Regulatory Flexibility Act

The Commissioner of the Immigration and Naturalization Service, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and by approving it certifies that this rule will not have a significant economic impact on a substantial number of small entities. This rule simply corrects the filing deadline for 405 applications thereby benefitting applicants who were denied consideration for failure to apply by the February 2, 1995 deadline. This amendment has no financial impact on applicants eligible under this provision.

Executive Order 12866

This rule is not considered by the Department of Justice, Immigration and Naturalization Service, to be a ''significant regulatory action'' under Executive Order 12866, section 3(f), Regulatory Planning and Review, and the Office of Management and Budget has waived its review process under section 6(a)(3)(A).

Executive Order 12612

The regulation will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the 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.

Executive Order 12606

The Commissioner of the Immigration and Naturalization Service certifies that she has assessed this rule in light of the criteria in Executive Order 12606 and has determined that it will not have a significant negative impact on family well-being.

List of Subjects in 8 CFR Part 329

Armed Forces, Citizenship and Naturalization, Veterans.

According, part 329 of chapter I of title 8 of the Code of Federal Regulations is amended as follows:

PART 329—SPECIAL CLASSES OF PERSONS WHO MAY BE NATURALIZED: NATURALIZATION BASED UPON ACTIVE DUTY SERVICE IN THE UNITED STATES ARMED FORCES DURING SPECIFIED PERIODS OF HOSTILITIES

1. The authority citation for part 329 continues to read as follows:

Authority: 8 U.S.C. 1103, 1440, 1443.

§ 329.5 [Amended]

2. In § 329.5, paragraph (e) is amended by revising the date: ''February 2, 1995'' to read: ''February 3, 1995''

Dated: August 25, 1995.

Doris Meissner,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 95–21689 Filed 8–31–95; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

15 CFR Part 275

[Docket No. 950808205–5205–01]

RIN 0693–XX11

Policies and Procedures Governing the Appearance of NIST Employees as Witnesses in Private Litigation

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Final rule.

SUMMARY: The National Institute of Standards (NIST) hereby removes 15 CFR Part 275 which sets forth policies and procedures governing the appearance of NIST employees as witnesses in private litigation. This action is taken in keeping with the goals of the National Performance Review and in order to comply with recent Executive Orders that address regulatory reforms. Part 275 is removed because it is out of date and unnecessary.

The policies and procedures to be followed with respect to the testimony of all Department of Commerce employees regarding official matters, and the production of Department documents in legal proceedings is set forth at 15 CFR Part 15a.

EFFECTIVE DATE: September 1, 1995.

FOR FURTHER INFORMATION CONTACT: Michael Rubin, 301–975–2803.

SUPPLEMENTARY INFORMATION: On March 4, 1995, as part of the President's Regulatory Reform Initiative, the President directed agencies to conduct a page-by-page review of all regulations and eliminate or revise those that are outdated or otherwise in need of reform. After conducting a review of the NIST regulations, it was determined that 15 CFR Part 275 was outdated and should be removed because 15 CFR Part 15a sets forth current Department policies with respect to the testimony of employees regarding official matters, and the production of Department documents in legal proceedings.

List of Subjects in 15 CFR Part 275

Administrative practice and procedure, Courts, Government employees.

PART 275—[REMOVED AND RESERVED]

Accordingly, under authority of Sec. 9, 31 Stat. 1450, as amended, 15 U.S.C. 277, 15 CFR part 275 is removed and reserved.

Dated: August 28, 1995.

Samuel Kramer,

Associate Director.

[FR Doc. 95–21734 Filed 8–31–95; 8:45 am]

BILLING CODE 3510–13–M

FEDERAL TRADE COMMISSION

16 CFR Part 600

Statement of General Policy or Interpretation; Commentary on the Fair Credit Reporting Act

AGENCY: Federal Trade Commission.

ACTION: Final amendment to commentary.

SUMMARY: The Commission is amending its Commentary on the Fair Credit Reporting Act (''FCRA''), 16 CFR part 600, to state that the FCRA does not require the disclosure of ''risk scores'' to consumers by consumer reporting agencies. This action responds to comments the Commission and its staff received from the public in response to its **Federal Register** publication on June 17, 1994.

EFFECTIVE DATE: September 1, 1995.

ADDRESSES: Federal Trade Commission; Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Clarke Brinckerhoff, Attorney, Division of Credit Practices, Federal Trade Commission, Washington, DC 20580, 202–326–3208.

SUPPLEMENTARY INFORMATION:

Background and Chronology

Section 609(a)(1) of the FCRA requires each credit bureau to disclose to a properly identified consumer ''(t)he nature and substance of all information (except medical information) in its files on the consumer at the time of the request'' by the consumer for such disclosure. A risk score is a statistical assessment of the data in the consumer's file that a credit bureau can provide to its customer. Credit bureaus did not provide such scores until the late 1980's, and thus they were not contemplated, when the FCRA was enacted in 1970.

On May 4, 1990, the Commission included in the final version of its Commentary on the FCRA (16 CFR part 600) a sentence in Comment 7 to Section 609 that adopted the position taken by an informal August 1988 staff opinion letter that the provision did not require disclosure of risk scores (55 FR 18804, 18822).

On February 11, 1992, the Commission reversed its position by publishing a notice in the **Federal Register** changing the sentence in Comment 7 to state the view that the provision required disclosure of risk scores, effective immediately (57 FR 4935). The Commission based its reversal on (1) Its subsequent investigations, which indicated that some credit report users got only a risk score, and (2) the legislative history of the FCRA, in particular a statement by Representative Leonor Sullivan that credit bureaus should have to disclose information ''in any form which would be relayed to a (bureau client) in making a judgment as to the worthiness of the individual's application . . .'' 116 Cong. Rec. 36572 (Oct. 12, 1970).

After the Commission amended the FCRA Commentary, several industry representatives requested clarification of the revision. Three principal issues arose concerning the applicability of the FCRA to risk scores: (1) When a consumer reporting agency must disclose a risk score, (2) what score(s) must be disclosed, and (3) what type of explanation of the score must be provided as part of the disclosure.

On June 17, 1994, the Commission published for public comment a proposed revision to the FCRA Commentary addressing these issues (59 FR 31176). The proposal, this time styled as an additional Comment 12 to Section 609, maintained the position set forth by the Commission in its February 1992 revision that risk score disclosure was required; it specified that the score needed to be computed and reported only as of the date of the consumer's disclosure request, that disclosure was required regardless of whether a credit bureau or a creditor created (or owned) the scoring system used to calculate the numerical score, and that only a brief explanation was required. In addition, it posed a number of questions on which it requested public comment.

Eighty parties responded with written submissions for Commission consideration. On the industry side, the record includes extensive comments filed by or on behalf of credit bureaus that supply risk scores, creditors who purchase and use such scores, and the companies that prepare scoring systems that they use to produce them. Consumer interests were represented by a consortium of state Attorney General offices and a major national consumer advocacy group, among others.

Summary of Comments and Final Interpretation

The industry commenters argued strongly that section 609 does not literally require the disclosure of risk scores. They contended that a credit bureau's risk score is not ''information * * * in its files * * * at the time of the request'' but rather is a system of analyzing that information for the credit bureau's client. For a fee, the credit bureau applies a statistical ''model'' to the information in its files and (generally combined with a full credit report) provides the resulting number (''score'') to its client. The score does not exist in the file until that function is performed, and is not retained by the credit bureau after it is provided to the bureau's client.

The industry commenters also argued that the disclosure of risk scores would be costly to the credit-granting and credit-reporting industries, and further contended that the benefits to the public were uncertain and (if they existed at all) far outweighed by the costs. Finally, they noted that consumers already have access to information much more significant than a numerical score—the underlying information in the credit file (under Section 609) and a statement of the reasons why any user rejected their credit applications (under the Equal Credit Opportunity Act (''ECOA'') and its implementing Regulation B).

The consumer representatives emphasized the quote from Rep. Sullivan on which the Commission had relied in its February 1992 opinion. They pressed the view that it is only fair for consumers to have risk scores if credit bureau users are receiving them, and contended that consumers should not be deprived of disclosure of risk scores simply because credit bureaus do not retain them.

Based on the comments, the Commission has decided to reinstate its original position that Section 609 does not require a credit bureau to disclose risk scores because they are not ''information . . . in its files on the consumer at the time of the request'' by the consumer for file disclosure. Section 603(g) defines the term ''file'' to mean ''all of the information on (the) consumer *recorded and retained* by a consumer reporting agency regardless of how the information is stored.'' (Emphasis added). In analyzing the application of Section 609 to a risk score, the Commission has considered the process involved in generating a risk score. The comments indicate that a risk score is not ''recorded and retained'' by the credit bureau; rather it is produced when the bureau applies the scoring model to the actual data in the consumer's credit history and provides the resulting numerical score to its client who pays to have that function performed by the bureau. In addition to not being in the credit bureau ''files'', the score does not even exist ''at the time of the request.''

List of Subjects in 16 CFR Part 600

Credit, Trade practices.

For the reasons set out in the preamble, the Commission amends Title 16, Chapter I, Part 600 of the Code of Federal Regulations as follows:

PART 600—STATEMENT OF GENERAL POLICY OR INTERPRETATIONS

1. The authority citation for Part 600 continues to read as follows:

Authority: 15 U.S.C. 1681s and 16 CFR 1.73.

2. In the appendix to Part 600, the Commission amends Section 609 by revising comment 7 and adding a new comment 12, to read as follows:

Appendix—Commentary on the Fair Credit Reporting Act

* * * * *

Section 609—Disclosures to Consumers

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7. Ancillary Information.

A consumer reporting agency is not required to disclose information consisting of an audit trail of changes it makes in the consumer's file, billing records, or the contents of a consumer relations folder, if the information is not from consumer reports and will not be used in preparing future consumer reports. Such data is not included in the term ''information in the files'' which must be disclosed to the consumer pursuant to this section. A consumer reporting agency must disclose claims report information only if it has appeared in consumer reports.

* * * * *

12. Risk Scores.

A consumer reporting agency is not required to disclose a risk score (or other numerical evaluation, however named) that is provided to the agency's client (based on an analysis of data on the consumer) but not retained by the agency. Such a score is not information ''in (the agency's) files at the time of the request'' by the consumer for file disclosure.

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By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 95–21789 Filed 8–31–95; 8:45 am]

BILLING CODE 6750–01–M