

existing requirements, and thus no party who is currently complying with the Act and Commission regulations will incur any expense in order to comply with the amended rule. Therefore, the Commission believes that this final rule will not have a significant economic impact on a substantial number of small entities.<sup>14</sup>

### C. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3507(d), which imposes certain requirements on Federal agencies, including the Commission, connection with their conducting or sponsoring any collection of information as defined by the PRA, does not apply to this rule. The Commission believes this rule amendment does not contain information collection requirements that require the approval of the Office of Management and Budget.

### List of Subjects in 17 CFR Part 143

Civil monetary penalty, Claims.

■ In consideration of the foregoing and pursuant to authority contained in Sections 6(c), 6b and 6c of the Act, 7 U.S.C. 9, 13a, and 13a-1(d), and 28 U.S.C. 2461 note as amended by Pub. L. 104-134, the Commission hereby amends part 143 of chapter I 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 of citation for part 143 reads as follows:

**Authority:** 7 U.S.C. 9 and 15, 9a, 12a(5), 13a, 13a-1(d) and 13(a); 31 U.S.C. 3701-3719; 28 U.S.C. 2461 note.

■ 2. Section 143.8 is amended by revising paragraph (a) to read as follows:

<sup>14</sup> Any agency that regulates the activities of small entities must establish a policy or program to reduce and, when appropriate, to waive civil penalties for violations of statutory or regulatory requirements by small entities. An agency is not required to reduce or waive civil penalties, however, if: (1) An entity has been the subject of multiple enforcement actions; (2) an entity's violations involve willful or criminal conduct; or (3) the violations involve serious health, safety or environmental threats. See Small Business Regulatory Enforcement Fairness Act of 1996 ("SBREFA"), Pub. L. 104-121, § 223, 110 Stat. 862 (March 29, 1996). The Commission takes these provisions of SBREFA into account when it considers whether to seek or impose a civil monetary penalty in a particular case involving a small entity.

### § 143.8 Inflation-adjusted civil monetary penalties.

(a) Unless otherwise amended by an act of Congress, the inflation-adjusted maximum civil monetary penalty for each violation of the Commodity Exchange Act or the rules or orders promulgated thereunder that may be assessed or enforced by the Commission under the Commodity Exchange Act pursuant to an administrative proceeding or a civil action in Federal court will be:

(1) For each violation for which a civil monetary penalty is assessed against any person (other than a registered entity) pursuant to Section 6(c) of the Commodity Exchange Act, 7 U.S.C. 9:

(i) For violations committed between November 27, 1996 and October 22, 2000, not more than the greater of \$110,000 or triple the monetary gain to such person for each such violation;

(ii) For violations committed between October 23, 2000 and October 22, 2004, not more than the greater of \$120,000 or triple the monetary gain to such person for each such violation; and

(iii) For violations committed on or after October 23, 2004, not more than the greater of \$130,000 or triple the monetary gain to such person for each such violation;

(2) For each violation for which a civil monetary penalty is assessed against any registered entity or other person pursuant to Section 6c of the Commodity Exchange Act, 7 U.S.C. 13a-1:

(i) For violations committed between November 27, 1996 and October 22, 2000, not more than the greater of \$110,000 or triple the monetary gain to such person for each such violation;

(ii) For violations committed between October 23, 2000 and October 22, 2004, not more than the greater of \$120,000 or triple the monetary gain to such person for each such violation; and

(iii) For violations committed on or after October 23, 2004, not more than the greater of \$130,000 or triple the monetary gain to such person for each such violation; and

(3) For each violation for which a civil monetary penalty is assessed against any registered entity or any director, officer, agent, or employee of any registered entity pursuant to Section 6b of the Commodity Exchange Act, 7 U.S.C. 13a:

(i) For violations committed between November 27, 1996 and October 22, 2000, not more than \$550,000 for each such violation;

(ii) For violations committed between October 23, 2000 and October 22, 2004, not more than \$575,000 for each such violation; and

(iii) For violations committed on or after October 23, 2004, not more than \$625,000 for each such violation.

\* \* \* \* \*

Issued in Washington, DC on August 24, 2004, by the Commission.

**Jean A. Webb,**

*Secretary of the Commission.*

[FR Doc. 04-19754 Filed 8-30-04; 8:45 am]

BILLING CODE 6351-01-M

## COMMODITY FUTURES TRADING COMMISSION

### 17 CFR Part 143

### RIN 3038-AC03

### Collection of Claims Owed the United States Arising From Activities Under the Commission's Jurisdiction

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Notice of final rulemaking.

**SUMMARY:** The Commodity Futures Trading Commission (Commission) is amending its regulations which govern the collection of claims owed to the United States arising from activities under the Commission's jurisdiction. The amendment implements provisions of the Debt Collection Improvement Act of 1996 (DCIA) that allow Federal agencies to collect past-due debts through administrative wage garnishment. As required by the DCIA, the wage garnishment procedures the Commission is adopting are based on, and are consistent with, implementing regulations that have been issued by the Department of Treasury.

**DATES:** The Commission's amendment of its part 143 regulations shall be effective on August 31, 2004.

**FOR FURTHER INFORMATION CONTACT:** Stephen Mihans, Esq., Office of General Counsel, Commodity Futures Trading Commission, at (202) 418-5399 or [smihans@cftc.gov](mailto:smihans@cftc.gov). This document also is available at <http://www.regulations.gov>.

**SUPPLEMENTARY INFORMATION:** On December 15, 2003, the Commission published for public comment a proposed revision of part 143 of its regulations, 17 CFR part 143, which would add administrative wage garnishment to the available procedures for collecting debts owed to the United States arising from activities subject to the Commission's jurisdiction.<sup>1</sup> At present, the part 143 rules, which apply to debts owed by persons not employed by the Federal government, authorize

<sup>1</sup> See 68 FR 69634 (Dec. 15, 2003).

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.<sup>2</sup>

Under the Commission's proposal, Department of the Treasury regulations implementing the administrative wage garnishment provisions of the DCIA would govern wage garnishment proceedings initiated by the Commission. Those regulations, promulgated by the Treasury Department's Financial Management Service (FMS), have been codified at 31 CFR 285.11. As proposed by the Commission, when an individual owes the United States a delinquent non-tax debt arising from activities under the Commission's jurisdiction, the Commission, or another Federal agency collecting the debt on the Commission's behalf,<sup>3</sup> would be authorized to initiate administrative proceedings to garnish the debtor's disposable income in accordance with the requirements of 31 CFR 285.11.<sup>4</sup> The debtor would have an opportunity to request a hearing regarding the existence or amount of the debt or the terms of repayment. If such a hearing were requested, the Commission's Executive Director would designate a qualified and impartial employee of the Commission to act as the hearing official.<sup>5</sup>

In addition to adding administrative wage garnishment to the existing debt-collection measures in the part 143 rules, the Commission's proposal included several technical corrections and editorial changes of a non-substantive nature in the part 143 rules. Finally, the Commission proposed that the current part 143 rules, as revised, be grouped together in a new subpart A, while the new administrative wage

garnishment rules be placed in a new subpart B.

The public comment period for the proposed revision of the Commission's part 143 rules closed on January 14, 2004. No comments were received. As a result, with the exception of certain non-substantive changes to Proposed Rule 143.10, the Commission is revising its part 143 rules as proposed.<sup>6</sup>

## Related Matters

### A. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601–611, requires that in adopting final rules, agencies consider the impact of those rules on small businesses. As noted in the preamble to the proposed rule amendments, the revisions to the part 143 rules are not subject to the provisions of the RFA because they relate solely to agency organization, procedure, and practice. Nevertheless, the Acting Chairman certifies, on behalf of the Commission, that these 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. In addition, under 31 CFR 281.55, an employer will not be required to vary its normal payroll cycle to accommodate an administrative wage garnishment order.

### B. Paperwork Reduction Act

The Commission's administrative wage garnishment rules will not require the collection of information from the general public, but only from specifically identified individuals or entities. For that reason, the rules do not impose a burden within the meaning and intent of the Paperwork Reduction Act of 1980, 5 U.S.C., *et seq.*, and do not necessitate review by the Office of Management and Budget.

<sup>6</sup> As adopted, Rule 143.10 clarifies that administrative wage garnishment hearings held by the Commission will be governed by 31 CFR 285.11(f). It provides, however, that in addition to the mandates of 31 CFR 285.11(f), several further requirements will apply to the Commission's wage garnishment hearings, including marking and retaining as exhibits all documents presented for consideration by the hearing official, and taking all testimony adduced at an oral hearing under oath or affirmation and on the record. These additional requirements will ensure that an adequate record is available for review in the event that an administrative wage garnishment order issued by, or on behalf of, the Commission is appealed to a Federal court with appropriate jurisdiction.

### C. 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 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—namely, 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. As a result, 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 administrative wage garnishment rules being adopted by the Commission are not related to the marketplace and, therefore, 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 rules 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 amends chapter 1 of title 17

<sup>2</sup> 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.

<sup>3</sup> 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. The Commission's routine uses of information for purposes of the Privacy Act, 5 U.S.C. 552a, permit the disclosure of information necessary for the FMS to assist the Commission in collecting delinquent debts through administrative wage garnishment. See 62 FR 44442 (Aug. 21, 1997).

<sup>4</sup> See Proposed Rule 143.9, which can be found at 68 FR 69637. Under this proposed rule, the Commission's use of the other debt-collection measures set forth in part 143 would not preclude it from initiating an administrative wage garnishment proceeding against a delinquent debtor.

<sup>5</sup> See Proposed Rule 143.10, which can be found at 68 FR 69637.

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; administrative wage garnishment regulations issued by the Department of the Treasury, 31 CFR 285.11; and other laws applicable to the collection of non-tax debts owed to the United States arising from activities under the Commission's jurisdiction. Subpart A describes procedures for collection by offset against obligations of the United States to the debtor, by compromise, and by referral to the Department of Justice for litigation. It also sets forth the Commission's policy on collecting interest on unpaid claims, the method used in calculating such interest, and the maximum inflation-adjusted civil monetary penalties that may be assessed and enforced for each violation of the Commodity Exchange Act or regulations or orders of the Commission promulgated thereunder. Subpart B describes procedures for collection by administrative garnishment of the debtor's wages.

■ 3. Sections 143.2 through 143.8 are designated as subpart A of part 143, and a new heading, "Subpart A—General Provisions," is added above § 143.2 to read as follows:

**Subpart A—General Provisions**

■ 4. Section 143.2 is amended by revising paragraph (c) to read as follows:

**§ 143.2 Notice of claim.**

\* \* \* \* \*

(c) If no response or an unsatisfactory response is received by the date indicated in the notice, the Commission may take further action as appropriate

under the Commodity Exchange Act or regulations thereunder, or under 31 CFR parts 900-905 or the Federal Claims Collection Act as amended, 31 U.S.C. 3701-3720E.

■ 5. Section 143.7 is amended by revising paragraph (a) to read as follows:

**§ 143.7 Delegation of authority to the Executive Director.**

(a) The Commission hereby delegates, until such time as the Commission orders otherwise, to the Executive Director or to any Commission employee under the Executive Director's supervision as he or she may designate, authority to take action to carry out subpart A and subpart B of this part and the requirements of 31 CFR parts 900-905 and 31 CFR 285.11.

\* \* \* \* \*

■ 6. A new subpart B is added to part 143, to read as follows:

**Subpart B—Administrative Wage Garnishment**

**§ 143.9 Administrative wage garnishment orders.**

Whenever an individual owes the United States a delinquent non-tax debt arising from activities under the Commission's jurisdiction, the Commission, or another federal agency collecting the debt on behalf of the Commission, may initiate administrative proceedings to garnish the disposable income of the delinquent debtor in accordance with the requirements of, and the procedures set forth in, 31 CFR 285.11. The Commission's use of other debt-collection measures set forth in subpart A of this part does not preclude the initiation of an administrative wage garnishment proceeding against a delinquent debtor.

**§ 143.10 Garnishment hearings.**

Any oral or written hearing required to establish the Commission's right to collect a delinquent debt through administrative wage garnishment shall be presided over by a hearing official designated by the Executive Director, with the concurrence of the General Counsel or the General Counsel's designee. Any qualified and impartial employee of the Commission designated by the Executive Director may serve as a hearing official. Except as otherwise provided in this section, the hearing shall be conducted in accordance with the requirements of, and the procedures set forth in, 31 CFR 285.11(f). All documents presented to the hearing official for his or her consideration shall be marked as exhibits and retained in the record. All testimony given at an

oral hearing, either in person or by telephone, shall be under oath or affirmation; a transcript of the hearing shall be prepared and made part of the record. When a debtor requests a hearing, the designated hearing official shall hold the hearing and issue his or her written decision within 60 days of the Commission's receipt of the request, unless otherwise approved, in writing, by the Executive Director.

Issued in Washington, DC, on August 24, 2004 by the Commission.

**Jean A. Webb,**

*Secretary of the Commission.*

[FR Doc. 04-19755 Filed 8-30-04; 8:45 am]

**BILLING CODE 6351-01-M**

**DEPARTMENT OF HOMELAND SECURITY**

**Coast Guard**

**33 CFR Part 100**

[CGD05-04-143]

**RIN 1625-AA08**

**Special Local Regulations for Marine Events; Susquehanna River, Port Deposit, MD**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing temporary special local regulations for "Ragin' on the River," a power boat race to be held over the waters of the Susquehanna River adjacent to Port Deposit, Maryland. These special local regulations are necessary to provide for the safety of life on navigable waters during the event. This action is intended to restrict vessel traffic in portions of the Susquehanna River adjacent to Port Deposit, Maryland during the power boat race.

**DATES:** This rule is effective from 11 a.m. on September 4, 2004, to 6:30 p.m. on September 5, 2004.

**ADDRESSES:** Documents indicated in this preamble as being available in the docket are part of docket CGD05-04-143 and are available for inspection or copying at Commander (oax), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704-5004, between 9 a.m. and 2 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** D. M. Sens, Project Manager, Auxiliary and Recreational Boating Safety Branch, at (757) 398-6204.

**SUPPLEMENTARY INFORMATION:**