

(iii) A contact point at the creditor agency identified by the disbursing official that will handle concerns regarding the offset.

(2) The information described in paragraphs (c)(1)(ii) and (c)(1)(iii) of this section does not need to be provided to the debtor when the offset occurs if such information was included in a prior notice from the disbursing official or the creditor agency.

#### § 105–56.032 Fees.

GSA, while performing centralized salary offset computer matching services, may charge a fee sufficient to cover the full cost for such services. In addition, FMS, or GSA acting as the paying agency on behalf of FMS, may charge a fee sufficient to cover the full cost of implementing the administrative offset program. FMS may deduct the fees from amounts collected by offset or may bill the creditor agency. Fees charged for offset will be based on actual administrative offsets completed.

#### § 105–56.033 Disposition of amounts collected.

(a) The disbursing official conducting the offset will transmit amounts collected for debts, less fees charged under § 105–56.032 of this subpart, to the creditor agency.

(b) If an erroneous offset payment is made to the creditor agency, the disbursing official will notify the creditor agency that an erroneous offset payment has been made.

(1) The disbursing official may deduct the amount of the erroneous offset payment from future amounts payable to the creditor agency; or

(2) Alternatively, upon the disbursing official's request, the creditor agency will promptly return to the disbursing official or the affected payee an amount equal to the amount of the erroneous payment (without regard to whether any other amounts payable to the creditor agency have been paid). The disbursing official and the creditor agency will adjust the debtor records appropriately.

[FR Doc. 03–30408 Filed 12–9–03; 8:45 am]

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## GENERAL SERVICES ADMINISTRATION

### 41 CFR Part 105–57

[GSPMR Amendment 2003–03; GSPMR Case 2003–105–2]

RIN 3090–AH85

### Administrative Wage Garnishment

**AGENCY:** Office of Finance, General Services Administration (GSA).

**ACTION:** Final rule.

**SUMMARY:** The General Services Administration (GSA) is amending its regulations to implement the administrative wage garnishment provisions contained in the Debt Collection Improvement Act of 1996 (DCIA). Wage garnishment is a process whereby an employer withholds amounts from an employee's wages and pays those amounts to the employee's creditor in satisfaction of a withholding order. The DCIA authorizes Federal agencies to administratively garnish the disposable pay of an individual to collect delinquent non-tax debts owed to the United States in accordance with regulations issued by the Secretary of the Treasury.

This part was previously titled Collection of Debts by Tax Refund Offset. Effective January 1, 1999, the Department of the Treasury started to conduct the tax refund offset program as part of the centralized offset program, known as the Treasury Offset Program (TOP), operated by the Financial Management Service (FMS), a bureau of the Department of the Treasury. Since GSA has a cross-servicing agreement with FMS, which includes the TOP, the Collection of Debts by Tax Refund Offset is no longer valid and is rescinded and replaced with the new part, Administrative Wage Garnishment.

**DATES:** *Effective date:* December 10, 2003.

**FOR FURTHER INFORMATION CONTACT:** The Regulatory Secretariat, Room 4035, GS Building, Washington, DC 20405, at (202) 208–7312 for information pertaining to status or publication schedules. For clarification of content, contact Mr. Michael J. Kosar, General Services Administration, Office of Finance (BCD), Office of the Chief Financial Officer, Room 3121, 1800 F Street, NW., Washington, DC 20405, telephone (202) 501–2029; electronic mail at [mike.kosar@gsa.gov](mailto:mike.kosar@gsa.gov). Please cite GSPMR Amendment 2003–03, GSPMR case 2003–105–2.

#### SUPPLEMENTARY INFORMATION:

##### A. Background

This rule implements the wage garnishment provision in section 31001(o) of the Debt Collection Improvement Act of 1996 (DCIA), Public Law 104–134, 110 Stat. 1321–358 (Apr. 26, 1996), codified at 31 U.S.C. 3720D. Wage garnishment is a process whereby an employer withholds amounts from an employee's wages and pays those amounts to the employee's creditor in satisfaction of a withholding order. The DCIA authorizes Federal agencies to

administratively garnish up to 15 percent of the disposable pay of a debtor to satisfy delinquent non-tax debt owed to the United States. Prior to the enactment of the DCIA, agencies were required to obtain a court judgment before garnishing the wages of non-Federal employees. Section 31001(o) of the DCIA preempts State laws that prohibit wage garnishment or otherwise govern wage garnishment procedures.

As authorized by the DCIA, a Federal agency collecting delinquent non-tax debt may administratively garnish a delinquent debtor's wages in accordance with regulations promulgated by the Secretary of the Treasury. The Financial Management Service (FMS), a bureau of the Department of the Treasury, is responsible for promulgating the regulations implementing this and other debt collection tools established by the DCIA.

In accordance with the requirements of the DCIA, this rule establishes the following rules and procedures:

1. *Notice.* At least 30 days before GSA initiates garnishment proceedings, the Agency will give the debtor written notice informing him or her of the nature and amount of the debt, the intention of GSA to collect the debt through deductions from pay, and an explanation of the debtor's rights regarding the proposed action.

2. *Rights of the Debtor.* GSA will provide the debtor with an opportunity to inspect and copy records related to the debt, to establish a repayment agreement, and to receive a hearing concerning the existence and/or amount of the debt and/or the terms of a repayment schedule. A hearing will be held prior to the issuance of a withholding order if the debtor's request is received timely. For hearing requests that are not received in the specified time frame, GSA will not delay issuance of the withholding order prior to conducting a hearing. GSA will not garnish the wages of a debtor who has been involuntarily separated from employment until that individual has been reemployed continuously for at least 12 months. The debtor bears the burden of informing GSA of the circumstances surrounding an involuntary separation from employment.

3. *Employer's Responsibilities.* GSA will send to the employer of a delinquent debtor a wage garnishment order directing that the employer pay a portion of the debtor's wages to GSA. This rule requires the debtor's employer to certify certain payment information about the debtor. Employers will not be required to vary their normal pay cycles

in order to comply with the garnishment order.

The DCIA prohibits employers from taking disciplinary actions against the debtor based on the fact that the debtor's wages are subject to administrative garnishment. In addition, the DCIA authorizes GSA to sue an employer for amounts not properly withheld from the wages payable to the debtor.

*Discussion of Comments.* In response to its Notice of Proposed Rule (NPR) concerning Administrative Wage Garnishment (68 FR 41290, July 11, 2003), GSA received one internal comment and one from another agency. A review of the comments is provided in the following comment analysis, including a discussion of GSA's determination whether to incorporate specific suggestions in the final rule. The comment analysis is organized by reference to the paragraph in the NPR.

*NPR Sec. 105-57.005, Hearing.* One commenter suggested that transcripts taken during the course of oral hearing proceedings be arranged by the hearing official and all charges associated with the taking of the transcript be the responsibility of GSA. The final rule incorporates this suggestion.

*NPR Sec. 105-57.008, Amounts withheld.* One commenter questioned if the NPR has the same net base rule as the current Consumer Credit Protection Act (CCPA) limitation of 15 percent of an eligible employee's disposable earnings, but not below \$154.50 net per week. Under the NPR and the final rule, the amount of garnishment is the lesser of the amount indicated on the garnishment order up to 15 percent of the debtor's disposable pay or the amount set forth in 15 U.S.C. 1673(a)(2), which is the amount by which a debtor's disposable pay exceeds an amount equal to thirty times the minimum wage. The current minimum wage is \$5.15 per hour, times thirty equals \$154.50.

#### **B. Executive Order 12866**

This rule is not a significant regulatory action as defined in Executive Order 12866. It is hereby certified this regulation, including the certification referenced in this final rule (see § 105-57.007 of this part), will not have a significant economic impact on a substantial number of small entities. Although a substantial number of small entities will be subject to this regulation and to the certification requirement in this rule, the requirements will not have a significant economic impact on these entities. Employers of delinquent debtors must certify certain information about the debtor such as the debtor's employment status and earnings. This

information is contained in the employer's payroll records. Therefore, it will not take a significant amount of time or result in a significant cost for an employer to complete the certification form. Even if an employer is served withholding orders on several employees over the course of a year, the cost imposed on the employer to complete the certifications would not have a significant economic impact on that entity. Employers are not required to vary their normal pay cycles in order to comply with a withholding order issued pursuant to this rule.

#### **C. Regulatory Flexibility Act**

It is hereby certified this regulation will not have a significant economic impact on a substantial number of small entities because the regulation either (1) results in greater flexibility for GSA to streamline debt collection regulations, or (2) reflects the statutory language contained in the DCIA. Accordingly, a Regulatory Flexibility Analysis is not required.

#### **D. Executive Order 13132**

This regulation will not have a substantial direct effect 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 13132, it is determined this regulation does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

#### **E. Unfunded Mandates Reform Act of 1995**

This regulation 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 (1) 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.

#### **F. Small Business Regulatory Enforcement Fairness Act of 1996**

This rule is not a major rule as defined by section 251 of the Small Business Regulatory Enforcement Act, 5 U.S.C. § 804. This 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 on the ability of United States-based companies to compete with foreign-

based companies in domestic or export markets.

#### **G. Paperwork Reduction Act**

This rule does not contain information collection requirements that require approval by the Office of Management and Budget under the Paperwork Reduction Act, 44 U.S.C. 3507 *et seq.*

#### **List of Subjects in 41 CFR Part 105-57**

Claims, Government public contracts and property management, Income taxes.

Dated: December 2, 2003.

**Stephen A. Perry,**  
*Administrator of General Services.*

For the reasons set out in the preamble, GSA amends 41 CFR chapter 105 as follows:

#### **CHAPTER 105 [Amended]**

1. Revise Part 105-57 to read as follows:

#### **PART 105-57—ADMINISTRATION WAGE GARNISHMENT**

Sec.	
105-57.001	Purpose, authority and scope.
105-57.002	Definitions.
105-57.003	General rule.
105-57.004	Notice requirements.
105-57.005	Hearing.
105-57.006	Wage garnishment order.
105-57.007	Certification by employer.
105-57.008	Amounts withheld.
105-57.009	Exclusions from garnishment.
105-57.010	Financial hardship.
105-57.011	Ending garnishment.
105-57.012	Actions prohibited by the employer.
105-57.013	Refunds.
105-57.014	Right of action.

**Authority:** 5 U.S.C. §§ 552-553, 31 U.S.C. § 3720D, 31 CFR part 285.11.

#### **§ 105-57.001 Purpose, authority and scope.**

(a) This part provides standards and procedures for GSA to collect money from a debtor's disposable pay by means of administrative wage garnishment to satisfy delinquent non-tax debt owed to the United States.

(b) These standards and procedures are authorized under the wage garnishment provisions of the Debt Collection Improvement Act of 1996, codified at 31 U.S.C. 3720D, and Department of the Treasury Wage Garnishment Regulations at 31 CFR 285.11.

(c) *Scope.* (1) This part applies to any GSA program that gives rise to a delinquent non-tax debt owed to the United States and that pursues recovery of such debt.

(2) This part will apply notwithstanding any provision of State law.

(3) Nothing in this part precludes the compromise of a debt or the suspension or termination of collection action in accordance with applicable law. See, for example, the Federal Claims Collection Standards (FCCS), 31 CFR parts 900 through 904.

(4) The receipt of payments pursuant to this part does not preclude GSA from pursuing other debt collection remedies, including the offset of Federal payments to satisfy delinquent non-tax debt owed to the United States.

GSA may pursue such debt collection remedies separately or in conjunction with administrative wage garnishment.

(5) This part does not apply to the collection of delinquent non-tax debt owed to the United States from the wages of Federal employees from their Federal employment. Federal pay is subject to the Federal salary offset procedures set forth in 5 U.S.C. 5514 and other applicable laws. GSA standards and procedures for offsetting Federal wage payments are stated in 41 CFR part 105-56.

(6) Nothing in this part requires GSA to duplicate notices or administrative proceedings required by contract or other laws or regulations.

#### § 105-57.002 Definitions.

(a) *Administrative offset*, as defined in 31 U.S.C. 3701(a)(1), means withholding funds payable by the United States (including funds payable by the United States on behalf of a State government) to, or held by the United States for, a person to satisfy a claim.

(b) *Business day* means Monday through Friday, excluding Federal legal holidays. For purposes of computation, the last day of the period will be included unless it is a Federal legal holiday.

(c) *Day* means calendar day. For purposes of computation, the last day of the period will be included unless it is a Saturday, a Sunday, or a Federal legal holiday.

(d) *Debtor* means an individual who owes a delinquent non-tax debt to the United States.

(e) *"Delinquent" or "past-due" non-tax debt* means any non-tax debt that has not been paid by the date specified in GSA's initial written demand for payment or applicable agreement or instrument (including a post-delinquency payment agreement), unless other satisfactory payment arrangements have been made.

(f) *Disposable pay* means that part of the debtor's compensation (including, but not limited to, salary, bonuses,

commissions, and vacation pay) from an employer remaining after the deduction of health insurance premiums and any amounts required by law to be withheld. For purposes of this part, "amounts required by law to be withheld" include amounts for deductions such as social security taxes and withholding taxes, but do not include any amount withheld pursuant to a court order.

(g) *Employer* means a person or entity that employs the services of others and that pays their wages or salaries. The term employer includes, but is not limited to, State and local Governments, but does not include an agency of the Federal Government as defined by 31 CFR 285.11(c).

(h) *Evidence of service* means information retained by GSA indicating the nature of the document to which it pertains, the date of submission of the document, and to whom the document is being submitted. Evidence of service may be retained electronically or otherwise, so long as the manner of retention is sufficient for evidentiary purposes.

(i) *Financial hardship* means an inability to meet basic living expenses for goods and services necessary for the survival of the debtor and his or her spouse and dependents. See § 105-57.010 of this part.

(j) For the purposes of the standards in this part, unless otherwise stated, the term "Administrator" refers to the Administrator of General Services or the Administrator's delegate.

(k) For the purposes of the standards in this part, the terms "claim" and "debt" are synonymous and interchangeable.

They refer to an amount of money, funds, or property that has been determined by GSA to be due the United States from any person, organization, or entity, except another Federal agency, from sources which include loans insured or guaranteed by the United States and all other amounts due the United States from fees, leases, rents, royalties, services, sales of real or personal property, overpayments, penalties, damages, interest, fines and forfeitures and all other similar sources, including debt administered by a third party as an agent for the Federal Government. For the purposes of administrative offset under 31 U.S.C. 3716, the terms "claim" and "debt" include an amount of money, funds, or property owed by a person to a State (including past-due support being enforced by a State), the District of Columbia, American Samoa, Guam, the United States Virgin Islands, the Commonwealth of the Northern Mariana

Islands, or the Commonwealth of Puerto Rico.

(l) For the purposes of the standards in this part, unless otherwise stated, the terms "GSA" and "Agency" are synonymous and interchangeable.

(m) For the purposes of the standards in this part, unless otherwise stated, "Secretary" means the Secretary of the Treasury or the Secretary's delegate.

(n) *Garnishment* means the process of withholding amounts from an employee's disposable pay and the paying of those amounts to GSA in satisfaction of a withholding order.

(o) *Hearing* means a review of the documentary evidence concerning the existence and/or amount of a debt, and/or the terms of a repayment schedule, provided such repayment schedule is established other than by a written agreement entered into pursuant to this part. If the hearing official determines that the issues in dispute cannot be resolved solely by review of the written record, such as when the validity of the debt turns on the issue of credibility or veracity, an oral hearing may be provided.

(p) *Hearing official* means a Board Judge of the GSA Board of Contract Appeals (GSBCA).

(q) *Withholding order* means "Wage Garnishment Order (SF 329B)", issued by GSA. For purposes of this part, the terms "wage garnishment order" and "garnishment order" have the same meaning as "withholding order."

(r) In this part, words in the plural form shall include the singular and vice versa, and words signifying the masculine gender shall include the feminine and vice versa. The terms "includes" and "including" do not exclude matters not listed but do include matters that are in the same general class.

#### § 105-57.003 General rule.

Whenever GSA determines a delinquent debt is owed by an individual, the Agency may initiate administrative proceedings to garnish the wages of the delinquent debtor.

#### § 105-57.004 Notice requirements.

(a) At least 30 days before the initiation of garnishment proceedings, GSA will send, by first class mail, overnight delivery service, or hand delivery to the debtor's last known address a written notice informing the debtor of—

(1) The nature and amount of the debt;

(2) The intention of GSA to initiate proceedings to collect the debt through deductions from pay until the debt and all accumulated interest, penalties and administrative costs are paid in full; and

(3) The debtor's rights, including those set forth in paragraph (b) of this section, and the time frame within which the debtor may exercise his or her rights.

(b) The debtor will be afforded the opportunity—

(1) To inspect and copy Agency records related to the debt;

(2) To enter into a written repayment agreement with GSA under terms agreeable to the Agency; and

(3) To request a hearing in accordance with § 105-57.005 of this part concerning the existence and/or amount of the debt, and/or the terms of the proposed repayment schedule under the garnishment order. However, the debtor is not entitled to a hearing concerning the terms of the proposed repayment schedule if these terms have been established by written agreement under paragraph (b)(2) of this section.

(c) The notice required by this section may be included with GSA's demand letter required by 41 CFR 105-55.010.

(d) GSA will keep a copy of the evidence of service indicating the date of submission of the notice. The evidence of service may be retained electronically so long as the manner of retention is sufficient for evidentiary purposes.

#### § 105-57.005 Hearing.

(a) GSA will provide a hearing, which at the hearing official's option may be oral or written, if within fifteen (15) business days of submission of the notice by GSA, the debtor submits a signed and dated written request for a hearing, to the official named in the notice, concerning the existence and/or amount of the debt, and/or the terms of the repayment schedule (for repayment schedules established other than by written agreement under § 105-57.004(b)(2) of this part). A copy of the request for a hearing must also be sent to the GSA Board of Contract Appeals (GSBCA) at the address indicated in paragraph (b)(2) of this section.

(b) *Types of hearing or review.* (1) For purposes of this section, whenever GSA is required to afford a debtor a hearing, the hearing official will provide the debtor with a reasonable opportunity for an oral hearing when he/she determines that the issues in dispute cannot be resolved by review of the documentary evidence, for example, when the validity of the claim turns on the issue of credibility or veracity.

(2) If the hearing official determines that an oral hearing is appropriate, he/she will establish the time and location of the hearing. An oral hearing may, at the debtor's option, be conducted either in-person or by telephone conference.

In-person hearings will be conducted in the hearing official's office located at GSA Central Office, 1800 F St., NW., Washington, DC 20405, or at another location designated by the hearing official. All personal and travel expenses incurred by the debtor in connection with an in-person hearing will be borne by the debtor. All telephonic charges incurred during a hearing will be the responsibility of GSA.

(3) The debtor may represent himself or herself or may be represented by another person of his or her choice at the hearing. GSA will not compensate the debtor for representation expenses, including hourly fees for attorneys, travel expenses, or costs for reproducing documents.

(4) In those cases when an oral hearing is not required by this section, the hearing official will nevertheless conduct a "paper hearing", that is, the hearing official will decide the issues in dispute based upon a review of the written record. The hearing official will establish a reasonable deadline for the submission of evidence.

(c) Subject to paragraph (k) of this section, if the debtor's written request is received by GSA on or before the 15th business day after the submission of the notice described in § 105-57.004(a) of this part, the Agency will not issue a withholding order under § 105-57.006 of this part until the debtor has been provided the requested hearing and a decision in accordance with paragraphs (h) and (i) of this section has been rendered.

(d) If the debtor's written request for a hearing is received by GSA after the 15th business day following the mailing of the notice described in § 105-57.004(a) of this part, GSA may consider the request timely filed and provide a hearing if the debtor can show that the delay was because of circumstances beyond his or her control. However, GSA will not delay issuance of a withholding order unless the Agency determines that the delay in filing the request was caused by factors over which the debtor had no control, or GSA receives information that the Agency believes justifies a delay or cancellation of the withholding order.

(e) After the debtor requests a hearing, the hearing official will notify the debtor of—

(1) The date and time of a telephonic hearing;

(2) The date, time, and location of an in-person oral hearing; or

(3) The deadline for the submission of evidence for a written hearing.

(f) *Burden of proof.* (1) GSA will have the burden of establishing the existence and/or amount of the debt.

(2) Thereafter, if the debtor disputes the existence and/or amount of the debt, the debtor must prove by a preponderance of the evidence that no debt exists or that the amount of the debt is incorrect. In addition, the debtor may present evidence that the terms of the repayment schedule are unlawful, would cause a financial hardship to the debtor, or that collection of the debt may not be pursued due to operation of law.

(g) The hearing official will arrange and maintain a written transcript of any hearing provided under this section. The transcript will be made available to either party in the event of an appeal under the Administrative Procedure Act, 5 U.S.C. 701 through 706. All charges associated with the taking of the transcript will be the responsibility of GSA. A hearing is not required to be a formal evidentiary-type hearing; however, witnesses who testify in oral hearings will do so under oath or affirmation.

(h) The hearing official will issue a written opinion stating his or her decision, as soon as practicable, but not later than sixty (60) days after the date on which the request for such hearing was received by GSA. If the hearing official is unable to provide the debtor with a hearing and render a decision within 60 days after the receipt of the request for such hearing—

(1) GSA will not issue a withholding order until the hearing is held and a decision rendered; or

(2) If GSA had previously issued a withholding order to the debtor's employer, the Agency will suspend the withholding order beginning on the 61st day after the receipt of the hearing request and continuing until a hearing is held and a decision is rendered.

(i) The written decision will include—

(1) A summary of the facts presented;

(2) The hearing official's findings, analysis and conclusions; and

(3) The terms of any repayment schedules, if applicable.

(j) The hearing official's decision will be the final Agency action for the purposes of judicial review under the Administrative Procedure Act (5 U.S.C. 701 *et seq.*).

(k) In the absence of good cause shown, a debtor who fails to appear at a hearing scheduled pursuant to paragraph (e) of this section, or to provide written submissions within the time set by the hearing official, will be deemed to have waived his or her right to appear and present evidence.

**§ 105-57.006 Wage garnishment order.**

(a) Unless GSA receives information it believes justifies a delay or cancellation of the withholding order, the Agency will send, by first class mail, overnight delivery service or hand delivery, a SF 329A (Letter to Employer & Important Notice to Employer), a SF 329B (Wage Garnishment Order), a SF 329C (Wage Garnishment Worksheet), and a SF 329D (Employer Certification), to the debtor's employer—

(1) Within 30 days after the debtor fails to make a timely request for a hearing (*i.e.*, within 15 business days after the mailing of the notice described in § 105-57.004(a) of this part); or

(2) If a timely request for a hearing is made by the debtor, within 30 days after a final decision is made by the hearing official to proceed with garnishment.

(b) The withholding order sent to the employer under paragraph (a) of this section will contain the signature of, or the image of the signature of, the Administrator or his or her delegate. The order will contain only the information necessary for the employer to comply with the withholding order. Such information includes the debtor's name, address, and social security number, as well as instructions for withholding and information as to where payments are to be sent.

(c) GSA will retain a copy of the evidence of service indicating the date of submission of the order. The evidence of service may be retained electronically so long as the manner of retention is sufficient for evidentiary purposes.

**§ 105-57.007 Certification by employer.**

The employer must complete and return the SF 329D (Employer Certification) to GSA within the time frame prescribed in the instructions to the form. The certification will address matters such as information about the debtor's employment status and disposable pay available for withholding.

**§ 105-57.008 Amounts withheld.**

(a) After receipt of the garnishment order issued under this part, the employer shall deduct from all disposable pay paid to the applicable debtor during each pay period the amount of garnishment described in paragraph (b) of this section. The employer may use the SF 329C (Wage Garnishment Worksheet) to calculate the amount to be deducted from the debtor's disposable pay.

(b) Subject to the provisions of paragraphs (c) and (d) of this section, the amount of garnishment will be the lesser of—

(1) The amount indicated on the garnishment order up to 15 percent of the debtor's disposable pay; or

(2) The amount set forth in 15 U.S.C. 1673(a)(2) (Restriction on Garnishment), which is the amount by which a debtor's disposable pay exceeds an amount equivalent to thirty times the minimum wage. *See* 29 CFR 870.10.

(c) When a debtor's pay is subject to withholding orders with priority, the following will apply:

(1) Unless otherwise provided by Federal law, withholding orders issued under this part will be paid in the amounts set forth under paragraph (b) of this section and will have priority over other withholding orders which are served later in time. Notwithstanding the foregoing, withholding orders for family support will have priority over withholding orders issued under this part.

(2) If amounts are being withheld from a debtor's pay pursuant to a withholding order served on an employer before a withholding order issued pursuant to this part, or if a withholding order for family support is served on an employer at any time, the amounts withheld pursuant to the withholding order issued under this part will be the lesser of—

(i) The amount calculated under paragraph (b) of this section; or

(ii) An amount equal to 25 percent of the debtor's disposable pay less the amount(s) withheld under the withholding order(s) with priority.

(3) If a debtor owes more than one debt to GSA, the Agency may issue multiple withholding orders provided the total amount garnished from the debtor's pay for such orders does not exceed the amount set forth in paragraph (b) of this section.

(d) An amount greater than that set forth in paragraphs (b) and (c) of this section may be withheld upon the written consent of the debtor.

(e) The employer shall promptly pay to GSA all amounts withheld in accordance with the withholding order issued pursuant to this part.

(f) An employer will not be required to vary its normal pay and disbursement cycles in order to comply with the withholding order.

(g) Any assignment or allotment by an employee of his or her earnings will be void to the extent it interferes with or prohibits execution of the withholding order issued under this part, except for any assignment or allotment made pursuant to a family support judgment or order.

(h) The employer will withhold the appropriate amount from the debtor's wages for each pay period until the

employer receives notification from GSA to discontinue wage withholding. The garnishment order will indicate a reasonable period of time within which the employer is required to commence wage withholding, usually the first payday after the employer receives the order. However, if the first payday is within ten (10) days after the receipt of the garnishment order, the employer may begin deductions on the second payday.

(i) Payments received through a wage garnishment order will be applied in the following order:

(1) To outstanding penalties.

(2) To administrative costs incurred by GSA to collect the debt.

(3) To interest accrued on the debt at the rate established by the terms of the obligation under which it arose or by applicable law.

(4) To outstanding principal.

**§ 105-57.009 Exclusions from garnishment.**

GSA will not garnish the wages of a debtor who it knows has been involuntarily separated from employment until the debtor has been reemployed continuously for at least 12 months. The debtor has the burden of informing GSA of the circumstances surrounding an involuntary separation from employment.

**§ 105-57.010 Financial hardship.**

(a) A debtor whose wages are subject to a wage withholding order under this part, may, at any time, request a review by GSA of the amount garnished, based on materially changed circumstances such as disability, divorce, or catastrophic illness which result in financial hardship.

(b) A debtor requesting a review under paragraph (a) of this section shall submit the basis for claiming the current amount of garnishment results in a financial hardship to the debtor, along with supporting documentation.

(c) If a financial hardship is found, GSA will downwardly adjust, by an amount and for a period of time agreeable to the Agency, the amount garnished to reflect the debtor's financial condition. GSA will notify the employer of any adjustments to the amounts to be withheld.

**§ 105-57.011 Ending garnishment.**

(a) Once GSA has fully recovered the amounts owed by the debtor, including interest, penalties, and administrative costs consistent with the FCCS, the Agency will send the debtor's employer notification to discontinue wage withholding.

(b) At least annually, GSA will review its debtors' accounts to ensure that

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.