

(1) Cannot schedule, hear, and render decisions promptly, or

(2) Learns a dispute has been settled by the parties prior to the decision.

(c) Within 15 days after an award has been submitted to the parties, the arbitrator shall submit an Arbitrator's Report and Fee Statement (Form R-19) to OAS showing a breakdown of the fee and expense charges so that the OAS may review conformance with stated charges under § 1404.11(a). The Form R-19 is not to be used to invoice the parties.

(d) While FMCS encourages the publication of arbitration awards, arbitrators should not publicize awards if objected to by one of the parties.

§ 1404.15 Fees and charges of arbitrators.

(a) FMCS will charge all arbitrators an annual fee to be listed on the Roster. All arbitrators listed on the Roster may charge a per diem and other predetermined fees for services, if the amount of such fees have been provided in advance to FMCS. Each arbitrator's maximum per diem and other fees are set forth on a biographical sketch which is sent to the parties when panels are submitted. The arbitrators shall not change any fee or add charges without giving at least 30 days advance written notice to FMCS. Arbitrators with dual business addresses must bill the parties for expenses from the least expensive business address to the hearing site.

(b) In cases involving unusual amounts of time and expenses relative to the pre-hearing and post-hearing administration of a particular case, an administrative charge may be made by the arbitrator.

(c) Arbitrators shall divulge all charges to the parties and obtain agreement thereto immediately after appointment.

(d) The OAS requests that it be notified of any arbitrator's deviation from the policies expressed in this part. While the OAS does not resolve individual fee disputes, repeated complaints concerning the fees charged by an arbitrator will be brought to the attention of the Arbitrator Review Board for consideration. Similarly, repeated complaints by arbitrators concerning non-payment of fees by the parties may lead to the denial of services or other actions by the OAS.

§ 1404.16 Reports and biographical sketches.

(a) Arbitrators listed on the Roster shall execute and return all documents, forms and reports required by the OAS. They shall also keep the OAS informed of changes of address, telephone number, availability, and of any

business or other connection or relationship which involves labor-management relations or which creates or gives the appearance of advocacy as defined in § 1404.5(c)(1).

(b) The OAS will provide biographical sketches on each person admitted to the Roster from information supplied by applicants. Arbitrators may request revision of biographical information at later dates to reflect changes in fees, the existence of additional charges, or other relevant data. The OAS reserves the right to decide and approve the format and content of biographical sketches.

Appendix to 29 CFR Part 1404 Arbitration Policy; Schedule of Fees

Annual listing fee for all arbitrators: \$100 for the first address; \$50 for second address
Request for panel of arbitrators: \$30 for each panel request (includes subsequent appointment)

Direct appointment of arbitrator when a panel is not used—\$20 per appointment
List and biographic sketches of arbitrators in a specific area—\$10 per request plus \$.10 per page

John Calhoun Wells,

Director.

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DEPARTMENT OF THE TREASURY

Fiscal Service

31 CFR Part 285

RIN 1510-AA62

Offset of Tax Refund Payments To Collect Past-Due, Legally Enforceable Nontax Debt

AGENCY: Financial Management Service, Fiscal Service, Treasury.

ACTION: Interim rule with request for comments.

SUMMARY: Effective January 1, 1998, the Department of the Treasury (Treasury) will merge the tax refund offset program with the centralized administrative offset program operated by the Financial Management Service (FMS), a bureau of the Department of the Treasury. The merger of the two offset programs is intended to maximize and improve Treasury's government-wide collection of delinquent nontax debt owed to the Federal Government. FMS will administer nontax debt collection functions that include the tax refund offset program. The Internal Revenue Service (IRS) will remain responsible for the administration of the internal revenue laws. To conform with the requirements of the merged offset program, this interim rule supersedes

the tax refund offset procedures promulgated by the IRS.

DATES: This rule is effective July 25, 1997. This rule applies to tax refund payments payable after January 1, 1998. Comments will be received until July 25, 1997.

ADDRESSES: All comments should be addressed to Gerry Isenberg, Financial Program Specialist, Debt Management Services, Financial Management Service, Department of the Treasury, 401 14th Street S.W., Room 151, Washington, D.C. 20227. A copy of this interim rule is being made available for downloading from the Financial Management Service home page at the following address: <http://www.fms.treas.gov>.

FOR FURTHER INFORMATION CONTACT:

Gerry Isenberg, Financial Program Specialist, at (202) 874-6660; Pamela Dillon, Treasury Offset Program, at (202) 874-8700; Ellen Neubauer or Ronda Kent, Senior Attorneys, at (202) 874-6680.

SUPPLEMENTARY INFORMATION:

Background

FMS, as the Treasury disbursing agency, is responsible for the implementation of centralized administrative offset of Federal payments for the collection of delinquent nontax debt owed to Federal agencies and to States, including past-due child support, in accordance with the provisions of the Debt Collection Improvement Act of 1996 (DCIA), Public Law 104-134, 110 Stat. 1321-358 *et seq.* (1996). In addition, FMS disburses more than 850 million Federal payments annually, including tax refund payments to taxpayers on behalf of the IRS.

Under 26 U.S.C. 6402(d) and 31 U.S.C. 3720A, the tax refund of a taxpayer who owes delinquent debt to a Federal agency is reduced, or offset, by the amounts owed by the taxpayer. The funds offset from the taxpayers' tax refunds are forwarded to the Federal agency collecting the delinquent debt. Since 1986, the IRS has been collecting delinquent debt owed to Federal agencies by tax refund offset.

To improve the efficiency of Treasury's collection of delinquent debt owed to Federal agencies, effective January 1, 1998, the tax refund offset program will merge with the centralized administrative offset program operated by FMS, known as the "Treasury Offset Program." The Treasury Offset Program, described below, is a centralized offset program. Under the Treasury Offset Program, a Federal payment to a person can be reduced, or offset, by a

delinquent amount owed by that person to a Federal agency or to a State. In centralizing offset through the Treasury Offset Program, FMS will consolidate and simplify offset procedures for the Federal Government. The rules and procedures governing the Treasury Offset Program will reflect statutory requirements for particular types of payments or debts, as well as the general rules applicable to collection of debts by offset.

The DCIA clarified that a Treasury disbursing official may conduct tax refund offsets (see section 31001(w) of the DCIA, codified at 31 U.S.C. 3720A(h)). To conform with the requirements of the merged program, this regulation supersedes the procedures governing the tax refund offset program established by the IRS (codified at 26 CFR 301.6402-6), applicable to the collection of delinquent nontax debts owed to Federal agencies. The tax refund offset procedures in this rule supersede the procedures codified at 26 CFR 301.6402-6. Procedures for processing claims by non-debtor spouses and for rejecting a taxpayer's election to apply his or her refund to future tax liabilities remain governed by IRS rules.

FMS will promulgate separate rules for the offset of tax refund payments for the collection of past-due child support under 26 U.S.C. 6402(c) (offset of past-due support against overpayments) and 42 U.S.C. 664 (collection of past-due support from Federal tax refunds). In addition, as authorized by the DCIA, FMS will promulgate rules for the offset of payments other than tax refund payments for the collection of debts owed to the United States and debts owed to States. FMS anticipates that Part 285 of this title will contain all of the provisions relating to offset by disbursing officials for the collection of debts owed to the Federal Government and to State governments, including past-due support.

Under the Treasury Offset Program, before a payment is disbursed to a payee, FMS will compare the payee information with debtor information in a database operated by FMS. The database contains debtor information submitted and updated by Federal and State agencies collecting debts. If the payee's name (or derivation of the name, known as a "name control") and taxpayer identifying number (TIN) match the name control and TIN of a debtor, the payment will be offset to satisfy the debt, to the extent allowed by law, including applicable regulations. The delinquent debt information will remain in the debtor database for continuous offset of tax refund and all

other eligible Federal payments until debt collection activity for that debt is terminated because of payment, compromise, write-off or other reasons justifying termination.

After January 1, 1998, tax refund payments will be offset as part of the Treasury Offset Program, subject to the requirements of 26 U.S.C. 6402 and 31 U.S.C. 3720A. Since FMS issues different payment types daily, a nontax delinquent debt could be satisfied by the offset of a variety of Federal payment types, including vendor, salary, retirement and certain benefit payments, as well as tax refund payments.

As required by IRS regulation codified at 26 CFR 301.6402-6, under the Treasury Offset Program and this rule, before submitting the debt to FMS for offset, creditor agencies are responsible for notifying debtors that their debt is delinquent and that the creditor agency intends to collect the debt by offset. In the notice, the creditor agency must inform debtors of their right to review applicable records and to seek a review of the determination of the debt. The creditor agency will certify to FMS that the requirements of this regulation and applicable Federal law have been met.

After a tax refund offset occurs, FMS will notify the debtor that the offset has occurred. FMS will provide information to the debtor regarding the amount and date of the offset, the creditor agency to which the amount offset was paid or credited, and a contact within the creditor agency that will handle concerns or questions regarding the offset. The notice also will advise any non-debtor spouse who may have filed a joint tax return with the debtor of the steps that a non-debtor spouse may take to secure his or her proper share of the tax refund. IRS will continue to be responsible for reviewing refund claims by non-debtor spouses. FMS will provide creditor agencies with sufficient information to identify the debt for which amounts have been collected, but will not disclose the payment source for the amounts collected. FMS also will report offset information to the IRS at least weekly.

Procedural Changes Under Treasury Offset Program

As described in detail below, this rule supersedes certain procedures established by the IRS (codified at 26 CFR 301.6402-6) applicable to the collection of delinquent nontax debts owed to Federal agencies. The procedural changes do not affect the rights of the debtor to dispute the nature or amount of the debt or method of collection; they only reflect the changes

necessitated by the merger of tax refund offset with the Treasury Offset Program and/or enactment of the DCIA. For example, since FMS will implement tax refund offset, under this rule, agencies are required to refer delinquent debts and provide information and certification to FMS, instead of IRS. FMS, rather than IRS, will provide post-offset notices and information to debtors and agencies. Under the Treasury Offset Program, agencies will submit debts for offset on an ongoing basis, rather than annually. Therefore, agencies may report, as needed, routine increases to the amount of the debt (such as those resulting from interest, penalties, and costs) subject to notice and certification requirements.

Under the IRS regulation (codified at 26 CFR 301.6402-6(c)), prior to referring a debt for tax refund offset, among other things, agencies are required to attempt to collect the debt by administrative and salary offset. FMS' Treasury Offset Program implements the DCIA mandate to conduct centralized administrative offset (31 U.S.C. 3716(c)) and salary offset (5 U.S.C. 5514(a)). Therefore, when an agency refers a debt to FMS' Treasury Offset Program, the debt automatically will be subject to collection by administrative offset, salary offset, and tax refund offset. Under the IRS regulation (codified at 26 CFR 301.6402-6(c)), prior to referring a debt for tax refund offset, agencies are required to report the debt to a consumer reporting agency. The DCIA requires that agencies report delinquent consumer debt to credit bureaus, which agencies may do prior to or after submitting a debt to the Treasury Offset Program. Although agencies are encouraged to report delinquent debt early in the collection process, credit bureau reporting is not a prerequisite to tax refund offset under this rule.

Creditor agencies are required to provide the same due process rights to debtors under this rule as required by the IRS regulation (codified at 26 CFR 301.6402-6) and agency-specific regulations. Under the IRS regulation codified at 26 CFR 301.6402-6(d)(1), agencies are required to mail the pre-offset notice to a debtor at the mailing address obtained by the IRS. Although agencies may continue to use the IRS mailing address, this rule allows agencies the flexibility to use current address information contained in an agency's records, which may include address information obtained from the debtor, public databases, and other means. Since 1992, when the IRS promulgated its final rule, access to address information databases has become widely available at reasonable

costs. Also, based on their experience as participants in the tax refund offset program over the last 10 years, some agencies have indicated that the debtor address in their files is a more appropriate mailing address for due process notification than the IRS address. The change contained in this rule recognizes the fact that, for the purpose of providing pre-offset notice to the taxpayer, the address obtained by a creditor agency may be more recent than the address that the IRS can provide based on a prior year's tax return.

Section Analysis

(a) Definitions

Creditor agency. The term "creditor agency" has the same meaning as found at 31 U.S.C. 3701(e)(1) and includes a Federal agency seeking to collect a claim through tax refund offset.

Debt or claim. For the purposes of this rule, the terms "claim" and "debt" are synonymous and interchangeable and have the same meaning as found at 31 U.S.C. 3701(b). The term includes debt administered by a third party acting as an agent for the Federal Government as set forth in 31 U.S.C. 3720A(a).

Tax refund offset. For purposes of this rule, the term "tax refund offset" means withholding or reducing a tax refund payment by an amount necessary to satisfy a debt owed by the payee(s) of a tax refund payment. This rule governs the offset of tax refund payments under 26 U.S.C. 6402(d), 31 U.S.C. 3720A and agency regulations promulgated in accordance with the requirements of this rule. This rule does not cover the offset of payments other than tax refund payments, nor does it cover tax refund offset for the collection of past-due support. The offset of tax refund payments to collect past-due child support is governed by 26 U.S.C. 6402(c), 42 U.S.C. 664, and additional regulations issued by FMS and the Department of Health and Human Services. The offset of other types of Federal payments to collect delinquent debt is governed by 31 U.S.C. 3716, 5 U.S.C. 5514, and related regulations issued by FMS, Office of Personnel Management, and agencies collecting debt.

Tax refund payment. The tax refund payment is the amount to be refunded to the taxpayer after the IRS has applied the taxpayer's overpayment to the taxpayer's past-due tax liabilities in accordance with 26 U.S.C. 6402(a) and 26 CFR 6402-3(a)(6)(i).

(b) General Rule

Paragraph (b)(1) states the general rule that Federal agencies, except the

Tennessee Valley Authority (TVA), are required to submit nontax delinquent debt information to the Secretary of the Treasury for purposes of tax refund offset. TVA may, but is not required to, submit its delinquent debt information for tax refund offset. Under the IRS regulation codified at 26 CFR 301.6402-6(a), agencies submit debt information to the IRS. Under this rule, agencies will submit debt information to FMS, a bureau of the Treasury. FMS will operate the delinquent debtor database and agencies are required to submit debtor information to FMS for offset purposes. Federal agencies will submit delinquent debtor information to FMS for purposes of tax refund offset and administrative offset simultaneously. Thus, agencies will not have to submit duplicate information to the IRS (for tax refund offset) and FMS or other Federal agencies (for administrative offset).

Paragraph (b)(2) describes the offset process.

Paragraph (b)(3) identifies the types of debts that this rule does not cover. Tax debts are collected in accordance with the Internal Revenue Code and related regulations. As noted above, the IRS deducts any tax liabilities owed by the taxpayer before authorizing the issuance of the tax refund payment.

Paragraph (b)(4) describes the rules applicable to tax refund offset for the purpose of collecting Federal Old Age, Survivors and Disability Insurance (OASDI) overpayments. These rules have not changed as a result of the merger of the tax refund offset program with the administrative offset program.

Paragraph (b)(5) clarifies that an agency is not precluded from using other debt collection tools, such as wage garnishment, after submitting a debt to FMS for purposes of tax refund and administrative offset.

(c) Regulations

This paragraph requires agencies to promulgate temporary or final regulations for administrative and tax refund offset. Agencies that previously participated in the tax refund offset program may need to revise existing regulations to conform with the revised requirements in this rule. Regulations for administrative offset under 31 U.S.C. 3716 are required since any debt submitted to the FMS debtor database will be subject to administrative and tax refund offset simultaneously (to the extent that payments are available for offset). Therefore, in addition to tax refund offset requirements, a creditor agency must meet the prerequisites for administrative offset before submitting debts for collection by offset. FMS anticipates that Federal employee salary

offsets (whereby salary payments payable to Federal employees who owe Federal debt are reduced to satisfy the outstanding obligations) will be part of the Treasury Offset Program.

(d) Agency Certification and Referral of Debt

This paragraph describes the procedures related to the collection of past-due legally enforceable debt owed to Federal agencies by tax refund offset.

Paragraph (d)(1) outlines the certification required by an agency submitting debt to FMS for tax refund offset. Section 3720A(b) of title 31 requires that, before collecting a debt by tax refund offset, an agency must certify that reasonable efforts to collect the debt have been made by the agency. Under the IRS regulation codified at 26 CFR 301.6402-6(c), before referring a debt for tax refund offset agencies are required, among other things, to report the debt to a credit bureau and attempt collection by salary and administrative offset. This rule no longer requires credit bureau reporting and offset collection as prerequisites to tax refund offset because the DCIA mandates that agencies submit their delinquent debts to Treasury for administrative offset and participate in matches for salary offset purposes. FMS' Treasury Offset Program will implement the DCIA mandates to conduct centralized administrative (31 U.S.C. 3716(c)) and salary offset (5 U.S.C. 5514(a)). Therefore, when an agency refers a debt to FMS' Treasury Offset Program, the debt automatically will be subject to collection by administrative offset, salary offset, and tax refund offset. Under this rule, by complying with the DCIA, agencies will meet the "reasonable efforts" requirement since, before submitting a debt for tax refund offset, agencies will have demanded payment, notified the debtor that the agency intends to collect the debt by offset through FMS' Treasury Offset Program if payment is not received when due, and provided the debtor with an opportunity for review of the debt and to enter into a reasonable repayment plan. The DCIA further requires that agencies report delinquent consumer debt to credit bureaus, which agencies may do prior to or after submitting a debt to FMS' Treasury Offset Program. Although agencies are encouraged to report delinquent debt early in the collection process, credit bureau reporting is not a prerequisite to tax refund offset under this rule.

Paragraph (d)(1)(iv) requires agencies to certify that the debt is at least \$25. If a debt referred to FMS is over \$25 at the time it is referred, the debt will remain

subject to collection by offset until it is paid in full even if it falls below the \$25 minimum.

Paragraph (d)(2) governs pre-offset notice and consideration of evidence. Under the IRS regulation codified at 26 CFR 301.6402-6(d)(1), agencies are required to mail a pre-offset notice to a debtor at the mailing address obtained from the IRS. Paragraph (d)(2)(i) of this rule modifies this requirement. As noted above, many agencies can obtain updated address information from credit reports, public record databases and the debtor. In many cases, the address obtained by the agency is more recent than the address that the IRS can provide based on a prior year's tax return. Therefore, agencies may mail the required pre-offset notice to the debtor at the most current address contained in the agency's records related to the debt. An agency may, but is not required to, obtain address information from the IRS pursuant to 26 U.S.C. 6103(m)(2), (4), or (5) in accordance with IRS procedures.

Paragraph (d)(2)(ii) requires that agencies provide debtors with at least 30 days to request review by the agency when an agent of the creditor agency has handled the review. This requirement is the same as contained in the IRS regulation codified at 26 CFR 301.6402-6(d)(2).

Paragraph (d)(3) governs referral of past-due, legally enforceable debt. This paragraph describes the information that agencies must include for each debt submitted to FMS for purposes of tax refund offset.

Paragraph (d)(4) describes the procedures for correcting and updating information transmitted to FMS by a creditor agency. Under the IRS regulation codified at 26 CFR 301.6402-6(f), agencies are not permitted to increase the amount of debt after they refer a debt to the IRS for tax refund offset. Under the Treasury Offset Program and this rule, agencies may increase the amount of the debt owed, subject to compliance with certification requirements. As operated by the IRS, agencies submit debts annually for tax refund offset. Since, in addition to tax refunds, other types of payments will be offset under the Treasury Offset Program, agencies will submit debts to the debtor database, and offsets will occur, on an ongoing basis. Payments will be offset and applied to a debtor's debt in the order in which the payments are issued. A tax refund payment is one of many types of payments that may be offset. Therefore, agencies may increase the amount of the debt owed if the offset prerequisites have been met.

(e) Priorities for Offset

This paragraph describes how a tax refund payment is applied when a taxpayer owes multiple debts. The priorities as stated in the IRS regulation codified at 26 CFR 301.6402-6 have not changed. Before authorizing FMS to disburse a tax refund payment, the IRS will apply any amount of overpayment by the taxpayer to tax liabilities of the taxpayer (see definition of "tax refund payment" in paragraph (a) of this section).

Paragraph (e)(1) states that the tax refund payment will be reduced and applied to a taxpayer's debts in the following order of priority: First by the amount of any past-due support assigned to a State; second, by the amount of any past-due, legally enforceable debt owed to a Federal agency; and third, by the amount of any qualifying past-due support not assigned to a State.

Paragraph (e)(2) states that if a debtor owes more than one past-due, legally enforceable debt to a Federal agency or agencies, the tax refund payment shall be credited against the debts in the order in which the debts accrued. A debt shall be considered to have accrued at the time at which the agency determines that the debt became past due.

FMS notes that for payments other than tax refunds that are offset under the Treasury Offset Program, debts not subject to any time limitation for enforcement will be paid after debts subject to such limitations. One of the purposes of the DCIA is "to maximize collections of delinquent debts owed to the Government by ensuring quick action to enforce recovery of the debts and the use of all appropriate collection tools." DCIA, Section 31001(b)(1). Generally, Government policy requires that agencies apply amounts recovered by offset to debts owed to Federal agencies in accordance with the best interests of the United States, considering the applicable statute of limitations. See Federal Claims Collection Standards at 4 CFR Part 102.3(g). It is in the best interests of the United States to first collect debts that are subject to time limitations restrictions. Therefore, if a debtor owes multiple debts to the United States, amounts offset under 31 U.S.C. 3716 will be applied first to older debts subject to a time limitation, and last to debts for which there is no limitation to when legal action to collect the debt may be initiated. See e.g., 20 U.S.C. 1091a (no limitation terminates the period within which legal action, including offset, may be taken to collect

a student loan). However, unlike 31 U.S.C. 3716, 26 U.S.C. 6402(d)(2) states that a tax refund payment shall be applied to multiple debts owed to Federal agencies by a taxpayer in the order in which such debts accrued.

Paragraph (e)(3) reiterates that the tax refund payment will be applied to the outstanding debts of a taxpayer prior to the taxpayer's future estimated tax liabilities. Any amounts remaining after offset shall be applied to estimated tax, or will be refunded to the taxpayer.

(f) Post-Offset Notice to the Debtor, the Creditor Agency, and the IRS

As provided by the IRS under the IRS regulation codified at 26 CFR 301.6402-6(h), under this paragraph (f), once an offset of a tax refund payment has occurred, FMS will provide notice to the payee and the creditor agency collecting the debt. FMS will not inform the creditor agency of the payment source of the amounts collected. Since FMS and other disbursing agencies will be conducting offsets of various payment types, debt repayment may result from any one of a number of payment sources. In its notice to the payee, FMS also will notify a non-debtor spouse who files a joint income tax return with a debtor and who is entitled to a tax refund of the procedures that may be taken to secure his or her proper share of the tax refund. FMS will notify the IRS of any offsets.

(g) Offset Made With Regard to a Tax Refund Payment Based Upon Joint Return

This paragraph states that a non-debtor spouse who files a joint income tax return with a debtor should take appropriate action to secure his or her proper share of a tax refund from which an offset was made. Such procedures are governed by IRS rules and are not affected by this rule.

(h) Disposition of Amounts Collected

This paragraph describes how amounts collected from tax refund payments will be transmitted to creditor agencies.

(i) Fees

As did the IRS, FMS will charge a fee to cover the costs of the tax refund offset program incurred by FMS and IRS. FMS will deduct the fee from the amount offset before that amount is transmitted to the creditor agency. The creditor agency may add this fee to the amount of the debt as an administrative cost if permitted by law. FMS may adjust the amount of the fee annually to ensure that the fee adequately covers the

administrative costs of the tax refund offset program.

(j) Review of Tax Refund Offsets

As provided in the IRS regulation codified at 26 CFR 301.6402-6(l) and not changed by this rule, the reduction of a taxpayer's refund made pursuant to 26 U.S.C. 6402(d) shall not be subject to review by any court of the United States or by the Secretary of the Treasury, FMS or IRS in an administrative proceeding. Any action taken to recover the amount of a tax refund offset must be taken against the Federal creditor agency to which the amount of the reduction was paid. With respect to recoveries of overpayments of benefits under 42 U.S.C. 404, any action to recover the amount of the tax refund offset must be taken against the Commissioner of Social Security.

(k) Access to and Use of Confidential Tax Information

Since creditor agencies will not receive information identifying the payment source of an offset, FMS does not anticipate that creditor agencies will have access to and use of confidential tax information under the merged offset programs. If any such information is disclosed, however, access to and use of such information is restricted and governed by 26 U.S.C. 6103.

(l) Effective Date

The merger of the tax refund offset program with the administrative offset program conducted by FMS will be effective for all tax refund payments payable after January 1, 1998. Before that date, Federal agencies must publish or amend tax refund offset regulations and otherwise comply with tax refund offset prerequisites, such as providing notice to debtors, to participate in the merged program for tax refund payments payable after January 1, 1998. Therefore, although this rule applies to tax refund payments payable after January 1, 1998, agencies are required to comply with the requirements of this rule on July 25, 1997.

Regulatory Analyses

This interim rule is not a significant regulatory action as defined in Executive Order 12866. Because no notice of proposed rulemaking is required for this interim rule, the provisions of the Regulatory Flexibility Act do not apply.

Special Analyses

FMS is promulgating this interim rule without opportunity for prior public comment pursuant to the Administrative Procedure Act, 5 U.S.C.

553, because FMS has determined that a comment period would be unnecessary, impractical, and contrary to the public interest. A comment period is unnecessary because this interim rule does not contain any significant, substantive changes from the IRS regulations and does not change how the tax refund offset program affects the taxpayer who owes delinquent nontax debt. This interim rule reflects changes to procedures under which creditor agencies submit debt information to Treasury because of DCIA requirements and the merger of the tax refund offset program with other Federal offset programs. Under this regulation, creditor agencies will submit delinquent debt information to FMS, instead of the IRS. Creditor agencies remain responsible for providing debtors with the same pre-offset notice, opportunities, and rights to dispute the debt as required under existing IRS regulations.

The purpose of a delayed effective date is to afford persons affected by a rule a reasonable time to prepare for compliance. However, in this case, many agencies have participated in the tax refund offset program over the last 10 years. Procedures affecting debtors remain substantially unchanged. The procedural changes in this rule affect how agencies will participate in the offset program. In order to implement the merged offset programs for tax refund payments made after January 1, 1998, agencies may need to modify and/or promulgate their own offset regulations and provide debtors with pre-offset notice prior to October 1997. This interim rule provides critical guidance that will facilitate creditor agencies' participation in the tax refund offset program in 1998.

The merged offset programs will improve the efficiency of Treasury's government-wide collection of nontax delinquent debts. Therefore, FMS believes that good cause exists and that it is in the public interest to issue the interim rule without opportunity for prior public comment.

The public is invited to submit comments on the interim rule which will be taken into account before a final rule is issued.

List of Subjects in 31 CFR Part 285

Administrative practice and procedure, Claims, Privacy, Taxes.

Authority and Issuance

For the reasons set forth in the preamble, part 285 is added to 31 CFR chapter II, subchapter A, to read as follows:

PART 285—DEBT COLLECTION AUTHORITIES UNDER THE DEBT COLLECTION IMPROVEMENT ACT OF 1996

Subpart A—Disbursing Official Offset

Sec.

285.1 [Reserved]

285.2 Offset of tax refund payments to collect past-due, legally enforceable nontax debt.

Authority: 26 U.S.C. 6402; 31 U.S.C. 321, 3720A.

Subpart A—Disbursing Official Offset

§ 285.1 [Reserved]

§ 285.2 Offset of tax refund payments to collect past-due, legally enforceable nontax debt.

(a) *Definitions.* For purposes of this section:

Creditor agency means a Federal agency owed a claim that seeks to collect that claim through tax refund offset.

Debt or claim refers to an amount of money, funds, or property which has been determined by an agency official to be due the United States from any person, organization, or entity, except another Federal agency. For the purposes of this section, the terms "claim" and "debt" are synonymous and interchangeable and includes debt administered by a third party acting as an agent for the Federal Government.

Debtor means a person who owes a debt or claim. The term "person" includes any individual, organization or entity, except another Federal agency.

FMS means the Financial Management Service, a bureau of the Department of the Treasury.

IRS means the Internal Revenue Service, a bureau of the Department of the Treasury.

Tax refund offset means withholding or reducing a tax refund payment by an amount necessary to satisfy a debt owed by the payee(s) of a tax refund payment.

Tax refund payment means any overpayment of Federal taxes to be refunded to the person making the overpayment after the IRS makes the appropriate credits as provided in 26 U.S.C. 6402(a) and 26 CFR 6402-3(a)(6)(i) for any liabilities for any tax on the part of the person who made the overpayment.

(b) *General rule.* (1) A Federal agency (as defined in 26 U.S.C. 6402(g)) that is owed by a person a past-due, legally enforceable nontax debt shall notify FMS of the amount of such debt for collection by tax refund offset. However, any agency subject to section 9 of the Act of May 18, 1933 (16 U.S.C. 831h) owed such a debt may, but is not

required to, notify FMS of the amount of such debt for collection by tax refund offset.

(2) FMS will compare tax refund payment records, as certified by the IRS, with records of debts submitted to FMS. A match will occur when the taxpayer identifying number (as that term is used in 26 U.S.C. 6109) and name (or derivation of the name, known as a "name control") of a payment certification record are the same as the taxpayer identifying number and name control of a debtor record. When a match occurs and all other requirements for tax refund offset have been met, FMS will reduce the amount of any tax refund payment payable to a debtor by the amount of any past-due, legally enforceable debt owed by the debtor. Any amounts not offset will be paid to the payee(s) listed in the payment certification record.

(3) This section does not apply to any debt or claim arising under the Internal Revenue Code.

(4)(i) This section applies to Federal Old Age, Survivors and Disability Insurance (OASDI) overpayments provided the requirements of 31 U.S.C. 3720A(f)(1) and (2) are met with respect to such overpayments.

(ii) For purposes of this section, "OASDI overpayment" means any overpayment of benefits made to an individual under title II of the Social Security Act (42 U.S.C. 401 *et seq.*).

(5) A creditor agency is not precluded from using debt collection procedures, such as wage garnishment, to collect debts that have been submitted to FMS for purposes of offset under this part. Such debt collection procedures may be used separately or in conjunction with offset collection procedures.

(c) *Regulations.* Prior to submitting debts to FMS for collection by tax refund offset, Federal agencies shall promulgate temporary or final regulations under 31 U.S.C. 3716 and 31 U.S.C. 3720A, governing the agencies' authority to collect debts by administrative offset, in general, and offset of tax refund payments, in particular.

(d) *Agency certification and referral of debt—(1) Past-due, legally enforceable debt eligible for tax refund offset.* For purposes of this section, when a Federal agency refers a past-due, legally enforceable debt to FMS for tax refund offset, the agency will certify to FMS that:

(i) The debt is past-due and legally enforceable in the amount submitted to FMS and that the agency will ensure that collections are properly credited to the debt;

(ii) Except in the case of a judgment debt or as otherwise allowed by law, the debt is referred for offset within ten years after the agency's right of action accrues;

(iii) The creditor agency has made reasonable efforts to obtain payment of the debt in that the agency has:

(A) Submitted the debt to FMS for collection by administrative offset and complied with the provisions of 31 U.S.C. 3716(a) and related regulations, to the extent that collection of the debt by administrative offset is not prohibited by statute;

(B) Notified, or has made a reasonable attempt to notify, the debtor that the debt is past-due, and unless repaid within 60 days after the date of the notice, will be referred to FMS for tax refund offset;

(C) Given the debtor at least 60 days to present evidence that all or part of the debt is not past-due or legally enforceable, considered any evidence presented by the debtor, and determined that the debt is past-due and legally enforceable; and

(D) Provided the debtor with an opportunity to make a written agreement to repay the amount of the debt;

(iv) The debt is at least \$25; and

(v) In the case of an OASDI overpayment—

(A) The individual is not currently entitled to monthly insurance benefits under title II of the Social Security Act (42 U.S.C. 401 *et seq.*);

(B) The notice describes conditions under which the Commissioner of Social Security is required to waive recovery of the overpayment, as provided under 42 U.S.C. 404(b); and

(C) If the debtor files a request for a waiver under 42 U.S.C. 404(b) within the 60-day notice period, the agency has considered the debtor's request.

(2) *Pre-offset notice and consideration of evidence for past-due, legally enforceable debt.* (i) For purposes of paragraph (d)(1)(iii)(B) of this section, a creditor agency has made a reasonable attempt to notify the debtor if the agency uses the current address information contained in the agency's records related to the debt. Agencies may, but are not required to, obtain address information from the IRS pursuant to 26 U.S.C. 6103(m)(2), (4), or (5).

(ii) For purposes of paragraph (d)(1)(iii)(C) of this section, if the evidence presented by the debtor is considered by an agent of the creditor agency, or other entities or persons acting on the agency's behalf, the debtor must be accorded at least 30 days from the date the agent or other entity or

person determines that all or part of the debt is past-due and legally enforceable to request review by an officer or employee of the agency of any unresolved dispute. The agency must then notify the debtor of its decision.

(3) *Referral of past-due, legally enforceable debt.* A Federal agency will submit past-due, legally enforceable debt information for tax refund offset to FMS in the time and manner prescribed by FMS. For each debt, the creditor agency will include the following information:

(i) The name and taxpayer identifying number (as defined in 26 U.S.C. 6109) of the debtor who is responsible for the debt;

(ii) The amount of such past-due and legally enforceable debt;

(iii) The date on which the debt became past-due;

(iv) The designation of the Federal agency or subagency referring the debt; and

(v) In the case of an OASDI overpayment, a certification by the Commissioner of Social Security designating whether the amount payable to the agency is to be deposited in either the Federal Old-Age and Survivors Insurance Trust Fund or the Federal Disability Insurance Trust Fund, but not both.

(4) *Correcting and updating referral.* If, after referring a past-due, legally enforceable debt to FMS as provided in paragraph (d)(3) of this section, a creditor agency determines that an error has been made with respect to the information transmitted to FMS, or if an agency receives a payment or credits a payment to the account of a debtor referred to FMS for offset, or if the debt amount is otherwise incorrect, the agency shall promptly notify FMS and make the appropriate correction of the agency's records. Creditor agencies will provide certification as required under paragraph (d)(1) of this section for any increases to amounts owed.

(5) FMS may reject a certification which does not comply with the requirements of paragraph (d)(1) of this section. Upon notification of the rejection and the reason for the rejection, a creditor agency may resubmit the debt with a corrected certification.

(e) *Priorities for offset.* (1) A tax refund payment shall be reduced first by the amount of any past-due support assigned to a State under section 402(a)(26) or section 471(a)(17) of the Social Security Act (42 U.S.C. 602(a)(26) or 42 U.S.C. 671(a)(17)) which is to be offset under 26 U.S.C. 6402(c), 42 U.S.C. 664 and the regulations thereunder; second, by the amount of any past-due,

legally enforceable debt owed to a Federal agency which is to be offset under 26 U.S.C. 6402(d), 31 U.S.C. 3720A and this section; and third, by the amount of any qualifying past-due support not assigned to a State which is to be offset under 26 U.S.C. 6402(c), 42 U.S.C. 664 and the regulations thereunder.

(2) If a debtor owes more than one past-due, legally enforceable debt to a Federal agency or agencies, the tax refund payment shall be credited against the debts in the order in which the debts accrued. A debt shall be considered to have accrued at the time at which the agency determines that the debt became past due.

(3) Reduction of the tax refund payment pursuant to 26 U.S.C. 6402(a), (c), and (d) shall occur prior to crediting the overpayment to any future liability for an internal revenue tax. Any amount remaining after tax refund offset under 26 U.S.C. 6402 (a), (c), and (d) shall be refunded to the taxpayer, or applied to estimated tax, if elected by the taxpayer pursuant to IRS regulations.

(f) *Post-offset notice to the debtor, the creditor agency, and the IRS.* (1)(i) FMS will notify the payee(s) to whom the tax refund payment is due, in writing of:

(A) The amount and date of the offset to satisfy a past-due, legally enforceable nontax debt;

(B) The creditor agency to which this amount has been paid or credited; and

(C) A contact point within the creditor agency that will handle concerns or questions regarding the offset.

(ii) The notice in paragraph (f)(1)(i) of this section will also advise any non-debtor spouse who may have filed a joint tax return with the debtor of the steps which a non-debtor spouse may take in order to secure his or her proper share of the tax refund. See paragraph (g) of this section.

(2) FMS will advise each creditor agency of the names, mailing addresses, and identifying numbers of the debtors from whom amounts of past-due, legally enforceable debt were collected and of the amounts collected from each debtor for that agency. FMS will not advise the creditor agency of the source of payment from which such amounts were collected. If a payment from which an amount of past-due, legally enforceable debt is to be withheld is payable to two individual payees, FMS will notify the creditor agency and furnish the name and address of each payee to whom the payment was payable.

(3) At least weekly, FMS will notify the IRS of the names and taxpayer identifying numbers of the debtors from whom amounts of past-due, legally

enforceable debt were collected and the amounts collected from each debtor.

(g) *Offset made with regard to a tax refund payment based upon joint return.* If the person filing a joint return with a debtor owing the past-due, legally enforceable debt takes appropriate action to secure his or her proper share of a tax refund from which an offset was made, the IRS will pay the person his or her share of the refund and request that FMS deduct that amount from amounts payable to the creditor agency. FMS and the creditor agency will adjust their debtor records accordingly.

(h) *Disposition of amounts collected.* FMS will transmit amounts collected for past-due, legally enforceable debts, less fees charged under paragraph (i) of this section, to the creditor agency's account. If an erroneous payment is made to any agency, FMS will notify the creditor agency that an erroneous payment has been made. The agency shall pay promptly to FMS an amount equal to the amount of the erroneous payment (without regard to whether any other amounts payable to such agency have been paid).

(i) *Fees.* The creditor agency will reimburse FMS and the IRS for the full cost of administering the tax refund offset program. FMS will deduct the fees from amounts collected prior to disposition and transmit a portion of the fees deducted to reimburse the IRS for its share of the cost of administering the tax refund offset program. To the extent allowed by law, creditor agencies may add the offset fees to the debt.

(j) *Review of tax refund offsets.* Any reduction of a taxpayer's refund made pursuant to 26 U.S.C. 6402(d) shall not be subject to review by any court of the United States or by the Secretary of the Treasury, FMS or IRS in an administrative proceeding. No action brought against the United States to recover the amount of this reduction shall be considered to be a suit for refund of tax. Any legal, equitable, or administrative action by any person seeking to recover the amount of the reduction of the overpayment must be taken against the Federal creditor agency to which the amount of the reduction was paid. Any action which is otherwise available with respect to recoveries of overpayments of benefits under 42 U.S.C. 404 must be taken against the Commissioner of Social Security.

(k) *Access to and use of confidential tax information.* Access to and use of confidential tax information in connection with the tax refund offset program are restricted by 26 U.S.C. 6103. Generally, agencies will not

receive confidential tax information from FMS. To the extent such information is received, agencies are subject to the safeguard, recordkeeping, and reporting requirements of 26 U.S.C. 6103(p)(4) and the regulations thereunder. The agency shall inform its officers and employees who access or use confidential tax information of the restrictions and penalties under the Internal Revenue Code for misuse of confidential tax information.

(l) *Effective date.* This section applies to tax refund payments payable under 26 U.S.C. 6402 after January 1, 1998.

Dated: June 6, 1997.

Russell D. Morris,

Commissioner, Financial Management Service.

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DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 151

[CGD 97-015]

RIN 2115-AF43

Antarctic Treaty Environmental Protection Protocol; Correction

AGENCY: Coast Guard, DOT.

ACTION: Direct final rule; correction.

SUMMARY: This document contains corrections to the direct final regulations [CGD 97-015] which were published Monday, April 14, 1997 (62 FR 18043). The regulations incorporated the Antarctic Treaty Environmental Protection Protocol into the Code of Federal Regulations (CFR).

DATES: This rule is effective on September 30, 1997.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Ray Perry, Office of Operating and Environmental Standards at (202) 267-2714.

SUPPLEMENTARY INFORMATION:

Background

The direct final rule that is the subject of this correction amends Title 33 of the Code of Federal Regulations to implement the Antarctic Science, Tourism, and Conservation Act of 1996 (Pub. L. 104-227). These regulations should guide U.S. owned and/or operated vessels to properly prepare for voyages in the Antarctic. The rule will harmonize U.S. regulations with international standards and improve preparedness to respond to a spill.