

garnishment has been terminated for accounts that have been paid in full.

§ 105–57.012 Actions prohibited by the employer.

An employer may not discharge, refuse to employ, or take disciplinary action against the debtor due to the issuance of a withholding order under this part. *See* 31 U.S.C. 3720D(e).

§ 105–57.013 Refunds.

(a) If a hearing official, at a hearing held pursuant to § 105–57.005 of this part, determines that a debt is not legally due and owing to the United States, GSA will promptly refund any amount collected by means of administrative wage garnishment.

(b) Unless required by Federal law or contract, refunds under this part will not bear interest.

§ 105–57.014 Right of action.

GSA may sue any employer for any amount that the employer fails to withhold from wages owed and payable to an employee in accordance with §§ 105–57.006 and 105–57.008 of this part, plus attorney's fees, costs, and if applicable, punitive damages. However, a suit may not be filed before the termination of the collection action involving a particular debtor, unless earlier filing is necessary to avoid expiration of any applicable statute of limitations period. For purposes of this part, "termination of the collection action" occurs when GSA has terminated collection action in accordance with the FCCS or other applicable standards. In any event, termination of the collection action will have been deemed to occur if GSA has not received any payments to satisfy the debt from the particular debtor whose wages were subject to garnishment, in whole or in part, for a period of one (1) year.

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DEPARTMENT OF THE INTERIOR

Office of the Secretary

43 CFR Part 4

RIN 1090–AA84

Special Rules Applicable to Public Land Hearings and Appeals

AGENCY: Office of the Secretary, Interior.

ACTION: Final rule.

SUMMARY: The Office of Hearings and Appeals (OHA) is amending its existing regulations governing petitions for stays

of grazing decisions issued by the Bureau of Land Management. The changes would specifically authorize OHA administrative law judges to decide such petitions, which would expedite the administrative review process by eliminating an inefficient division of authority.

EFFECTIVE DATE: January 9, 2004.

FOR FURTHER INFORMATION CONTACT: Will A. Irwin, Administrative Judge, Interior Board of Land Appeals, U. S. Department of the Interior, 801 N. Quincy Street, Suite 300, Arlington, VA 22203, Phone: 703–235–3750. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at (800) 877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

A. The Proposed Rule

On May 22, 2003, the Office of Hearings and Appeals (OHA) proposed to amend its existing regulations governing petitions to stay bureau decisions. 68 FR 27955–27960 (May 22, 2003). As explained in that proposal, the existing regulations governing hearings and appeals of grazing decisions issued by the Bureau of Land Management (BLM) assign responsibility for deciding petitions for a stay of such decisions to the Interior Board of Land Appeals (IBLA) or the Director, OHA. Responsibility for conducting the hearing, ruling on other motions, and making the initial decision on the appeal, however, rests with administrative law judges (ALJs) in the Hearings Division, OHA.

When an appeal of a grazing decision is filed with a BLM field office, the current OHA regulations require that office to forward the appeal to the BLM State Director, and the State Director to transmit it to the OHA Hearings Division office in Salt Lake City, Utah. 43 CFR 4.470(d). If a petition for a stay of the decision accompanies the appeal, the Hearings Division must forward the petition to IBLA in Arlington, Virginia. Under 43 CFR 4.21(b)(4), IBLA (or the OHA Director) has 45 days to decide whether or not to grant the petition; after IBLA decides, it returns the record to the Hearings Division in Salt Lake City. In the meantime, the ALJ to whom the case is assigned normally waits to schedule the hearing and to rule on any motions concerning the appeal, such as a motion to intervene in the appeal or a motion by BLM to dismiss the appeal. IBLA does not have authority to rule on such motions.

This division of responsibility results in delays and inefficiencies that would

be alleviated if the ALJs also had authority to rule on petitions for a stay. For example, IBLA sometimes finds during its consideration of a stay petition that a motion to dismiss should be granted. However, under the existing regulations, IBLA cannot grant the motion but must proceed to decide the stay petition and then refer the case, including the motion to dismiss, back to the Hearings Division. If the ALJ had authority to rule on a petition for a stay, he or she could consider any other pending motions at the same time and, where appropriate, grant a motion to dismiss without having to rule on the petition. Moreover, under the existing regulations, IBLA must thoroughly review the record in deciding whether to grant a stay petition, and the ALJ must then do the same in deciding the merits of the case. This is an unnecessary duplication of effort and takes time away from IBLA's consideration of other appeals.

Therefore, OHA proposed amendments to the existing regulations in 43 CFR 4.21 and 4.470 *et seq.* to provide the authority to ALJs to rule on petitions for a stay of BLM grazing decisions. OHA also proposed that any party may appeal to the IBLA an order of an ALJ granting or denying a petition for a stay. Any party (other than BLM) wishing to appeal an order of an ALJ denying a petition for a stay would be able to seek judicial review instead of appealing to IBLA.

OHA also proposed to revise the existing regulatory language to make it clearer and to conform to Departmental requirements for writing rules in plain language. *See* 318 DM 4.2.

B. Responses to Comments

We received comments on the proposed rules from Nordhaus Haltom Taylor Taradash & Bladh, LLP, on behalf of the Jicarilla Apache Nation, the Pueblo of Laguna, and the Pueblo of Santa Ana; the National Wildlife Federation; Budd-Falen Law Offices, P.C.; the National Mining Association; Holme Roberts & Owen LLP, on behalf of Placer Dome America; Jason R. Warran, Esq.; and the American Farm Bureau Federation.

Most commenters expressed agreement with the basic intent of the proposed rule, *i.e.*, to authorize ALJs to decide petitions for stay of BLM grazing decisions. But they raised numerous questions about the proposed amendments to the general regulation in 43 CFR 4.21 and the need for such amendments, and they urged that we limit the final rule to the grazing-related provisions of §§ 4.470–.478.