

POSTAL SERVICE**39 CFR Part 491****Garnishment of Postal Employee Salaries**

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: These amended regulations implement the statutory provision which provides that the pay of employees of the United States Postal Service and the Postal Rate Commission will be subject to garnishment orders.

EFFECTIVE DATE: January 6, 1999.

FOR FURTHER INFORMATION CONTACT: William B. Neel, Attorney, Law Department Mid-Atlantic Office, (202) 314-6814.

SUPPLEMENTARY INFORMATION: On October 6, 1993, Congress enacted section 9 of Public Law 103-94 entitled, "Garnishment of Federal Employees' Pay." This law is a limited waiver of the Federal Government's sovereign immunity to permit pay from an agency to an employee to be garnished by federal, state and local legal process, subject to certain limitations. Child support garnishment is already covered by other federal law. On February 3, 1994, the President signed Executive Order 12897, which delegated responsibility to the Postal Service to issue implementing regulations for its employees and for the employees of the Postal Rate Commission. These regulations are amended in accordance with this delegation of authority.

The Postal Service is amending its regulations implementing garnishment withholding under Section 9 of Public Law 103-94. This federal law supersedes state law with regard to a variety of issues in garnishment. Accordingly, regardless of state law, legal process must be in conformity with these regulations.

This waiver of immunity for the garnishment process confers jurisdiction only over an employee's pay, and does not confer jurisdiction over the Postal Service or the Postal Rate Commission as a party to a lawsuit, nor does it waive immunity for the purpose of orders to show cause or for penalties or sanctions such as default judgments. In *First Virginia Bank v. Randolph*, 920 F.Supp. 213 (D.D.C. 1996), rev'd., No. 96-5205 (D.C. Cir. April 11, 1997) the Circuit Court held that the Federal Government's waiver of sovereign immunity is limited and the Federal Government cannot be held liable to pay money damages for failure to comply with legal process. These regulations

embody language consistent with that holding.

List of Subjects in 39 CFR Part 491

Government employees, Postal Service, Wages.

For the reasons stated, in subchapter F of chapter I of title 39, Code of Federal Regulations, part 491 is revised to read as follows:

PART 491—GARNISHMENT OF SALARIES OF EMPLOYEES OF THE POSTAL SERVICE AND THE POSTAL RATE COMMISSION

Sec.

- 491.1 Authorized Agent to receive service.
- 491.2 Manner of service.
- 491.3 Sufficient legal form.
- 491.4 Identification of employees.
- 491.5 Costs.
- 491.6 Response to process.
- 491.7 Release of information.
- 491.8 Execution of process.
- 491.9 Restrictions on garnishment.

Authority: 5 U.S.C. 5520a; 39 U.S.C. 401; E.O. 12897, 59 FR 5517, 3 CFR, 1994 Comp., p. 858.

§ 491.1 Authorized Agent to receive service.

Notwithstanding the designation, in § 2.2 of this chapter, of the General Counsel as agent for the receipt of legal process against the Postal Service, the sole agent for service of garnishment process directed to the pay of Postal Service employees and employees of the Postal Rate Commission ("employees") is the Manager, Payroll Processing Branch, 2825 Lone Oak Parkway, Eagan, MN 55121-9650 ("Authorized Agent"). The Authorized Agent shall have sole authority to receive service of legal process in the nature of garnishment (hereinafter sometimes referred to as "process") arising under the law of any state, territory, or possession, or the order of a court of competent jurisdiction of any state, territory, or possession (including any order for child support and alimony or bankruptcy). The Authorized Agent may not receive or transmit service of process in a private legal matter on behalf of an employee. No process shall be effectively served until it is received by the Authorized Agent or his designee. No other employee shall have the authority to accept service of such process. Service of process in conformity with Rule 4(i) of the Federal Rules of Civil Procedure (28 U.S.C. Appendix) is not waived for any suit or action wherein the Postal Service, its officers, or employees are parties. Any Order, issued in bankruptcy, for the withholding of sums from pay due an employee and which is directed to the

Postal Service for handling outside the voluntary allotment procedure, is legal process subject to the provisions of these regulations.

§ 491.2 Manner of service.

Service of process on the Authorized Agent or his designee may be made in person or by certified or registered mail, with return receipt requested, at the address of the Authorized Agent. Service may also be made on the Authorized Agent by means of any private delivery service pursuant to its authority for the private carriage of letters under an exception to the Private Express Statutes, 39 U.S.C. 601-606, provided that the private delivery organization issues a receipt bearing the name and address of both the addressee and sender, as well as the date of delivery and the signature of the receiving agent. No garnishment is effectively served until it is received by the Authorized Agent or his designee regardless of the chosen mode of delivery. Process addressed to, delivered to, or in any manner given to any employee, other than the Authorized Agent or his designee, may, at the sole discretion of the employee, be returned to the issuing court marked "Not Effectively Served." A copy of or reference to these regulations may be included. Employees are not authorized to redirect or forward garnishment process to the Authorized Agent. In the event that the address of the Authorized Agent is changed, mail may be forwarded from his last published address to his new official address until such time as these regulations are amended to reflect the new address.

§ 491.3 Sufficient legal form.

No document purporting to garnish employee wages shall be deemed sufficient unless it can be determined from the face of the document that it is legal process in the nature of garnishment; that it is issued by a court of competent jurisdiction or an authorized official pursuant to an order of such a court or pursuant to federal, state or local law, evidenced by a signature of the issuing person; and that it contains the name of the garnished party, with his or her social security number, orders the employing agency to withhold from pay a specific amount of money, specifically describes the judgment of debt or administrative action complete with statutory citation and contains specific advice as to where to send the funds as they are periodically withheld including the complete Zip Code (Zip + 4). When there is a suggestion that the employee is under the jurisdiction of a bankruptcy

proceeding, the creditor must provide documentary evidence to prove that his legal process is not in violation of the bankruptcy court's jurisdiction before the creditor's garnishment may be processed. Documents deficient in any of these respects may be returned to the issuing court or authorized official inscribed "Insufficient as to legal form."

§ 491.4 Identification of employees.

Garnishments must be accompanied by sufficient information to permit prompt identification of the employee and the payments involved. Garnishment of an employee whose name and social security number is similar to but not identical with the name and social security number on the garnishment will not be processed. An exact match of both name and social security number is required in order to permit processing; otherwise, the garnishment will be returned marked "Insufficient identifying information." Garnishments which are insufficient in regard to identifying information will not be held pending receipt of further information and must be served again when the proper information is obtained.

§ 491.5 Costs.

The Postal Service's administrative costs in executing the garnishment action shall be added to each garnishment and the costs recovered shall be retained as offsetting collections. The Postal Service reserves the right to redetermine the administrative cost of any garnishment if, in administering any garnishment, extra costs beyond those normally encountered are incurred, and add the extra cost to each garnishment. The extra costs recovered shall be retained as offsetting collections.

§ 491.6 Response to process.

(a) Within fifteen days after receipt of process that is sufficient for legal form and contains sufficient information to identify the employee, the Authorized Agent shall send written notice that garnishment process has been served, together with a copy thereof, to the affected employee at his or her duty station or last known address. The Authorized Agent shall respond, in writing, to the garnishment or interrogatories within thirty days of receipt of process. The Authorized Agent may respond within a longer period of time as may be prescribed by applicable state law. Neither the Authorized Agent nor any employee shall be required to respond in person to any garnishment served according to the provisions of 5 U.S.C. 5520a and the

regulations in this section. A sufficient response to legal process shall consist of any action of the Postal Service consistent with these regulations. The action shall be considered to be given under penalty of perjury and shall constitute a legally sufficient answer to any garnishment. The Postal Service may, in its sole discretion, answer or otherwise respond to documents purporting to be legal process which are insufficient as to the manner of service, insufficient as to the identification of the employee, insufficient as to legal form or insufficient for any other reason.

(b) The requirements of paragraph (a) of this section are illustrated by the following example:

Example: Each periodic check with the accompanying Financial Institution Statement shall be considered to be a legally sufficient answer. Where legal process has been processed but no money was deducted, (for the reason of insufficient pay, prior garnishment in force, etc.) the mailing label or other written response shall be a sufficient answer. Where the Postal Service sends a check or mailing label, no further action will be required (such as a cumulative report or notarized statement.) Documents which are defective with respect to service, lack of legal sufficiency, failure to properly identify the employee, or other reason, do not require a response or an answer but if the Postal Service chooses to act in any way, such as to return the document, that act shall be a sufficient answer.

§ 491.7 Release of information.

(a) No employee whose duties include responding to interrogatories to garnishments shall release information in response to a garnishment until it is determined that sufficient information, as required in § 491.4, has been received in writing as part of the garnishment legal process. The Authorized Agent may, at his or her sole discretion, accept or initiate telephone or telefax inquiries concerning garnishments. No other employee may release any information about employees except in conformity with the Privacy Act of 1974, 5 U.S.C. 552a, and the regulations in 39 CFR Part 266, "Privacy of Information."

(b) The Authorized Agent's response to legal process is sufficient if it contains only that information not otherwise protected from release by any federal statute including the Privacy Act. Neither the Postal Service nor the Postal Rate Commission shall be required to provide formal answers to interrogatories received prior to the receipt of legal process. Employment verification may be obtained by accessing the Postal Service's employment verification system by dialing 1-(800) 276-9850.

§ 491.8 Execution of process.

(a) All legal process in the nature of garnishment shall be date and time stamped by the Authorized Agent when received for the purpose of determining the order of receipt of process which is sufficient as to legal form and contains sufficient information for identification of the employee, the Authorized Agent's date and time stamp shall be conclusive evidence. Child support and alimony garnishments will be accorded priority over commercial garnishments under 5 U.S.C. 5520a as provided in 5 U.S.C. 5520a(h)(2). Garnishments shall be executed provided that the pay cycle is open for input or, if closed, will be held until the next cycle. In no event shall the Postal Service be required to vary its normal pay or disbursement cycles in order to comply with legal process of any kind. Garnishments shall be recalculated, if required, to fit within the normal postal pay cycles. The Postal Service shall not be required to withhold pay and hold the funds in escrow. The Postal Service, in its sole discretion, may process more than one garnishment at a time within the restrictions on garnishments in Section 491.9 of these regulations. The Postal Service may, in its sole discretion, accept and hold for processing garnishments received after the garnishment currently in force.

(b) The Postal Service will only accept and effectuate legal process for a person who is currently employed. Upon cessation of employment, process relating to that individual will be terminated and not retained. The Postal Service shall not be required to establish an escrow account to comply with legal process even if the applicable law of the jurisdiction requires private employers to do so. Legal process must state on its face that the Postal Service withhold up to a specific total amount of money, the Postal Service will not calculate interest, charges, or any variable in processing a garnishment. The Postal Service may continue processing a garnishment if the garnishing attorney provides the adjusted total including the additional money owed, as determined from his calculation of the variable amounts. The attorney is deemed to certify on his professional responsibility that the calculations are correct and will indemnify the employee directly for any errors. All garnishments of periodic pay may be effectuated in accordance with the bi-weekly pay schedule. The Postal Service need not vary its pay and disbursement cycles to accommodate withholding on any other cycle.

(c) Neither the Postal Service, the Postal Rate Commission nor any

disbursing officer shall be liable for any payment made from moneys due from, or payable by the Postal Service or the Postal Rate Commission to any individual pursuant to legal process regular on its face.

(d) The Postal Service, the Postal Rate Commission, any disbursing officer or any other employee shall not be liable to pay money damages for failure to comply with legal process.

§ 491.9 Restrictions on garnishment.

Garnishments under this section shall be subject to the restrictions in 15 U.S.C. 1671–1677, including limits on the amounts which can be withheld from an employee's pay and the priority of garnishments.

Stanley F. Mires,

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[NH–7162a; A–1–FRL–6196–1]

Approval and Promulgation of Air Quality Implementation Plans; New Hampshire; 15 Percent Rate-of-Progress and Contingency Plans; Vapor Recovery Controls for Gasoline Distribution and Dispensing

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving State Implementation Plan (SIP) revisions submitted by the State of New Hampshire. These revisions establish 15 percent rate-of-progress (ROP) and contingency plans for ozone nonattainment areas in the State. The revisions also include regulations adopted by New Hampshire to control volatile organic compound (VOC) emissions from gasoline dispensing facilities and from gasoline tank trucks. The intended effect of this action is to approve these plans and regulations as revisions to the State's SIP. This action is being taken in accordance with the Clean Air Act.

EFFECTIVE DATE: This rule is effective on January 6, 1999.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours, by appointment at the Office of Ecosystem Protection, U.S. Environmental Protection Agency, Region I, One Congress Street, 11th

floor, Boston, MA; and the Air Resources Division, Department of Environmental Services, 64 North Main Street, Caller Box 2033, Concord, NH 03302–2033.

FOR FURTHER INFORMATION CONTACT: Robert McConnell, (617) 565–9266.

SUPPLEMENTARY INFORMATION: Section 182(b)(1) of the Act requires ozone nonattainment areas classified as moderate or above to develop plans to reduce volatile organic compounds (VOC) emissions by 15 percent from 1990 baseline levels. There are two serious ozone nonattainment areas in New Hampshire. The areas are referred to as the Portsmouth-Dover-Rochester area (the "Por-Dov-Roc area"), and the New Hampshire portion of the Boston-Lawrence-Worcester area (the "Bos-Law-Wor area"). New Hampshire is, therefore, subject to the 15 percent ROP requirement.

I. Background

On October 27, 1997 (62 FR 55544), EPA published a Notice of Proposed Rulemaking (NPR) for the State of New Hampshire. The NPR proposed approval of the State's 15 percent ROP and contingency plans. The formal SIP revision was submitted by New Hampshire on August 29, 1996.

The proposed approval of New Hampshire's 15 percent ROP and contingency plans which was published in the October 27, 1997 **Federal Register** (62 FR 55544), stated that EPA accepted the level of emission reductions projected to occur from the State's VOC RACT rules, Stage I rule, and Stage II rule. EPA's proposed rulemaking noted that although the State had submitted these rules to EPA, they had not been approved by EPA as of October 27, 1997. On March 10, 1998 (63 FR 11600), EPA approved the New Hampshire VOC RACT rules into the State's SIP. On September 21, 1998 (63 FR 50180), EPA proposed approval of New Hampshire's Part Env–A 1205 "Volatile Organic Compounds (VOC): Gasoline Dispensing Facilities and Gasoline Tank Trucks." This regulation contains the State's Stage I and Stage II vapor recovery control requirements. Today's action also includes a final approval of New Hampshire's Part Env–A 1205.

Transportation Conformity Budgets

Under EPA's transportation conformity rule the 15 percent plans are a control strategy SIP. The plans for New Hampshire establish VOC emission budgets for on-road mobile sources within the respective nonattainment areas. These plans do not establish NO_x emission budgets for on-road mobile

sources. However, New Hampshire submitted an ozone attainment demonstration SIP revision to EPA on June 30, 1998. The ozone attainment demonstration establishes the VOC and NO_x emission budgets for 2003 shown in Table 1.

TABLE 1.—2003 EMISSION BUDGETS FOR ON-ROAD MOBILE SOURCES

Nonattainment area	VOC Budget tons per summer day	NO _x Budget tons per summer day
NH portion of Bos-Law-Wor area	10.72	21.37
Por-Dov-Roc area	6.97	13.68

By letter dated August 19, 1998, EPA informed New Hampshire that the motor vehicle budgets contained within the State's ozone attainment demonstration were adequate for conformity purposes. EPA believes that the VOC and NO_x budgets established by the New Hampshire ozone attainment demonstration are currently the controlling budgets for conformity determinations for 2003 and later years. The budgets in the attainment demonstration specifically address anticipated mobile source emissions in 2003, whereas the 15 percent plan establishes a budget for 1996. The time period for the budget in the 15 percent plans has passed. Additionally, the attainment demonstration establishes a more stringent budget.

EPA's rationale for granting approval to these plans, and the details of New Hampshire's submittal are contained in the NPR and the accompanying technical support document and will not be restated here.

II. Public Comments

No comments were received on the October 27, 1997 NPR regarding EPA's proposed action on the New Hampshire 15 percent ROP and contingency plans, or on the September 21, 1998 NPR regarding the State's Gasoline Dispensing Facilities and Gasoline Tank Trucks regulation.

III. Final Action

EPA is approving the New Hampshire 15 percent ROP and contingency plans as revisions to the State's SIP. EPA is also approving New Hampshire's Part Env–A 1205 "Volatile Organic Compounds (VOC): Gasoline Dispensing Facilities and Gasoline Tank Trucks" into the New Hampshire SIP.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future