the scope of the amended Act and some exemptions to the Act, and make technical amendments to existing regulations.

DATES: Written comments must be submitted on or before September 7, 1999.

ADDRESSES: Please address all written comments concerning this proposed rule to Marshall R. Williams, Chief, Registration Unit, Internal Security Section, Criminal Division, United States Department of Justice, Washington, DC 20530.

FOR FURTHER INFORMATION CONTACT: Marshall R. Williams, Chief, Registration Unit or Heather H. Hunt, Attorney, Registration Unit on (202) 514-1216 or by facsimile on (202) 514-2836. These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: Under the Foreign Agents Registration Act of 1938 (FARA or the Act), 22 U.S.C. 611-621, agents of foreign principals are required to register with the Department of Justice in order to make periodic public disclosure of their relationship with the foreign principal, activities on behalf of the foreign principal, and receipts and disbursements in support of these activities. In the Lobbying Disclosure Act of 1995, Public Law 104-65 (LDA), and the Lobbying Disclosure Technical Amendments Act of 1998, Public Law 105-166 (LDTAA), Congress amended FARA in several respects. First, Congress generally narrowed the scope of FARA to agents of foreign governments and foreign political parties. Under new section 3(h) of FARA, 22 U.S.C. 613(h), agents of foreign principals other than foreign governments or foreign political parties

need not register under FARA if such agents engage in lobbying activities and register under the LDA. Second, Congress repealed section 1(q), 22 U.S.C. 611(a), which had provided a safe harbor specifying circumstances in which agents of multinational corporations would be exempt from registration under section 3(d)(2) of the Act, 22 U.S.C. 613(d)(2). When Congress authorized registration under the LDA rather than FARA for lobbying activities on behalf of foreign principals other than foreign governments and foreign political parties, section 1(q) became largely unnecessary.

In addition, in the LDA Congress clarified the applicability of an exemption in section 3(g), 22 U.S.C. 613(g), for legal representation of a foreign principal in certain proceedings. Finally, Congress substituted the term "informational materials" for the term "political propaganda" throughout FARA, except in section 4(e), 22 U.S.C. 614(e), which concerns the dissemination of materials on behalf of the foreign principal, and in section 11, 22 U.S.C. 621, which concerns the filing of a semi-annual report with Congress.

These amendments require changes in regulations implementing, among others, sections 3(d)(2), 3(g), 3(h) and 4 of FARA. First, this proposed rule clarifies the reach of section 3(d)(2) in light of the repeal of section 1(q) of FARA. Section 3(d)(2) exempts from registration under FARA activities of a political nature "not serving predominantly a foreign interest." Under the rule, activities of an agent on behalf of a foreign commercial interest, even if the activities are political in nature and are directed or controlled by a foreign government or foreign political party, do not require registration under FARA because such activities do not "serve predominantly a foreign interest" for purposes of 3(d)(2). However, the new regulation clarifies that even after the deletion of section 1(q), any person, including a foreign or domestic corporation, who engages in political activities, not of a commercial nature, on behalf of a foreign government or foreign political party is required to register under FARA, as these activities will "serve predominantly a foreign interest" and thus not be exempt under section 3(d)(2).

Second, the rule clarifies the circumstances in which agents of foreign principals, other than foreign governments or foreign political parties, can claim the new exemption provided in section 3(h), and clarifies the reach of the revised "attorneys' exemption" in section 3(g). In addition, the proposed

rule strikes the term "political propaganda" wherever it appears in the regulations and substitutes the LDA term, "informational materials." Finally, the rule makes certain technical amendments to the existing regulations to delete reference to other repealed sections of the Act and to enable the Registration Unit to more effectively administer the statute by allowing for electronic filing in the future.

Certifications and Determinations

The Attorney General, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this proposed rule and, by approving it, certifies that it will not have a significant economic impact on a substantial number of small entities. The rule primarily affects those persons required to register pursuant to FARA, currently approximately 525 primary registrants and 2,464 individual short form registrants.

This proposed rule has been drafted and reviewed in accordance with Executive Order 12866, section 1(b), Principles of Regulation. The Department of Justice has determined that it does not constitute "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and accordingly it has not been reviewed by the Office of Management and Budget.

In addition, the Department of Justice certifies that this rule is not a major rule as defined by section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 804. The rule will not result in an annual effect on the economy of \$100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Furthermore, this rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Finally, this rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on

distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 28 CFR Part 5

Aliens, Foreign relations, Reporting and recordkeeping requirements, Security measures.

Accordingly, the Department of Justice proposes to amend part 5 of title 28 of the Code of Federal Regulations, chapter I, as follows:

PART 5—ADMINISTRATION AND ENFORCEMENT OF FOREIGN AGENTS REGISTRATION ACT OF 1938, AS AMENDED

1. The authority citation for part 5 continues to read as follows:

Authority: 28 U.S.C. 509, 510; section 1, 56 Stat. 248, 357 (22 U.S.C. 620); title I, Pub. L. 102-395, 106 Stat. 1828, 1831 (22 U.S.C. 612 note).

§ 5.5 [Amended]

2. a. Amend § 5.5 in paragraph (d)(10) by adding the words "informational materials," following "reports,".

b. Amend § 5.5 in paragraph (d)(11) by adding the words "informational materials," following "reports,".

§ 5.100 [Amended]

3. a. Amend § 5.100 in paragraph (c) by removing "1 (q),".

b. Amend § 5.100 in paragraph (d) by removing "1 (q),".

§ 5.200 [Amended]

4. Amend § 5.200 in paragraph (b) by removing the words "Form OBD-63" and adding, in their place, the words "a form provided by the Registration Unit".

§ 5.201 [Amended]

5. a. Amend § 5.201 in paragraph (a)(1) by removing the words "Form OBD-67" and adding, in their place, the words "a form provided by the Registration Unit".

b. Amend § 5.201 in paragraph (a)(2) by removing the words "Form OBD-65" and adding, in their place, the words "a form provided by the Registration Unit".

§ 5.202 [Amended]

6. a. Amend § 5.202 in paragraph (b) by adding the word "registrable" before the word "activity".

b. Amend § 5.202 in paragraph (e) by removing the words "Form OBD-66" and adding, in their place, the words "a form provided by the Registration unit".

§ 5.203 [Amended]

7. Amend § 5.203 in paragraph (a) by removing the words "Form OBD-64"

and adding, in their place, the words "a form provided by the Registration Unit".

§ 5.204 [Amended]

8. Amend § 5.204 in paragraph (a) by removing the words "Form OBD-68" and adding, in their place, the words "a form provided by the Registration Unit".

§ 5.205 [Amended]

9. Amend § 5.205 in paragraph (a) by removing the words "OBD-64" and adding, in their place, the words "the supplemental statement form.

§ 5.206 [Amended]

10. Amend § 5.206 in paragraph (b) by adding the words "or if it is filed in an electronic format acceptable to the registration Unit" following the words "ink".

11. Revise paragraph (c) of § 5.304 to read as follows:

§ 5.304 Exemptions under sections 3(d) and (e) of the Act.

* * * * *

(c) For the purpose of section 3(d)(2) of the Act, the term "other activities not serving predominantly a foreign interest" includes political activities on behalf of foreign commercial interests, even if such activities are directed or controlled by a foreign government or foreign political party. The term does not include other political activities that are directly or indirectly supervised, directed, controlled, financed, or subsidized in whole or in substantial part by a government of a foreign country or a foreign political party.

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12. Revise paragraph (a) of § 5.306 to read as follows:

§ 5.306 Exemption under section 3(g) of the Act.

* * * * *

(a) Attempts to influence of persuade agency personnel or officials other than in the course of judicial proceedings, criminal or civil law enforcement inquiries, investigations, or proceedings, or agency proceedings required by statute or regulation to be conducted on the record, shall include only such attempts to influence or persuade with reference to formulating, adopting, or changing the domestic or foreign policies of the United States of with reference to the political or public interests, policies, or relations of a government of a foreign country or a foreign political party; and

* * * * *

§ 5.306 [Amended]

13. Amend § 5.306 in the last sentence of paragraph (b) by removing the word "like" and adding, in its place, the word "fall".

14. Add § 5.307 to read as follows:

§ 5.307 Exemption under section 3(h) of the Act.

For the purpose of section 3(h) of the Act, the burden of establishing that registration under the Lobbying Disclosure Act of 1995 (LDA), 2 U.S.C. 1601 *et seq.*, has been made shall fall upon the person claiming the exemption. The Department of Justice will accept as prima facie evidence of registration a duly executed registration statement filed pursuant to the LDA. In no case where a foreign government or foreign political party is the ultimate foreign principal will the exemption under section 3(h) be recognized.

§ 5.400 [Amended]

15. a. Amend the heading of § 5.400 by removing the words "political propaganda" and adding, in their place, the words "informational materials".

b. Amend § 5.400 in paragraph (a) by removing the words "two copies of each item of political propaganda" and adding, in their place, the words "informational materials", and by adding, before the period, the words "no later than 48 hours after the beginning of the transmittal of the informational materials".

c. Amend § 5.400 in paragraph (b) by removing the words "two copies of an item of political propaganda" and adding, in their place, the words "informational materials" and by removing the word "material" and adding, in its place, "materials".

d. Amend § 5.400 in the first sentence of paragraph (c) by removing the words "two copies of a motion picture containing political propaganda" and adding, in their place, the words "a copy of a motion picture".

§ 5.401 [Removed]

16. Remove § 5.401.

§ 5.402 [Amended]

17. a. Revise the heading of § 5.402 as set forth below.

b. Amend § 5.402 in paragraph (a) by removing the words "political propaganda" and adding, in their place, the words "informational materials", by removing the words "it has" and adding, in their place, the words "they have", and by removing the word "its" and adding in its place, the word "their".

c. Amend § 5.402 in paragraph (b) by removing the words "An item of political propaganda which is" and adding, in their place, the words "Informational materials", and removing the words "which is" and adding, in their place, the words "which are", and by removing the words "such item" and adding, in their place, the words "such materials".

d. Amend § 5.402 in paragraph (c) by removing the words "An item of political propaganda which is" and adding, in their place, the words "Informational materials", and by removing the phrase "which is not" and adding, in its place, the phrase "which are not".

e. Amend § 5.402 in paragraph (d) by removing the words "Political propaganda as defined in section 1(j) of the Act which is" and adding, in their place, the words "Informational materials that are", and by removing the words "is caused" and adding, in its place, the words "are caused".

f. Amend § 5.402 in paragraph (e) by removing the words "political propaganda as defined in section 1(j) of the Act" and adding, in their place, the words "informational materials".

g. Amend § 5.402 in paragraph (f) by removing the words "political propaganda" and adding, in their place, the words "informational materials".

h. Add new paragraph (g) to § 5.402 to read as follows:

§ 5.402 Labeling informational materials

* * * * *

(g) For the purpose of section 4(b) of the Act, a statement will be deemed conspicuous if it prefaces or accompanies the informational materials.

§ 5.500 [Amended]

18. Amend § 5.500 in paragraph (a)(4) by removing the words "political propaganda has" and adding, in their place, the words "informational materials have".

§ 5.600 [Amended]

19. Amend § 5.600 by adding the words "informational materials," following the words "Registration statements," and by removing the words "from 10 a.m. to 4 p.m." and adding, in their place, the words "during the posted hours of operation."

§ 5.601 [Amended]

20. a. Amend § 5.601 in paragraph (a) by adding the words "informational materials," following the word "thereto,".

b. Amend § 5.601 in paragraph (b) by adding the words "informational materials," following the word "thereto,".

Dated: June 26, 1999.

Janet Reno,

Attorney General.

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DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 904

[SPATS No. AR-029-FOR]

Arkansas Abandoned Mine Land Reclamation Plan

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) is announcing receipt of an amendment to the Arkansas abandoned mine land reclamation plan (Arkansas plan) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment consists of revisions to the Arkansas plan relating to definitions, purposes of the reclamation program, identification of eligible lands and water, ranking and selection procedures, coordination of reclamation work, acquisition management and disposition of land and water, reclamation on private land, rights of entry, public participation, organizational structure, personnel and staffing policies, purchasing and procurement systems, management accounting, and abandoned mine land (AML) problem description. Arkansas intends to revise its amendment in response to our letter dated September 26, 1994, that we sent to the State under 30 CFR 884.15(d). The amendment also includes changes made at Arkansas' own initiative.

This document gives the times and locations that the Arkansas plan and the amendment to that plan are available for your inspection, the comment period during which you may submit written comments on the amendment, and the procedures that will be followed for the public hearing, if one is requested.

DATES: We will accept written comments until 4:00 p.m., c.d.t., August 9, 1999. If requested, we will hold a public hearing on the amendment on August 3, 1999. We will accept requests to speak at the hearing until 4:00 p.m., c.d.t. on July 26, 1999.

ADDRESSES: You should mail or hand deliver written comments and requests to speak at the hearing to Michael C. Wolfrom, Director, Tulsa Field Office, at the address listed below.

You may review copies of the Arkansas plan, the amendment, a listing of any scheduled public hearings, and all written comments received in response to this document at the

addresses listed below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the amendment by contacting OSM's Tulsa Field Office.

Michael C. Wolfrom, Director, Tulsa Field Office, Office of Surface Mining, 5100 East Skelly Drive, Suite 470, Tulsa, Oklahoma 74135-6547, Telephone: (918) 581-6430

Arkansas Department of Environmental Quality, Russellville Field Office, 1220 West 2nd Street, Russellville, Arkansas 72801, Telephone: (501) 968-7339

FOR FURTHER INFORMATION CONTACT:

Michael C. Wolfrom, Director, Tulsa Field Office. Telephone: (918) 581-6430. Internet: mwolfrom@tokgw.osmre.gov.

SUPPLEMENTARY INFORMATION:

I. Background on the Arkansas Plan

On May 2, 1983, the Secretary of the Interior approved the Arkansas plan. You can find background information on the Arkansas plan, including the Secretary's findings, the disposition of comments, and the approval of the plan in the May 2, 1983, **Federal Register** (48 FR 19710). You can find later actions on the Arkansas plan at 30 CFR 904.25 and 904.26.

II. Description of the Proposed Amendment

By letter dated June 16, 1999 (Administrative Record No. AR-565), Arkansas sent us an amendment to its plan under SMCRA. Arkansas sent the amendment in response to a letter dated September 26, 1994, that we sent to the State under 30 CFR 884.15(d). The amendment also includes changes made at Arkansas' own initiative. Below is a summary of the changes proposed by Arkansas. The full text of the amendment is available for your inspection at the locations listed above under **ADDRESSES**.

A. Arkansas proposes to add to the reclamation plan a table of contents with numbered headings and lettered sub-headings.

B. Arkansas proposes to add Part III—"Definitions," to the reclamation plan.

C. Part IV—"Policies and Procedures for the State Abandoned Mine Land Reclamation Program."

1. Arkansas proposes to rename section 884.13(c)(1), "Introduction," and to remove the old SMCRA priority 4 (Research and Demonstration) project selection criteria. Arkansas also proposes to move descriptions of abandoned mine problem types from this section to section 884.13(e)(3). Arkansas also proposes to move the