

not withheld under a garnishment order.

III. Administrative Wage Garnishment Hearings

If a delinquent debtor requests a hearing concerning the existence or amount of his or her debt or the terms of repayment set forth in the garnishment order, the hearing will be conducted by the Commission in accordance with the requirements of 31 CFR 285.11(f). Under proposed Rule 143.10, the Commission would authorize its Executive Director (or any Commission employee designated by the Executive Director) to decide whether the hearing will be oral or in writing, and to select a qualified and impartial employee of the Commission to conduct the hearing and render a decision. Consistent with the requirements of 31 CFR 285.11(f)(10), the Commission's proposed rules require that a decision be issued within 60 days after the Commission's receipt of the debtor's request for a hearing. The hearing official's decision would be the final agency action for purposes of judicial review under the Administrative Procedure Act, 7 U.S.C. 701, *et seq.*

The proposed rules state that, at the hearing, the Commission has the burden of going forward to prove the existence and amount of the debt. Depending on his or her claims, the debtor then would have to establish, by a preponderance of the evidence, that no debt exists or the amount of the debt is incorrect, that the terms of the repayment schedule are either unlawful or would cause a financial hardship to the debtor, or that collection of the debt may not be pursued due to the operation of law. Although the FMS regulations require only that a "summary record" of the hearing be maintained, proposed Rule 143.10 would require that all testimony adduced at an oral hearing be transcribed on the record and under oath or affirmation, and that all documents presented for consideration by the hearing official be marked as exhibits and retained in the record.

IV. Related Matters

A. Administrative Procedure Act

The proposed amendments to the Commission's part 143 rules governing debt collection relate solely to agency organization, procedure, and practice. Therefore, the provisions of the Administrative Procedure Act, 5 U.S.C. 553, generally requiring notice of proposed rulemaking and opportunity for public comment, are not applicable. Moreover, because the rules implement

a definitive statutory scheme established by the DCIA, notice and an opportunity for public comment are not required. However, since the proposed amendments represent an additional tool in the Commission's debt-collection efforts, the Commission has determined that it would be useful to receive comments from any interested members of the public before proceeding to final rulemaking.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA"), 5 U.S.C. 601–611, requires that, in proposing rules, agencies consider the impact of those rules on small businesses. Since the proposed rules are not being effected pursuant to 5 U.S.C. 553, the analysis and certification process mandated by the RFA do not apply. In any event, the Chairman, on behalf of the Commission, certifies that the proposed rules will not have a significant economic impact on a substantial number of small businesses. Although an employer of a delinquent debtor will have to certify certain information about the debtor, such as the debtor's employment status and current earnings, this information is already contained in the employer's payroll records. Moreover, an employer would not be required to vary its normal payroll cycle to accommodate an administrative wage garnishment order.

C. Paperwork Reduction Act

The proposed part 143 rules do not impose a burden within the meaning and intent of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501, *et seq.*

D. Cost-Benefit Analysis

Section 15(a) of the Commodity Exchange Act, 7 U.S.C. 19(a), requires the Commission to consider the costs and benefits of its action before issuing a new regulation. The Commission understands that, by its terms, section 15(a) does not require the Commission to quantify the costs and benefits of a new regulation or to determine whether the benefits of the proposed regulation outweigh its costs. Nor does it require that each proposed rule be analyzed in isolation when that rule is a component of a larger package of rules or rule revisions. Rather, section 15(a) simply requires the Commission to "consider the costs and benefits" of its action.

Section 15(a) further specifies that costs and benefits shall be evaluated in light of five broad areas of market and public concern: Protection of market participants and the public; efficiency, competitiveness, and financial integrity of futures markets; price discovery; sound risk management practices; and

other public interest considerations. Accordingly, the Commission can, in its discretion, give greater weight to any one of the five enumerated areas of concern and can, in its discretion, determine that notwithstanding its costs, a particular rule is necessary or appropriate to protect the public interest or to effectuate any of the provisions, or accomplish any of the purposes, of the Commodity Exchange Act.

The proposed administrative wage garnishment rules are not related to the marketplace and thus should not affect the protection of market participants; the efficiency, competitiveness, and financial integrity of futures markets; price discovery; or sound risk management practices. These proposed rules, however, do address other public interest considerations, namely, the collection of debts owed to the United States arising from activities under the Commission's jurisdiction. The costs associated with implementing administrative wage garnishment, which are mandated by the DCIA and 31 CFR 285.11, will be small. On the other hand, the benefits include providing an additional means to prevent persons who have been found liable for violating the Commodity Exchange Act or the Commission's regulations or orders from avoiding payment of monetary sanctions lawfully imposed on them.

List of Subjects in 17 CFR Part 143

Civil monetary penalty, Claims.

In consideration of the foregoing, the Commission proposes to amend chapter 1 of title 17 of the Code of Federal Regulations as follows:

PART 143—COLLECTION OF CLAIMS OWED THE UNITED STATES ARISING FROM ACTIVITIES UNDER THE COMMISSION'S JURISDICTION

1. The authority citation for part 143 is revised to read as follows:

Authority: 7 U.S.C. 9 and 15, 9a, 12a(5), 13a, 13a-1(d), and 13(a); 31 U.S.C. 3701–3720E; 28 U.S.C. 2461 note.

2. Section 143.1 is revised to read as follows:

§ 143.1 Purpose.

This part provides procedures that the Commission will use to collect debts owed the United States arising from activities under the Commission's jurisdiction. As applicable, these procedures are based upon, and conform to, the Federal Claims Collection Act, as amended, 31 U.S.C. 3701–3720E; the Federal Claims Collection Standards, 31 CFR parts 900–905, issued by the Department of the Treasury and the Department of Justice;