

I. Background

Part 143 of the Commission's regulations, 17 CFR part 143, sets forth the Commission's policies and procedures for collecting debts owed to the United States arising from activities under the Commission's jurisdiction. At present, the part 143 rules, which apply to debts owed by persons not employed by the Federal government, authorize collection by (1) administrative offset against obligations owed to the debtor by the United States, (2) compromise (if the debt owed is not more than \$100,000), or (3) referral to the Department of Justice for litigation.¹ The part 143 rules were first published in 1985 (50 FR 5383) to implement the Federal Claims Collection Act of 1966, as amended by the Debt Collection Act of 1982, 31 U.S.C. 3701, *et seq.* They were amended in 1992 (57 FR 61291) to increase the maximum dollar amount of claims that the Commission itself may settle, and again in 1996 (61 FR 55564) and 2000 (65 FR 45709) to adjust for inflation the maximum dollar amount of civil penalties assessable for violations of the Commodity Exchange Act and the Commission's regulations and orders.²

As a result of the Department of the Treasury's issuance of regulations implementing the administrative wage garnishment provisions of the DCIA, the Commission is proposing to further amend its part 143 rules. Under the DCIA, the head of a Federal agency administering a program that gives rise to a delinquent non-tax debt owed to the United States by an individual may garnish the individual's disposable pay to collect the amount owed. *See* 31 U.S.C. 3720D. On May 6, 1998, the Financial Management Service (FMS),³ a bureau of the Department of the Treasury, promulgated regulations (63 FR 23156) establishing rules and procedures governing administrative wage garnishment by Federal agencies. *See* 31 CFR 285.11. Agencies that wish

to use administrative wage garnishment to collect delinquent debts must comply with all of the requirements set forth in 31 CFR 285.11. They are permitted, however, to prescribe their own rules for the conduct of administrative wage garnishment hearings, so long as the rules are consistent with criteria set forth in 31 CFR 285.11(f).

The Commission's proposal would revise existing Rule 143.1 by adding administrative wage garnishment to the list of available debt collection procedures. Existing Rules 143.2 through 143.8, which address the collection of delinquent debt through administrative offset, compromise, or referral to the Department of Justice for litigation, would be grouped together as subpart A, "General Provisions." To address the collection of delinquent debt through garnishment of the debtor's wages, a new subpart B, "Administrative Wage Garnishment," would be added to part 143. In addition to these changes, the Commission's proposal would correct citations in part 143 to the Federal Claims Collections Standards to reflect their transfer from part 4 to part 31 of the Code of Federal Regulations and make other editorial changes of a non-substantive nature.

II. Overview of Proposed Wage Garnishment Procedures

Under proposed Rule 143.9, administrative wage garnishment proceedings initiated by the Commission would be governed by the FMS regulations codified at 31 CFR 285.11.⁴ Those regulations allow the Commission to garnish the disposable pay of any individual, other than an employee of the Federal government, who owes a delinquent non-tax debt to the United States arising from an activity within the Commission's jurisdiction. 31 CFR 285.11(d). At least 30 days before a garnishment proceeding is initiated, the Commission (or FMS, acting on the Commission's behalf) will send the debtor written notice informing him or her of the nature and amount of the debt and the Commission's intention to collect it through deductions from the debtor's pay, and explaining the debtor's rights with respect to the proposed action. 31 CFR 285.11(e)(1).

The debtor will be given an opportunity to inspect and copy Commission records related to his or her debt, to enter into a written repayment agreement on terms acceptable to the

Commission, and to request a hearing concerning the existence or amount of the debt or the terms of the repayment schedule. 31 CFR 285.11(e)(2). If a hearing request is received within 15 business days after the Commission's notice is mailed to the debtor, a hearing must be held before a garnishment order can be issued. 31 CFR 285.11(f)(4). For hearing requests not received within 15 business days, the Commission need not delay the issuance of the garnishment order prior to conducting a hearing. 31 CFR 285.11(f)(5). The Commission may not garnish the pay of a delinquent debtor who has been involuntarily separated from employment until he or she has been reemployed continuously for at least 12 months. 31 CFR 295.11(j). The debtor bears the burden of informing the Commission of the circumstances surrounding an involuntary separation from employment.

Within 30 days after a delinquent debtor fails to make a timely request for a hearing or, if a timely request is received, within 30 days after a final decision is made to proceed with garnishment, the Commission (or FMS, acting on the Commission's behalf) will mail a wage garnishment order, in a form prescribed by the Department of the Treasury, to the debtor's employer. 31 CFR 285.11(g). The order will direct that the employer pay a specified portion of the debtor's wages to the Federal government. Along with the order, the Commission (or FMS, acting on the Commission's behalf) will send a certification form, to be executed by the employer, addressing such matters as the debtor's current employment status and the amount of disposable income available for garnishment. 31 CFR 285.11(h). Although the employer must promptly pay all amounts that are required to be withheld from the debtor's pay, the employer will not be required to alter its normal pay cycle in order to do so.

As provided by the DCIA, no more than 15 percent of a delinquent debtor's disposable income may be garnished for each pay period. A debtor may, at any time, seek review by the Commission of the amount being withheld under an administrative wage garnishment order, based on materially changed circumstances (such as disability, divorce, or catastrophic illness) which result in financial hardship. The DCIA makes it unlawful for an employer to take disciplinary action against an employee based on the fact that the employee's pay is subject to administrative wage garnishment. In addition, it authorizes the Commission to sue an employer for amounts that are

¹ The collection of debts owed to the Commission by its current employees or by the employees of other Federal agencies, and of debts owed to other Federal agencies by current Commission employees, is separately governed by part 141 of the Commission's regulations, 17 CFR part 141.

² The 1996 and 2000 amendments to the Commission's part 143 rules implemented the Federal Civil Penalties Inflation Adjustment Act of 1990 (FCPIAA), as amended by the DCIA. The FCPIAA and the relevant amendments made to the FCPIAA by the DCIA, are codified at 28 U.S.C. 2461 note.

³ On August 27, 1999, the Commission entered into a cross-servicing agreement with the FMS, which allows the FMS to undertake debt collection activities on behalf of the Commission. It is anticipated that, pursuant to that agreement, the FMS also will assist the Commission in collecting delinquent debts through administrative wage garnishment.

⁴ The Commission's use of other debt-collection measures set forth in subpart A of the part 143 rules would not preclude it from initiating an administrative wage garnishment proceeding against a delinquent debtor.