

are less than the \$1000 base amount as adjusted pursuant to section 218(c)(8)(B) of the Act to reflect changes in wages in the economy. We will publish this adjustment of the \$1000 base amount in the Federal Register on or before November 1 preceding the year for which the adjustment is made.

20. Section 404.1211 is amended by revising paragraph (d) to read as follows:

§ 404.1211 Interstate instrumentalities.

* * * * *

(d) They may provide coverage for firefighters and police officers in positions under a retirement system.

21. Section 404.1212 is revised to read as follows:

§ 404.1212 Police officers and firefighters.

(a) *General.* For Social Security coverage purposes under section 218 of the Act, a police officer's or firefighter's position is any position so classified under State statutes or court decisions. Generally, these positions are in the organized police and fire departments of incorporated cities, towns, and villages. In most States, a police officer is a member of the "police" which is an organized civil force for maintaining order, preventing and detecting crimes, and enforcing laws. The terms "police officer" and "firefighter" do not include services in positions which, although connected with police and firefighting functions, are not police officer or firefighter positions.

(b) *Providing coverage.* A State may provide coverage of:

(1) Police officers' and firefighters' positions not under a retirement system as part of an absolute coverage group; or

(2) Police officers' or firefighters' positions, or both, as part of a retirement system coverage group.

(c) *Police officers and firefighters in positions under a retirement system.* All States and interstate instrumentalities may provide coverage for employees in police officers' or firefighters' positions, or both, which are under a retirement system by following the majority vote referendum procedures in § 404.1206(d). In addition, all interstate instrumentalities and the States listed in § 404.1207 may use the desire for coverage procedures described in § 404.1207.

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NATIONAL LABOR RELATIONS BOARD

29 CFR Part 102

Procedural Rules Governing Debt-Collection Procedures for Administrative Offset and Federal Income Tax Refund Offset

AGENCY: National Labor Relations Board.

ACTION: Interim rules with request for comments.

SUMMARY: The National Labor Relations Board (Board) is issuing interim regulations to implement debt-collection procedures for administrative offset and Federal income tax refund offset provided for under the Debt Collection Act of 1982. The Debt Collection Act of 1982 (Pub. L. 97365) amends the Federal Claims Collection Act of 1966 to authorize the federal government to employ various debt collection techniques commonly available to the private sector, including administrative offset and Federal income tax refund offset. These interim regulations, set forth as new Subparts U (administrative offset) and V (Federal income tax refund offset) to Part 102 of the Board's Rules and Regulations, Series 8, are required in order to enable the Board to utilize these debt collection procedures that have proven to be cost effective mechanisms for collection of delinquent debt.

The Debt Collection Act of 1982 (Pub. L. 97-365) authorizes the federal government to collect debts owed it by means of administrative offset from other payments due the debtor from the United States, without the debtor's consent, provided that the debtor is properly notified and given the opportunity to exercise certain administrative rights. In Subpart V of the interim rules, the Board establishes Agency procedures that will be followed to implement 31 U.S.C. 3716, so that delinquent debts owed to the Board may be collected by means of administrative offset.

In 1992, the Congress passed and the President signed into law the Cash Management Improvement Act Amendments of 1992 which requires federal agencies to participate in the Internal Revenue Service (IRS) income tax refund offset program in which federal agencies refer delinquent debt to the IRS for collection by offset from a federal income tax refund that may be due the delinquent debtor. In Subpart W of the interim rules, the Board establishes Agency procedures that will be followed to implement 26 U.S.C.

6402(d) of the Internal Revenue Code and 31 U.S.C. 3720A, so that delinquent debts owed to the Board may be referred to the Internal Revenue Service (IRS) for collection by offset against Federal income tax refunds.

DATES: Effective Date: These regulations are effective July 24, 1996.

Comments: Comments must be submitted on or before September 29, 1996.

ADDRESSES: Send or deliver written comments to John J. Toner, Executive Secretary, National Labor Relations Board, 1099 14th Street, NW., Room 11602, Washington, DC 20570-0001.

FOR FURTHER INFORMATION CONTACT: John J. Toner, (202) 273-1940.

SUPPLEMENTARY INFORMATION: Effective debt collection by the Board is a necessary tool for enforcement of the federal labor laws. Under the Federal Claims Collection Standards (FCCS), 4 CFR 101.2(9), a debt exists when an amount of money or property has been determined by an appropriate Agency official to be owed to the United States. The Board's General Counsel and Regional Office staffs are authorized to assert and settle claims on behalf of the Board. 29 CFR 101.7-101.9.

As an agency of the United States Government, the Board is entitled to utilize the offset provisions of Title 31, because debts owed pursuant to Board orders are in fact debts owed to the United States. This is because the Board is the public agent chosen by Congress to enforce the National Labor Relations Act and its backpay orders seek reparations designed to vindicate the public policy of the statute. *NLRB v. Nathanson*, 344 U.S. 25, 27 (1952). In short, the Board acts primarily in the public interest as the champion and enforcer of federal labor laws and policies. *NLRB v. Deena Artware*, 361 U.S. 398, 412 (1960) (Frankfurter, J., concurring) ("[the Board's] primary function . . . is to prevent the conduct defined as unfair labor practices."); *National Licorice Co. v. NLRB*, 309 U.S. 350, 362 (1940) ("The Board acts in a public capacity to give effect to the declared public policy of the [National Labor Relations] Act."). Thus, judgments of the United States Circuit Courts of Appeals enforcing the make-whole orders of the Board are rendered exclusively in favor of the Board as the judgment creditor. Therefore, although the Board's debt collection actions may ultimately benefit wronged employees, the debts owed are in fact debts owed to the United States. *NLRB v. E.D.P. Medical Computer Systems, Inc.*, 6 F.3d 951, 954-55 (2d Cir. 1993). Accord: General Accounting Office—Decision of

the General Counsel B-259532 (March 6, 1995) (holding that the Board is entitled to use the judgment offset provisions of 31 U.S.C. 3728(a), since the Board's backpay claims are debts owed to the Government and the Board is the only creditor entitled to pursue collection).

The Agency recently has studied means by which to facilitate its debt-collection programs. Section 10 of the Debt Collection Act of 1982 (Act) (Public Law 97365) makes several changes in the way Executive and Legislative agencies collect debts owed to the Government. The purpose of the Act is to improve the ability of the Government to collect monies owed it.

Under the Act, administrative offset may be initiated when the head of an agency determines that an individual or entity is indebted to the United States, or is notified by the head of another agency that a person or entity is indebted to the United States and that the debtor is owed monies by the United States. Under the Act, before the Government may collect a debt by administrative offset, a debtor must be provided with notice that a debt is owed, the opportunity to inspect and copy Government records relating to the debt, the option to enter into a written repayment agreement, and an opportunity for review of the agency's determination concerning the existence or the amount of the debt, or the repayment terms. The debtor must notify the agency of his or her intent to exercise these rights within time periods prescribed by agency regulations.

The Act permits the agency to initiate an administrative offset prior to the completion of the due process requirements if failure to do so would substantially jeopardize the agency's ability to collect the debt and if the time remaining before payment is to be made does not reasonably permit completion of the due process procedures. Such prior offset must be followed by completion of the due process procedures.

The Act requires agencies to issue regulations for administrative offset. These interim rules establish the procedures the Board will follow in making an administrative offset. They are consistent with the Federal Claims Collection Standards on administrative offset issued jointly by the Department of Justice and the General Accounting Office as set forth in 4 CFR 102.3.

In 1992, the Congress passed and the President signed into law the Cash Management Improvement Act Amendments of 1992, which requires Federal agencies to participate in the IRS income tax refund offset program.

These interim rules are necessary for the Board's participation in the IRS offset program. They specify the procedures the Board will follow with regard to its referral of past-due legally enforceable debts to IRS for collection by income tax refund offset.

The Board has determined that this document is interpretative because it merely implements a definitive statutory scheme and the requirements contained in regulations promulgated by the Department of Justice, the General Accounting Office, the Internal Revenue Service, and the Treasury Department. For this reason, and because these interim rules relate to Agency procedure and practice, the Board has determined that no notice of proposed rulemaking or a delayed effective date is required under Sec. 553 of the Administrative Procedure Act (5 U.S.C. 553), and that the provisions of the Regulatory Flexibility Act (5 U.S.C. 601) and the Congressional review provisions of the Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 801) do not apply.

The Board has also determined, pursuant to 5 U.S.C. 553(b)(B), that good cause exists for waiving public comment prior to implementation of these interim rules. This waiver is based upon the need to have the regulations in place by December 31, 1996, in order for the Agency to participate in the IRS income tax refund offset program for the 1997 offset year. The Board finds that the public interest will be served by participation in the program, and accordingly, good cause exists for waiving public comment. In addition, the Board finds that public comment is unnecessary because, as noted above, these rules merely implement a definite statutory scheme and its concomitant regulations, and relate to Agency procedure and practice. The Board will, however, consider any public comments before issuing any final rules.

In sum, to ensure that the Agency's debt collection procedures provide for the use of reasonable and feasible methods of collection available under law, and in order to ensure compliance with the requirements of that law, as further described below, the Board establishes the following interim regulations to facilitate collection of delinquent debts by way of administrative offset and Federal income tax refund offset.

The following is an outline of the contents of this notice.

- I. Administrative Offset
 - A. Purpose
 - B. Legal Authority
- II. Federal Income Tax Refund Offset
 - A. Purpose and Background

- B. Legal Authority
- III. Publication in Final
- IV. Effective Date
- V. Executive Order 12866
- VI. Regulatory Flexibility Act
- VII. Paperwork Reduction Act
- VIII. Small Business Regulatory Enforcement Act
- IX. List of Subjects in 29 CFR Part 102

I. Administrative Offset

A. Purpose

An administrative offset is a procedure that permits the withholding of money payable by the United States to, or held by the United States on behalf of, a person to satisfy a debt owed the United States by that person.

B. Legal Authority

The Debt Collection Act of 1982 (P.L. 97-365), 31 U.S.C. 3711, provides that the head of an executive or administrative agency shall try to collect a claim of the United States Government for money or property arising out of the activities of the agency. Section 31 U.S.C. 3716(a) provides that the head of the agency, after trying to collect a claim under section 3711, may collect by administrative offset only after affording the debtor notice and other procedural due process protections. Specifically, the agency head must give the debtor:

(1) written notice of the type and amount of the claim, the intention of the head of the agency to collect the claim by administrative offset, and an explanation of the rights of the debtor under this section;

(2) an opportunity to inspect and copy the records of the agency related to the claim;

(3) an opportunity for a review within the agency of the decision of the agency related to the claim; and

(4) an opportunity to make a written agreement with the head of the agency to repay the amount of the claim.

Section 31 U.S.C. 3716(b) provides for the creation of regulations to facilitate agency attempts to collect a claim by administrative offset. This statutory provision further provides that the agency regulations must be based on the best interests of the United States Government, the likelihood of collecting a claim by administrative offset, and, if the 6-year period for bringing a civil action on a claim under 28 U.S.C. 2415 has expired, the cost effectiveness of leaving the claim unresolved for more than 6 years. Pursuant to 31 U.S.C. 3716(c), no claim may be collected by administrative offset if (1) It has been outstanding for more than 10 years after the agency's right to collect the debt first accrued, or (2) when a statute explicitly provides for or prohibits using

administrative offset to collect the claim or type of claim at issue.

II. Federal Income Tax Refund Offset

A. Purpose and Background

Tax refund offset is the means by which a Federal agency may recoup a delinquent debt owed it by having the Internal Revenue Service (IRS) withhold payment of a debtor's income tax refund, up to the amount of the debt, and remit the amount offset to the agency. Authority for the Federal Tax Refund Offset Program is granted under 26 U.S.C. 6402(d) of the Internal Revenue Code, 31 U.S.C. 3720A, and section 301.6402-6 of the Treasury Regulations on Procedure and Administration (26 CFR 301.604-6).

The Program was initially authorized for the collection of delinquent state or court-ordered payments by absent parents for Aid to Families with Dependent Children (AFDC), and, later, by the Omnibus Budget Act of 1981 for non-AFDC child support. Money collected through the offset of income tax refunds by the IRS is sent to the states by the Office of Child Support Enforcement.

In 1984, the Deficit Reduction Act (P.L. 98-369) expanded the scope of the program to include the use of offset to recover delinquent debts owed by individuals to Federal agencies. The legislation granted the Secretary of the Treasury authority to conduct a two year pilot program, from January 1, 1986 through December 31, 1987, in order to determine the program's feasibility.

The Omnibus Budget Reconciliation Act of 1987 (P.L. 100-203) extended the Federal Tax Refund Offset Program for 6 months through June 30, 1988. The Family Support Act of 1988 (P.L. 100-485), which extended this period through January 10, 1994, provided the opportunity to expand the program beyond the pilot stage, and authorized corporate offset. The Emergency Unemployment Compensation Act of 1991 (P.L. 102-164) gave the program permanent authority. The Cash Management Improvement Act amendments of 1992 (P.L. 102-589) mandated that all Federal agencies use tax refund offset to collect consumer debt by January 1, 1994, and corporate debt by January 1, 1995.

Federal agency participation in the program is also mandated by the Office of Management and Budget's (OMB) Circular A-129 (Revised), "Policies for Federal Credit Programs and Non-Tax Receivables," and by the Financial Management Services' (FMS') Treasury Financial Manual Supplement, "Managing Government Credit." The

IRS and FMS are jointly responsible for the administration and operation of the program.

B. Legal Authority

Section 31 U.S.C. 3720A, and implementing regulations of the Internal Revenue Service (IRS) set forth at 26 CFR 301.6402-6, authorize the IRS to reduce a tax refund by the amount of a past-due legally enforceable debt that is owed to the United States by individuals and business entities.

Section 31 U.S.C. 3720A(a) provides that any Federal agency that is owed a past-due legally enforceable debt by a named person (individual or business entity) shall, in accordance with agency and Treasury regulations, notify the Secretary of the Treasury at least once a year, of the amount of all such debt. Section 31 U.S.C. 3120A(b) provides that prior to taking such action, the Federal agency must: (1) notify the debtor that the agency proposes to take such action; (2) give the debtor at least 60 days to present evidence that all or part of such debt is not pastdue or not legally enforceable; (3) consider any evidence presented by the debtor and determine that an amount of such debt is past due and legally enforceable; (4) satisfy such other conditions as the Secretary of the Treasury may prescribe to ensure that the agency's determination with respect to such debt is valid and that the agency has made reasonable efforts (determined on a government-wide basis) to obtain payment of such debt; and (5) certify that reasonable efforts have been made by the agency (pursuant to regulations) to obtain payment of such debt.

After receiving notice from a Federal agency that a named person owes to such agency a past due, legally enforceable debt, the Secretary of the Treasury determines whether any amounts, as refunds of Federal taxes paid, are owed to such person. If so, the Secretary reduces such refund by an amount equal to the amount of such debt, pays the amount of such reduction to the Federal agency, and notifies such agency of the person's home address. See 31 U.S.C. 3720A(c). The Secretary of the Treasury issues regulations prescribing the time or times when agencies must submit notices of past-due legally enforceable debts, the manner in which such notices must be submitted, and the necessary information that must be contained in or accompany such notices. These regulations specify the minimum amount of the debt to which the foregoing offset procedure is applicable and the fee that an agency must pay to reimburse the Secretary of the Treasury

for the full cost of applying such procedure. See 31 U.S.C. 3720A(d).

Any Federal agency that receives notice from the Secretary that an erroneous payment has been made to such agency shall promptly remit to the Secretary, in accordance with regulations prescribed by the Secretary, the amount of such erroneous payment. See 31 U.S.C. 3720A(e).

The statute applies to refunds of business associations only if they are payable on or after January 1, 1995. The statute applies to refunds of individuals who owe debts to Federal agencies that have not participated in the Federal Tax Refund Offset Program prior to the November 10, 1992, only if such refunds are payable on or after January 1, 1994. See 31 U.S.C. 3720A(g).

III. Publication In Final

As indicated above, the Board has determined, pursuant to 5 U.S.C. 553(b)(B), that good cause exists for waiving public comment prior to implementation of these interim rules. This waiver is based, in part, upon the need to have the regulations in place by December 31, 1996, in order for the Board to participate in the IRS income tax refund offset program for the 1997 offset year. The Board finds that the public interest will be served by participation in the program, and accordingly, good cause exists for waiving public comment. In addition, the Board finds that public comment is unnecessary because these interim rules merely implement a definite statutory scheme and the requirements contained in the regulations promulgated by the Department of Justice, the General Accounting Office, the Internal Revenue Service and the Department of the Treasury, and relate to Agency procedure and practice. As indicated above, however, the Board will consider any public comments before issuing final rules.

IV. Effective Date

This document will become effective upon publication pursuant to 5 U.S.C. 553(d)(3). In order to participate in the IRS income tax refund offset program for the 1997 offset year, the Board must promulgate regulations that are effective by December 31, 1996. Therefore, pursuant to 5 U.S.C. 553(d)(3), good cause is found for making these interim rules effective immediately.

V. Executive Order 12866

These interim rules are not classified as "significant rules" under Executive Order 12866 on Federal regulations, because they will not result in (1) an annual effect on the economy of \$100

million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or foreign markets. Accordingly, no regulatory impact assessment is required.

VI. Regulatory Flexibility Act

Because no notice of proposed rule-making is required for interim rules, the requirements of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) pertaining to regulatory flexibility analysis do not apply to these rules.

VII. Paperwork Reduction Act

These interim rules are not subject to Section 3504(h) of the Paperwork Reduction Act (44 U.S.C. 3501) since they do not contain any new information collection requirements.

VIII. Small Business Regulatory Enforcement Act

Because these interim rules relate to Agency procedure and practice and merely implement a definitive statutory scheme and the requirements contained in regulations promulgated by the Department of Justice, the General Accounting Office, the Internal Revenue Service, and the Treasury Department, the Board has determined that the Congressional review provisions of the Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 801) do not apply.

IX. List of Subjects in 29 CFR Part 102

Administrative practice and procedure, labor management relations.

To enable the Agency to collect delinquent debts by way of administrative offset and Federal income tax refund offset, the Board amends 29 CFR Part 102 as follows:

PART 102—RULES AND REGULATIONS, SERIES 8

1. The authority citation for 29 CFR Part 102 continues to read as follows:

Authority: Sec. 6, National Labor Relations Act, as amended (29 U.S.C. 151, 156). Section 102.117(c) also issued under Section 552(a)(4)(A) of the Freedom of Information Act, as amended (5 U.S.C. 552(a)(4)(A)). Sections 102.143 through 102.155 also issued under Section 504(c)(1) of the Equal Access to Justice Act, as amended (5 U.S.C. 504(c)(1)).

2. Subpart U is added to Part 102 to read as follows:

Subpart U—Debt-Collection Procedures By Administrative Offset

Sec.

- 102.156 Administrative offset; purpose of scope.
- 102.157 Definitions.
- 102.158 Agency requests for administrative offsets and cooperation with other Federal agencies.
- 102.159 Exclusions.
- 102.160 Agency responsibilities.
- 102.161 Notification.
- 102.162 Examination and copying of records related to the claim; opportunity for full explanation of the claim.
- 102.163 Opportunity for repayment.
- 102.164 Review of the obligation.
- 102.165 Cost shifting.
- 102.166 Additional administrative collection action.
- 102.167 Prior provision of rights with respect to debt.

§ 102.156 Administrative offset; purpose and scope.

The regulations in this subpart specify the Agency procedures that will be followed to implement the administrative offset procedures set forth in the Debt Collection Act of 1982 (Public Law 97-365), 31 U.S.C. 3716.

§ 102.157 Definitions.

For purposes of this subpart—

- (a) The term *administrative offset* means the withholding of money payable by the United States to, or held by the United States on behalf of, a person to satisfy a debt owed the United States by that person; and
- (b) The term *debtor* is any person against whom the Board has a claim.
- (c) The term *person* does not include any agency of the United States, or any state or local government.
- (d) The terms *claim* and *debt* are synonymous and interchangeable. They refer to an amount of money or property which has been determined by an appropriate Agency official to be owed to the United States from any person, organization, or entity, except another federal agency.

(e) A debt is considered *delinquent* if it has not been paid by the date specified in the Agency's initial demand letter (§ 102.161), unless satisfactory payment arrangements have been made by that date, or if, at any time thereafter, the debtor fails to satisfy his obligations under a payment agreement with the Agency.

§ 102.158 Agency requests for administrative offsets and cooperation with other Federal agencies.

Unless otherwise prohibited by law, the Agency may request that monies due and payable to a debtor by another Federal agency be administratively offset in order to collect debts owed the

Agency by the debtor. In requesting an administrative offset, the Agency will provide the other Federal agency holding funds of the debtor with written certification stating

- (a) That the debtor owes the Board a debt (including the amount of debt); and
- (b) That the Agency has complied with the applicable Federal Claims Collection Standards, including any hearing or review.

§ 102.159 Exclusions.

(a)(1) The Agency is not authorized by the Debt Collection Act of 1982 (31 U.S.C. 3716) to use administrative offset with respect to:

- (i) Debts owed by any State or local government;
- (ii) Debts arising under or payments made under the Social Security Act, the Internal Revenue Code of 1954, or the tariff laws of the United States; or
- (iii) When a statute explicitly provides for or prohibits using administrative offset to collect the claim or type of claim involved.

(2) No claim that has been outstanding for more than 10 years after the Board's right to collect the debt first accrued may be collected by means of administrative offset, unless facts material to the right to collect the debt were not known and could not reasonably have been known by the official of the Agency who was charged with the responsibility to discover and collect such debts until within 10 years of the initiation of the collection action. A determination of when the debt first accrued should be made according to existing laws regarding the accrual of debts, such as under 28 U.S.C. 2415. Unless otherwise provided by contract or law, debts or payments owed the Board which are not subject to administrative offset under 31 U.S.C. 3716 may be collected by administrative offset under the common law or other applicable statutory authority, pursuant to this paragraph or Board regulations established pursuant to such other statutory authority.

(b) Collection by offset against a judgment obtained by a debtor against the United States shall be accomplished in accordance with 31 U.S.C. 3728.

§ 102.160 Agency responsibilities.

(a) The Agency shall provide appropriate written or other guidance to Agency officials in carrying out this subpart, including the issuance of guidelines and instructions, which may be deemed appropriate. The Agency shall also take such administrative steps as may be appropriate to carry out the purposes and ensure the effective implementation of this subpart.

(b) Before collecting a claim by means of administrative offset, the Agency must ensure that administrative offset is feasible, allowable and appropriate, and must notify the debtor of the Agency's policies for collecting a claim by means of administrative offset.

(c) Whether collection by administrative offset is feasible is a determination to be made by the Agency on a case-by-case basis, in the exercise of sound discretion. The Agency shall consider not only whether administrative offset can be accomplished, both practically and legally, but also whether administrative offset will further and protect the best interests of the United States Government. In appropriate circumstances, the Agency may give due consideration to the debtor's financial condition, and it is not expected that administrative offset will be used in every available instance, particularly where there is an available source of funds. The Agency may also consider whether administrative offset would substantially interfere with or defeat the purposes of the program authorizing the payments against which offset is contemplated.

(d) Administrative offset shall be considered by the Agency only after attempting to collect a claim under 31 U.S.C. 3711(a).

§ 102.161 Notification.

(a) The Agency shall send a written demand to the debtor in terms which inform the debtor of the consequences of failure to cooperate. In the demand letter, the Agency shall provide the name of an Agency employee who can provide a full explanation of the claim. When the Agency deems it appropriate to protect the Government's interests (for example, to prevent the statute of limitations, 28 U.S.C. 2415, from expiring), written demand may be preceded by other appropriate actions.

(b) In accordance with guidelines established by the Agency, the Agency official responsible for collection of the debt shall send written notice to the debtor, informing such debtor as appropriate:

- (1) Of the nature and amount of the Board's claim;
- (2) Of the date by which payment is to be made (which normally should be not more than 30 days from the date that the initial notification was mailed or hand delivered);
- (3) Of the Agency's intention to collect by administrative offset and of the debtor's rights in conjunction with such an offset;

(4) That the Agency intends to collect, as appropriate, interest, penalties, administrative costs and attorneys fees;

(5) Of the rights of such debtor to a full explanation of the claim, of the opportunity to inspect and copy Agency records with respect to the claim and to dispute any information in the Agency's records concerning the claim;

(6) Of the debtor's right to administrative appeal or review within the Agency concerning the Agency's claim and how such review shall be obtained;

(7) Of the debtor's opportunity to enter into a written agreement with the Agency to repay the debt; and

(8) Of the date on which, or after which, an administrative offset will begin.

§ 102.162 Examination and copying of records related to the claim; opportunity for full explanation of the claim.

Following receipt of the demand letter specified in § 102.161, and in conformity with Agency guidelines governing such requests, the debtor may request to examine and copy publicly available records pertaining to the debt, and may request a full explanation of the Agency's claim.

§ 102.163 Opportunity for repayment.

(a) The Agency shall afford the debtor the opportunity to repay the debt or enter into a repayment plan which is agreeable to the Agency and is in a written form signed by such debtor. The Agency may deem a repayment plan to be abrogated if the debtor should, after the repayment plan is signed, fail to comply with the terms of the plan.

(b) The Agency has discretion and should exercise sound judgment in determining whether to accept a repayment agreement in lieu of administrative offset.

§ 102.164 Review of the obligation.

(a) The debtor shall have the opportunity to obtain review by the Agency of the determination concerning the existence or amount of the debt as set forth in the notice. In cases where the amount of the debt has been fully liquidated, the review is limited to ensuring that the liquidated amount is correctly represented in the notice.

(b) The debtor seeking review shall make the request in writing to the Agency, not more than 15 days from the date the demand letter was received by the debtor. The request for review shall state the basis for challenging the determination. If the debtor alleges that the Agency's information relating to the debt is not accurate, timely, relevant or complete, the debtor shall provide

information or documentation to support this allegation.

(c) The Agency may effect an administrative offset against a payment to be made to a debtor prior to the completion of the due process procedures required by this subpart, if failure to take the offset would substantially prejudice the Agency's ability to collect the debt; for example, if the time before the payment is to be made would not reasonably permit the completion of due process procedures. Administrative offset effected prior to completion of due process procedures must be promptly followed by the completion of those procedures. Amounts recovered by administrative offset, but later found not owed to the Agency, will be promptly refunded.

(d) Upon completion of the review, the Agency's reviewing official shall transmit to the debtor the Agency's decision. If appropriate, this decision shall inform the debtor of the scheduled date on or after which administrative offset will begin. The decision shall also, if appropriate, indicate any changes in information to the extent such information differs from that provided in the initial notification to the debtor under § 102.161.

(e) Nothing in this subpart shall preclude the Agency from *sua sponte* reviewing the obligation of the debtor, including a reconsideration of the Agency's determination concerning the debt, and the accuracy, timeliness, relevance, and completeness of the information on which the debt is based.

§ 102.165 Cost shifting.

Costs incurred by the Agency in connection with referral of debts for administrative offset will be added to the debt and thus increase the amount of the offset. Such costs may include administrative costs and attorneys fees.

§ 102.166 Additional administrative collection action.

Nothing contained in this subpart is intended to preclude the Agency from utilizing any other administrative or legal remedy which may be available.

§ 102.167 Prior provision of rights with respect to debt.

To the extent that the rights of the debtor in relation to the same debt have been previously provided for under some other statutory or regulatory authority, the Agency is not required to duplicate those efforts before effecting administrative offset.

Subpart V—Debt Collection Procedures By Federal Income Tax Refund Offset

Sec.

- 102.168 Federal income tax refund offset; purpose and scope.
- 102.169 Definitions.
- 102.170 Agency referral to IRS for tax refund offset; Agency responsibilities.
- 102.171 Cost shifting.
- 102.172 Minimum referral amount.
- 102.173 Relation to other collection efforts.
- 102.174 Debtor notification.
- 102.175 Agency review of the obligation.
- 102.176 Prior provision of rights with respect to debt.

§ 102.168 Federal income tax refund offset; purpose and scope.

The regulations in this subpart specify the Agency procedures that will be followed in order to implement the federal income tax refund offset procedures set forth in 26 U.S.C. 6402(d) of the Internal Revenue Code (Code), 31 U.S.C. 3720A, and section 301.6402–6 of the Treasury Regulations on Procedure and Administration (26 CFR 301.6402–6). This statute and the implementing regulations of the Internal Revenue Service (IRS) at 26 CFR 301.6402–6 authorize the IRS to reduce a tax refund by the amount of a past-due legally enforceable debt owed to the United States. The regulations apply to past-due legally enforceable debts owed to the Agency by individuals and business entities. The regulations are not intended to limit or restrict debtor access to any judicial remedies to which he or she may otherwise be entitled.

§ 102.169 Definitions.

For purposes of this subpart:

- (a) *Tax refund offset* refers to the IRS income tax refund offset program operated under authority of 31 U.S.C. 3720A.
- (b) *Past-due legally enforceable debt* is a delinquent debt administratively determined to be valid, whereon no more than 10 years have lapsed since the date of delinquency (unless reduced to judgment), and which is not discharged under a bankruptcy proceeding or subject to an automatic stay under 11 U.S.C. 362.
- (c) *Individual* refers to a taxpayer identified by a social security number (SSN).
- (d) *Business entity* refers to an entity identified by an employer identification number (EIN).
- (e) *Taxpayer mailing address* refers to the debtor's current mailing address as obtained from IRS.
- (f) *Memorandum of understanding* refers to the agreement between the Agency and IRS outlining the duties and responsibilities of the respective parties for participation in the tax refund offset program.

§ 102.170 Agency referral to IRS for tax refund effect; Agency responsibilities.

(a) As authorized and required by law, the Agency may refer past-due legally enforceable debts to the Internal Revenue Service (IRS) for collection by offset from any overpayment of income tax that may otherwise be due to be refunded to the taxpayer. By the date and in the manner prescribed by the IRS, the Agency may refer for tax refund offset past-due legally enforceable debts. Such referrals shall include the following information:

- (1) Whether the debtor is an individual or a business entity;
 - (2) The name and taxpayer identification number (SSN or EIN) of the debtor who is responsible for the debt;
 - (3) The amount of the debt;
 - (4) A designation that the Agency is referring the debt and (as appropriate) Agency account identifiers.
- (b) The Agency will ensure the confidentiality of taxpayer information as required by IRS in its Tax Information Security Guidelines.
- (c) As necessary, the Agency will submit updated information at the times and in the manner prescribed by IRS to reflect changes in the status of debts or debtors referred for tax refund offset.
- (d) Amounts erroneously offset will be refunded by the Agency or IRS in accordance with the Memorandum of Understanding.

§ 102.171 Cost shifting.

Costs incurred by the Agency in connection with referral of debts for tax refund offset will be added to the debt and thus increase the amount of the offset. Such costs may include administrative costs and attorneys fees.

§ 102.172 Minimum referral amount.

The minimum amount of a debt otherwise eligible for Agency referral to the IRS is \$25 for individual debtors and \$100 for business debtors. The amount referred may include the principal portion of the debt, as well as any accrued interest, penalties, administrative cost charges, and attorney fees.

§ 102.173 Relation to other collection efforts.

(a) Tax refund offset is intended to be an administrative collection remedy to be utilized consistent with IRS requirements for participation in the program, and the costs and benefits of pursuing alternative remedies when the tax refund offset program is readily available. To the extent practical, the requirements of the program will be met by merging IRS requirements into the

Agency's overall requirements for delinquent debt collection.

(b) As appropriate, debts of an individual debtor of \$100 or more will be reported to a consumer or commercial credit reporting agency before referral for tax refund offset.

(c) Debts owed by individuals will be screened for administrative offset potential using the most current information reasonably available to the Agency, and will not be referred for tax refund offset where administrative offset potential is found to exist.

§ 102.174 Debtor notification.

(a) The Agency shall send appropriate written demand to the debtor in terms which inform the debtor of the consequences of failure to repay debts or claims owed the Board.

(b) Before the Agency refers a debt to IRS for tax refund offset, it will make a reasonable attempt to notify the debtor that:

- (1) The debt is past-due;
- (2) Unless the debt is repaid or a satisfactory repayment agreement is established within 60 days thereafter, the debt will be referred to IRS for offset from any overpayment of tax remaining after taxpayer liabilities of greater priority have been satisfied; and
- (3) The debtor will have a minimum of 60 days from the date of notification to present evidence that all or part of the debt is not past due or legally enforceable, and the Agency will consider this evidence in a review of its determination that the debt is past due and legally enforceable. The debtor will be advised where and to whom evidence is to be submitted.

(c) The Agency will make a reasonable attempt to notify the debtor by using the most recent address information available to the Agency or obtained from the IRS, unless written notification to the Agency is received from the debtor stating that notices from the Agency are to be sent to a different address.

(d) The notification required by paragraph (b) of this section and sent to the address specified in paragraph (c) of this section may, at the option of the Agency, be incorporated into demand letters required by paragraph (a) of this section.

§ 102.175 Agency review of the obligation.

(a) The Agency official responsible for collection of the debt will consider any evidence submitted by the debtor as a result of the notification required by § 102.174 and notify the debtor of the result. If appropriate, the debtor will also be advised where and to whom to

request a review of any unresolved dispute.

(b) The debtor will be granted 30 days from the date of the notification required by paragraph (a) of this section to request a review of the determination of the Agency official responsible for collection of the debt on any unresolved dispute. The debtor will be advised of the result.

§ 102.176 Prior provision of rights with respect to debt.

To the extent that the rights of the debtor in relation to the same debt have been previously provided under some other statutory or regulatory authority, including administrative offset procedures set forth in Subpart U, the Agency is not required to duplicate those efforts before referring a debt for tax refund offset.

Dated, Washington, DC, July 9, 1996.

By Direction of the Board.

John J. Toner,

Executive Secretary, National Labor Relations Board.

[FR Doc. 96-18029 Filed 7-23-96; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 925

[SPATS No. MO-029-FOR]

Missouri Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is approving a proposed amendment to the Missouri regulatory program (hereinafter referred to as the "Missouri program") under the Surface Mining Reclamation Act of 1977 (SMCRA). Missouri proposed revisions to its statutes pertaining to requirements and procedures for adoption of new or amended rules. The amendment is intended to revise the Missouri program to be consistent with SMCRA, clarify ambiguities, and improve operational efficiency.

EFFECTIVE DATE: July 24, 1996.

FOR FURTHER INFORMATION CONTACT: Michael Wolfrom, Regulatory Program Specialist, Mid-Continent Regional Coordinating Center, Alton Federal Building, 501 Belle Street, Alton, Illinois 62002. Telephone: (618) 463-6460.

SUPPLEMENTARY INFORMATION:

- I. Background on the Missouri Program
- II. Submission of the Proposed Amendment
- III. Director's Findings
- IV. Summary and Disposition of Comments
- V. Director's Decision
- VI. Procedural Determinations

I. Background on the Missouri Program

On November 21, 1980, the Secretary of the Interior conditionally approved the Missouri program. General background information on the Missouri program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Missouri program can be found in the November 21, 1980, Federal Register (45 FR 77017). Subsequent actions concerning Missouri's program and program amendments can be found at 30 CFR 925.12, 925.15, and 925.16.

II. Submission of the Proposed Amendment

By letter dated March 20, 1996 (Administrative Record No. MO-637), Missouri submitted a proposed amendment to its program pursuant to SMCRA. Missouri submitted the proposed amendment at its own initiative. The proposed amendment concerns changes to the Missouri Surface Coal Mining Law authorized by Senate Bill No. 3. Missouri proposed to amend the Revised Statutes of Missouri (RSMo) at sections 444.800.5, Procedures for suspension and reinstatement of rules; 444.810.2 through 444.810.8, Powers of the commission; and 444.950.2 through 444.950.8, Requirements and procedures for adoption of new or amended rules.

OSM announced receipt of the proposed amendment in the April 2, 1996, Federal Register (61 FR 14517), and in the same document opened the public comment period and provided an opportunity for a public hearing on the adequacy of the proposed amendment. The public comment period closed on May 2, 1996.

III. Director's Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are the Director's findings concerning the proposed amendment.

1. RSMo 444.800.5 Procedures for Suspension and Reinstatement of Rules

Missouri proposed to remove the provision at section 444.800.5 concerning the authority of the joint committee on administrative rules to suspend and reinstate a rule based upon specified circumstances. This provision

is duplicative of provisions contained in RSMo 536.024. Chapter 536, RSMo, Administrative Procedure and Review, contains the procedures State agencies must follow when adopting, amending, or rescinding administrative rules or regulations in Missouri.

Since there is no direct Federal counterpart to the deleted provision, the Director finds that the removal of section 444.800.5 will not render the Missouri program less stringent than SMCRA or less effective than the Federal regulations.

2. RSMo 444.810.2 Through 444.810.8 Powers of the Commission

Missouri proposed to remove the existing provisions at sections 444.810.2 through 444.810.8 concerning requirements and procedures for adoption of new or amended rules and to add the following new provision at section 444.810.2.

No rule or portion of a rule promulgated under the authority of sections 444.800 to 444.970 shall become effective unless it has been promulgated pursuant to the provisions of section 536.024, RSMo.

The existing provisions proposed for removal are duplicative of provisions contained in RSMo 536.024. Missouri's proposed new provision appropriately references section 536.024 since all Missouri agencies that are authorized by constitution or statute to make rules must comply with the provisions of Chapter 536, RSMo when adopting, amending, or rescinding administrative rules or regulations.

While there is no direct Federal counterpart to the removed provisions or to the new provision, SMCRA and the Federal regulation at 30 CFR 732.15(b)(10) require State programs to provide for public participation in the development and revision of State regulations. Chapter 536, RSMo provides for the publication in the Missouri Register of proposed rulemaking and subsequent final orders of rulemaking and provides for public participation in the rulemaking process.

Therefore, the Director finds that the deletion of the existing provisions at sections 444.810.2 through 444.810.8 and the addition of the new provision at section 444.810.2 do not render the Missouri program less stringent than SMCRA or less effective than the Federal regulations.

3. RSMo 444.950.2 Requirements and Procedures for Adoption of New or Amended Rules

Missouri proposed to remove the existing provisions at sections 444.950.2 through 444.950.8 concerning requirements and procedures for