

communities of Tribal governments, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action 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, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely authorizes state requirements as part of the State RCRA hazardous waste program without altering the relationship or the distribution of power and responsibilities established by RCRA. This action also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant and it does not make decisions based on environmental health or safety risks. This rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

Under RCRA 3006(b), the EPA grants a state's application for authorization as long as the state meets the criteria required by RCRA. It would thus be inconsistent with applicable law for EPA, when it reviews a state authorization application to require the use of any particular voluntary consensus standard in place of another standard that otherwise satisfies the requirements of RCRA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, the EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. The EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the Executive Order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must

submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this document and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This action will be effective October 13, 2009.

#### List of Subjects in 40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous waste, Hazardous waste transportation, Indians-lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements.

**Authority:** This action is issued under the authority of sections 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: July 14, 2009.

**Carol Rushin,**

*Acting Regional Administrator, Region 8.*

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**BILLING CODE 6560-50-P**

## DEPARTMENT OF TRANSPORTATION

### Office of the Secretary of Transportation

#### 49 CFR Part 89

[Docket No. OST-2008-0329]

RIN 2105-AD78

#### Administrative Wage Garnishment

**AGENCY:** Office of the Secretary of Transportation (OST), DOT.

**ACTION:** Final rule.

**SUMMARY:** This final rule will implement the authority established under the Debt Collection Improvement Act of 1996 (DCIA) for DOT to collect the Department's past due indebtedness through administrative wage garnishment. The final rule will adopt, without change, the hearing procedures issued by the Department of the Treasury implementing administrative wage garnishment under the DCIA. This final rule would apply only to individuals who are not Federal employees. The final rule also will amend regulations on procedures for the collection of claims to conform DOT

regulations to applicable provisions of the DCIA.

**DATES:** This rule is effective September 11, 2009.

#### FOR FURTHER INFORMATION CONTACT:

Edward C. Ramos, Collections Specialist, Office of the Secretary of Transportation, Department of Transportation, 1200 New Jersey Avenue, SE., Washington, DC 20590; (202) 366-5905. Hearing and speech-impaired persons may access this number via TTY by calling the Federal Information Relay Service at 1-800-877-8339.

#### SUPPLEMENTARY INFORMATION:

##### Background

In 1996, Congress enacted the Debt Collection Improvement Act of 1996 (Pub. L. 104-134, 110 Stat. 1321-1358, approved April 26, 1996), which amended the Debt Collection Act of 1982. Section 31001(o) of the DCIA authorizes collection of Federal agency debt by administrative wage garnishment (section 31001(o) is codified at 31 U.S.C. 3720D). Wage garnishment is a legal 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 garnish up to 15% of the disposable pay of a debtor to satisfy delinquent nontax 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.

The DCIA directed the Secretary of the Treasury to issue implementing regulations (see 31 U.S.C. 3720D(h)) on this subject. On May 6, 1998 (63 FR 25136), the Department of the Treasury published a final rule implementing the statutory administrative wage garnishment requirements at 31 CFR 285.11. Paragraph (f) of 31 CFR 285.11 provides that "[a]gencies shall prescribe regulations for the conduct of administrative wage garnishment hearings consistent with this section or shall adopt this section without change by reference." Under the DCIA, the Treasury Department serves as a coordinator for Federal debt collection through its Treasury Offset Program.

This final rule would amend DOT's regulations at 49 CFR part 89, subpart B to adopt 31 CFR 285.11 in its entirety. Specifically, the final rule would establish a new 49 CFR 89.35 that would contain a cross-reference to 31 CFR 285.11.

On December 5, 2008, the DOT published a notice of proposed

rulemaking in the **Federal Register** for the public to comment, as required. DOT received no comments from the public on this rule.

### Overview of the Administrative Wage Garnishment Process

Readers should refer to the Department of the Treasury regulation at 31 CFR 285.11 for details regarding the administrative wage garnishment procedures that would be adopted by this final rule. For the convenience of readers, the following presents a very brief overview of the rules and procedures codified at 31 CFR 285.11.

1. *Notice to debtor.* At least 30 days before the agency 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 the agency to collect the debt through deductions from pay, and an explanation of the debtor's rights regarding the proposed action.

2. *Rights of debtor.* The agency 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 or amount of the debt and the terms of a repayment schedule. A hearing must be held prior to the issuance of a withholding order if the debtor's request is timely received. For hearing requests that are not received in the specified timeframe, the agency need not delay the issuance of a withholding order prior to conducting a hearing. An agency may 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 responsibility of notifying the agency of the circumstances surrounding an involuntary separation from employment.

3. *Hearing official.* The Department of the Treasury regulations authorize the head of each agency to designate any qualified individual as a hearing official. This final rule would provide that any hearing required to establish DOT's right to collect a debt through administrative wage garnishment will be conducted by a qualified individual selected by the Secretary of Transportation. The hearing official is required to issue a written decision no later than 60 days after the request for a hearing is made. The hearing official's decision is the final agency action for purposes of judicial review.

4. *Employer's responsibilities.* The Treasury Department 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 the Federal Government. The employer is required to certify certain payment information about the debtor. Employers are not required to vary their normal pay cycles in order to comply with these requirements. Employers are prohibited from taking disciplinary actions against the debtor because the debtor's wages are subject to administrative garnishment. An agency may sue an employer for amounts not properly withheld from the wages payable to the debtor.

5. *Garnishment amounts.* As provided in the DCIA, no more than 15% of the debtor's disposable pay for each pay period may be garnished. Special rules apply to calculating the amount to be withheld from a debtor's pay that is subject to multiple withholding orders. A debtor may request a review by the agency of the amount being garnished under a wage garnishment order based on materially changed circumstances, such as disability, divorce, or catastrophic illness, which result in financial hardship.

### Rulemaking Analyses and Notices

#### *E.O. 12866 and DOT Regulatory Policies and Procedures*

The agency has evaluated this final rule in accordance with existing regulatory policies and procedures and has concluded that it is a nonsignificant regulatory action under E.O. 12866, and a nonsignificant rule under section 5(a)(4) of the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979).

The final rule is not a significant regulatory action under E.O. 12866 because it will not have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; will not create a serious inconsistency with an action planned or underway by another Federal agency; will not materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; and will not raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles of the Executive Order.

#### *Regulatory Flexibility Act*

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed and approved this final rule, and in so doing certifies that

this final rule would not have a significant economic impact on a substantial number of small entities. Although many small employers will be subject to the requirements of this final 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 an entity. Employers are not required to vary their normal pay cycles in order to comply with a withholding order issued pursuant to this final rule.

#### *Executive Order 13132 (Federalism)*

Executive Order 13132 (entitled "Federalism") prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial direct compliance costs on State and local governments and is not required by statute, or the rule preempts State law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order.

This final rule does not have federalism implications and does not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of the Executive Order.

#### *Executive Order 13084*

This rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13084 ("Consultation and Coordination with Indian Tribal Governments"). Because this rule would not significantly or uniquely affect the Indian tribal communities, and would not impose substantial direct compliance costs, the funding and consultation requirements of the Executive Order do not apply.

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

Title II of the Unfunded Mandates Reform Act of 1995 establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector.

This rule would not impose a Federal mandate on any State, local, or tribal government, or on the private sector,

within the meaning of the Unfunded Mandates Reform Act of 1995.

*Executive Order 12372  
(Intergovernmental Review)*

The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this program.

*Paperwork Reduction Act*

The Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) addresses the collection of information by the Federal government from individuals, small businesses and State and local government and seeks to minimize the burdens such information collection requirements might impose. A collection of information includes requiring answers to identical questions posed to, or identical reporting or recordkeeping requirements imposed on, ten or more persons, other than agencies, instrumentalities or employees of the United States.

This final rule contains information that would apply to individuals and possibly small entities. However, there are no reporting or other collection requirements associated with this final rule, even though it relates to an employer's certification of certain information about the debtor, such as the debtor's employment status and earnings, which would be inquiries on a one-time basis. In any case, comments in this area are welcomed.

*National Environmental Policy Act*

In accordance with 24 CFR 50.19(c)(1) of the Department's regulations, this final rule does not direct, provide for assistance or loan and mortgage insurance for, or otherwise govern or regulate, real property acquisition, disposition, leasing, rehabilitation, alteration, demolition, or new construction, or establish, revise, or provide for standards for construction or construction materials, manufactured housing, or occupancy. Therefore, this final rule is categorically excluded from the requirements of the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*).

*Energy Impact*

Executive Order 13211 requires Federal agencies to prepare a Statement of Energy Effects for any "significant energy action." See 66 FR 28355 (May 22, 2001). Under the Executive Order a "significant energy action" is defined as any action by an agency that promulgates or is expected to lead to the promulgation of a final rule or regulation, including notices of inquiry,

advance notices of final rulemaking, and notices of final rulemaking; (1)(i) That is a significant regulatory action under Executive Order 12866 or any successor order, and (ii) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (2) that is designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. OST has evaluated this final rule in accordance with Executive Order 13211.

The Department has determined that this final rule is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Consequently, the Department has determined that this final rule is not a "significant energy action" within the meaning of the Executive Order.

*Privacy Act Statement*

Anyone is able to search the electronic form of all comments received into any of DOT's dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc). You may review DOT's complete Privacy Act Statement published in the **Federal Register** on April 11, 2000 (Volume 65, Number 70, Pages 19477-78) or you may visit: <http://www.regulations.gov>.

*Regulation Identification Number*

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

**List of Subjects in 49 CFR Part 89**

Claims, Income taxes.

**The Final Rule**

■ For the reasons set forth in the preamble, OST amends Part 89 of chapter I, subtitle A of title 49, Code of Federal Regulations, as set forth below:

**PART 89—IMPLEMENTATION OF THE FEDERAL CLAIMS COLLECTION ACT**

■ 1. The authority citation for 49 CFR part 89, subpart B is revised to read as follows:

**Authority:** Public Law 89-508; Public Law 89-365, secs. 3, 10, 11, 13(b), 31 U.S.C. 3701-3720A; Public Law 98-167; Public Law 98-369; Public Law 99-578; Public Law 101-552, 31 U.S.C. 3711(a)(2); 31 CFR 3711, 3716-3720E.

■ 2. Add § 89.35 to subpart B to read as follows:

**§ 89.35 Administrative wage garnishment.**

(a) *General.* The Secretary may use administrative wage garnishment for debts referred to cross-servicing at Financial Management Service, Department of Treasury. Regulations in 31 CFR 285.11 govern the collection of debts owed to federal agencies through administrative wage garnishment. Whenever the Financial Management Service collects a debt for the Secretary using administrative wage garnishment, the statutory administrative requirements in 31 CFR 285.11 will govern.

(b) *Hearing official.* Any hearing required to establish the Secretary's right to collect a debt through administrative wage garnishment shall be conducted by a qualified individual selected at the discretion of the Secretary of Transportation, as specified in 31 CFR 285.11. The qualified individual may include an Administrative Law Judge.

Issued this 30th day of July 2009, at Washington, DC.

**Ray LaHood,**

*Secretary of Transportation.*

[FR Doc. E9-19344 Filed 8-11-09; 8:45 am]

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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 679**

[Docket No. 0810141351-9087-02]

**RIN 0648-XQ93**

**Fisheries of the Exclusive Economic Zone Off Alaska; Atka Mackerel Lottery in Areas 542 and 543**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notification of fishery assignments.

**SUMMARY:** NMFS is notifying the owners and operators of registered vessels of their assignments for the 2009 B season Atka mackerel fishery in harvest limit area (HLA) 542 and/or 543 of the Aleutian Islands subarea of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to allow the harvest of the 2009 B season HLA limits established for area 542 and area 543 pursuant to the final 2009 and