

than 30 days to avoid the expenditure of resources needed to prepare for the required August 1993 survey of the Oscoda-Alpena, Michigan, wage area. Wurtsmith AFB is unable to function as the host activity for the wage survey and no other local activity within the Oscoda-Alpena wage area has the capability to conduct a wage survey.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they affect only Federal agencies and employees.

List of Subjects in 5 CFR Part 532

Administrative practice and procedure, Government employees, Wages.

U.S. Office of Personnel Management.

Lorraine A. Green,

Deputy Director.

Accordingly, OPM is amending 5 CFR part 532 as follows:

PART 532—PREVAILING RATES SYSTEMS

1. The authority citation for part 532 continues to read as follows:

Authority: 5 U.S.C. 5343, 5346; § 532.707 also issued under 5 U.S.C. 552.

2. In appendix A to subpart B, the listing for the Oscoda-Alpena, Michigan, wage area is removed.

3. Appendix C to subpart B is amended by removing the listing for the Oscoda-Alpena, Michigan, wage area and by revising the wage area listing for the Northwestern Michigan wage area to read as follows:

Appendix C to Subpart B of Part 532—Appropriated Fund Wage and Survey Areas

Northwestern Michigan Survey Area

Michigan:
Delta
Dickinson
Marquette

Area of Application. Survey area plus:

Michigan:
Alcona¹
Alger
Alpena¹
Antrim¹
Baraga
Benzie¹
Charlevoix¹
Cheboygan¹

Chippewa
Crawford¹
Emmet¹
Gogebic
Grand Traverse¹
Houghton
Iosco¹
Iron
Kalkaska¹
Keweenaw
Leelanau¹
Luce
Mackinac
Manistee¹
Menominee
Missaukee¹
Montmorency¹
Ogemaw¹
Ontonagon
Oscoda¹
Otsego¹
Presque Isle¹
Roscommon¹
Schoolcraft
Wexford¹

* * * * *

Effective date January 1, 1994.

[FR Doc. 93-29724 Filed 12-6-93; 8:45 am]

BILLING CODE 325-01-M

5 CFR Part 831

RIN 3206-AF67

Civil Service Retirement System; Law Enforcement Officers and Firefighters

AGENCY: Office of Personnel Management.

ACTION: Interim rule with request for comments.

SUMMARY: The Office of Personnel Management (OPM) is issuing interim rules amending the regulations covering special retirement provisions for law enforcement officers and firefighters employed under the Civil Service Retirement System (CSRS). These changes are intended to improve efficiency by delegating to the employing agencies responsibility for deciding who is entitled to coverage under the special retirement provisions.

DATES: Interim rules effective December 7, 1993; comments must be received on or before February 7, 1994.

ADDRESSES: Send comments to Reginald M. Jones, Jr., Assistant Director for Retirement and Insurance Policy; Retirement and Insurance Group; Office of Personnel Management; P.O. Box 57; Washington, DC 20044; or deliver to OPM, room 4351, 1900 E Street NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Robert M. Rosenblatt, (202) 606-0299.

SUPPLEMENTARY INFORMATION: Section 8336(c) of title 5, U.S. Code, authorizes immediate retirement benefits at age 50

for Federal employees who have completed 20 years of Federal civilian service as a law enforcement officer or firefighter. Until now the Office of Personnel Management (OPM) has retained sole authority to determine whether or not service performed as a law enforcement officer or firefighter meets the retirement law's definitions of "law enforcement officer" or "firefighter" (5 U.S.C. 8331(20) and 5 U.S.C. 8331(21), respectively), and, therefore qualifies for special retirement benefits. These regulations will authorize heads of employing agencies, subject to OPM oversight, to decide which of their CSRS employees qualify for law enforcement officer or firefighter coverage in the same manner as those determinations are now made for law enforcement officers and firefighters under the Federal Employees Retirement System (FERS). (See subpart H of 5 CFR Part 842.)

The delegation of authority from OPM to agency heads will streamline the processing of law enforcement officer and firefighter coverage determinations, and place responsibility for those determinations with the employing agencies that have the most direct personnel management interest in them. (These rules stipulate, however, that agencies will not reopen past coverage decisions except when new and material evidence is available that was not available when the issue was decided.)

For the convenience of the reader, OPM has republished subpart I of part 831 in its entirety. However, these rules make substantive changes only in the delegation of authority to make coverage determinations to the employing agencies (and the consequent elimination of OPM's role in making those determinations, except in an oversight capacity); the criteria for making coverage determinations have changed.

Under section 553(b)(3)(B) of title 5, United States Code, I find that good cause exists for waiving the general notice of proposed rulemaking, and to make these rules effective in less than 30 days. These regulations streamline processing of coverage determinations and place responsibility for those determinations with the employing agencies that have the most direct personnel management interest in them, without affecting individual rights.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because the regulation will only affect Federal employees and agencies and retirement payments to retired Government employees and their survivors.

List of Subjects in 5 CFR Part 831

Administrative practice and procedure, Government employees, Pensions, Retirement.

U.S. Office of Personnel Management.

Lorraine A. Green,

Deputy Director.

Accordingly, OPM is amending 5 CFR part 831 as follows:

PART 831—RETIREMENT

1. The authority citation for part 831 continues to read in part as follows:

Authority: 5 U.S.C. 8347; * * *

2. Subpart I, consisting of §§ 831.901 through 831.911, is revised to read as follows:

Subpart I—Law Enforcement Officers and Firefighters

- Sec.
- 831.901 Applicability and purpose.
 - 831.902 Definitions.
 - 831.903 Conditions for coverage in primary positions.
 - 831.904 Conditions for coverage in secondary positions.
 - 831.905 Evidences.
 - 831.906 Requests from individuals.
 - 831.907 Withholdings and contributions.
 - 831.908 Mandatory separation.
 - 831.909 Reemployment.
 - 831.910 Review of decisions.
 - 831.911 Oversight of coverage determinations.

Subpart I—Law Enforcement Officers and Firefighters**§ 831.901 Applicability and purpose.**

(a) This subpart contains regulations of the Office of Personnel Management (OPM) to supplement 5 U.S.C. 8336(c), which establishes special retirement eligibility for law enforcement officers and firefighters employed under the Civil Service Retirement System; 5 U.S.C. 8331(3) (C) and (D), pertaining to basic pay; 5 U.S.C. 8334(a) (1) and (c), pertaining to deductions, contributions, and deposits; 5 U.S.C. 8335(b), pertaining to mandatory retirement; and 5 U.S.C. 8339(d), pertaining to computation of annuity.

(b) The regulations in this subpart are issued pursuant to the authority given to OPM in 5 U.S.C. 8347 to prescribe regulations to carry out subchapter III of chapter 83 of title 5 of the United States

Code, and in 5 U.S.C. 1104 to delegate authority for personnel management to the heads of agencies.

§ 831.902 Definitions.

In this subpart—

Agency head means, for the executive branch agencies, the head of an executive agency as defined in 5 U.S.C. 105; for the legislative branch, the Secretary of the Senate, the Clerk of the House of Representatives, or the head of any other legislative branch agency; for the judicial branch the Director of the Administrative Office of the U.S. Courts; for the Postal Service, the Postmaster General; and for any other independent establishment that is an entity of the Federal Government, the head of the establishment. For purposes of this subpart, "agency head" is also deemed to include the designated representative of the head of an executive department as defined in 5 U.S.C. 101, except that for provisions dealing with law enforcement officers and firefighters, the designated representative must be a department headquarters-level official who reports directly to the executive department head and who is the sole such representative for the entire department.

Detention duties means duties that require frequent direct contact in the detention, direction, supervision, inspection, training, employment, care, transportation, or rehabilitation of individuals suspected or convicted of offenses against the criminal laws of the United States or the District of Columbia or offenses against the punitive articles of the Uniform Code of Military Justice (10 U.S.C. chapter 47). (See 5 U.S.C. 8331(20).)

Firefighter means an employee, whose duties are primarily to perform work directly connected with the control and extinguishment of fires or the maintenance and use of firefighting apparatus and equipment. Also included in this definition is an employee engaged in this activity who is transferred to a supervisory or administrative position. (See 5 U.S.C. 8331(21).) An employee whose primary duties are the performance of routine fire prevention inspection is excluded from this definition.

Frequent direct contact means personal, immediate, and regularly-assigned contact with detainees while performing detention duties, which is repeated and continual over a typical work cycle.

Law enforcement officer means an employee, the duties of whose position are primarily the investigation, apprehension, or detention of individuals suspected or convicted of

offenses against the criminal laws of the United States, including an employee engaged in this activity who is transferred to a supervisory or administrative position. (See 5 U.S.C. 8331(20).) The definition does not include an employee whose primary duties involve maintaining law and order, protecting life and property, guarding against or inspecting for violations of law, or investigating persons other than persons who are suspected or convicted of offenses against the criminal laws of the United States.

Primary duties are those duties of a position that—

- (i) Are paramount in influence or weight; that is, constitute the basic reasons for the existence of the position;
- (ii) Occupy a substantial portion of the individual's working time over a typical work cycle; and
- (iii) Are assigned on a regular and recurring basis.

(2) Duties that are of an emergency, incidental, or temporary nature cannot be considered "primary" even if they meet the substantial portion of time criterion. In general, if an employee spends an average of at least 50 percent of his or her time performing a duty or group of duties, they are his or her primary duties.

Primary position means a position whose primary duties are:

- (1) To perform work directly connected with controlling and extinguishing fires or maintaining and using firefighter apparatus and equipment; or
- (2) Investigation, apprehension, or detention of individuals suspected or convicted of offenses against the criminal laws of the United States.

Secondary position means a position that:

- (1) Is clearly in the law enforcement or firefighting field;
- (2) Is in an organization having a law enforcement or firefighting mission; and
- (3) Is either—

- (i) Supervisory; i.e., a position whose primary duties are as a first-level supervisor of law enforcement officers or firefighters in primary positions; or
- (ii) Administrative; i.e., an executive, managerial, technical, semiprofessional, or professional position for which experience in a primary law enforcement or firefighting position, or equivalent experience outside the Federal government, is a prerequisite.

§ 831.903 Conditions for coverage in primary positions.

(a) An employee's service in a position that has been determined by the employing agency head to be a

primary law enforcement officer or firefighter position is covered under the provisions of 5 U.S.C. 8336(c).

(b) An employee who is not in a primary position, nor covered while in a secondary position, and who is detailed or temporarily promoted to a primary position is not covered under the provisions of 5 U.S.C. 8336(C)

§ 831.904 Conditions for coverage in secondary positions.

(a) An employee's service in a position that has been determined by the employing agency head to be a secondary law enforcement officer or firefighter position is covered under the provisions of 5 U.S.C. 8336(c) if all of the following criteria are met:

(1) The employee is transferred directly (i.e., without a break in service exceeding 3 days) from a primary position to a secondary position; and
(2) If applicable, the employee has been continuously employed in secondary positions since transferring from a primary position without a break in service exceeding 3 days, except that a break in employment in secondary positions which begins with an involuntary separation (not for cause), within the meaning of 8336(d)(1) of title 5, United States Code, is not considered in determining whether the service in secondary positions is continuous for this purpose.

(b) This requirement for continuous employment in a secondary position applies only to voluntary breaks in service beginning after January 19, 1988.

(c) An employee who is not in a primary position, nor covered while in a secondary position, and who is detailed or temporarily promoted to a secondary position is not covered under the provisions of 5 U.S.C. 8336(c).

(d) The service of an employee who is in a position on January 19, 1988, that has been approved as a secondary position under this subpart will continue to be covered under the provisions of 5 U.S.C. 8336(c) as long as the employee remains in that position without a voluntary break in service, and coverage is not revoked by OPM under § 831.911, or by the agency head.

§ 831.905 Evidence.

(a) An agency head's determination that a position is a primary position must be based solely on the official position description of the position in question, and any other official description of duties and qualifications. The official documentation for the position must establish that it satisfies the requirements defined in § 831.902.

(b) A determination under § 831.904 must be based on the official position

description and any other evidence deemed appropriate by the agency head for making the determination.

§ 831.906 Requests from individuals.

(a) An employee who requests credit for service under 5 U.S.C. 8336(c) bears the burden of proof with respect to that service, and must provide the employing agency with all pertinent information regarding duties performed, including—

(1) For law enforcement officers, a list of the provisions of Federal criminal law the incumbent is responsible for enforcing and arrests made; and

(2) For firefighters, number of fires fought, names of fires fought, dates of fires, and position occupied while on firefighting duty.

(b) An employee who is currently serving in a position that has not been approved as a primary or secondary position, but who believes that his or her service is creditable as service in a primary or secondary position may request the agency head to determine whether or not the employee's service should be credited and, if it qualifies, whether it should be a primary or secondary position.

(c) A current or former employee (or the survivor of a former employee) who believes that a period of past service in an unapproved position qualifies as service in a primary or secondary position and meets the conditions for credit must follow the procedure in paragraph (b) of this section. Except as provided in paragraph (d) of this section, the request must be made to the agency where the claimed service was performed.

(d) For a current or former employee seeking credit under 5 U.S.C. 8336(c) for service performed at an agency that is no longer in existence, and for which there is no successor agency, OPM will accept, directly from the current or former employee (or the survivor of a former employee), a request for a determination as to whether a period of past service qualifies as service in a primary or secondary position and meets the conditions for credit.

(e) Coverage in a position or credit for past service will not be granted for a period greater than 1 year prior to the date that the request from an individual is received under paragraphs (b), (c), or (d) of this section by the employing agency, the agency where past service was performed, or OPM.

(f) An agency head, in the case of a request filed under paragraph (b) or (c) of this section, or OPM, in the case of request filed under paragraph (d) of this section, may extend the time limit for filing when, in the judgment of such

agency head or OPM, the individual shows that he or she was prevented by circumstances beyond his or her control from making the request within the time limit.

§ 831.907 Withholdings and contributions.

(a) During the service covered under the conditions established by § 831.903 and § 831.904, the employing agency will deduct and withhold from the employee's base pay the amount required under 5 U.S.C. 8334(a) for such positions and submit that amount, together with agency contributions required by 5 U.S.C. 8334(a), to OPM in accordance with payroll office instructions issued by OPM.

(b) If the correct withholdings and/or Government contributions are not submitted to OPM for any reason whatsoever, including cases in which it is finally determined that past service of a current or former employee was subject to the higher deduction and Government contribution rates, the employing agency must correct the error by submitting the correct amounts (including both employee and agency shares) to OPM as soon as possible. Even if the agency waives collection of the overpayment of pay under any waiver authority that may be available for this purpose, such as 5 U.S.C. 5584, or otherwise fails to collect the debt, the correct amount must still be submitted to OPM without delay as soon as possible.

(c) An employee, upon proper application to the agency, or a former employee or eligible survivor, upon proper application to OPM, will be paid a refund, without interest, of erroneous additional withholdings or deposits for service that was found not to have been covered service.

(d) The additional employee withholding and agency contribution for covered or creditable service properly made as required under 5 U.S.C. 8334(a)(1) or deposited under 5 U.S.C. 8334(c) are not separately refundable, even in the event that the employee or his or her survivor does not qualify for a special annuity computation under 5 U.S.C. 8339(d).

(e) While an employee who does not hold a primary or secondary position is detailed or temporarily promoted to a primary or secondary position, the additional withholdings and agency contributions will not be made. While an employee who does hold a primary or secondary position is detailed or temporarily promoted to a position which is not a primary or secondary position, the additional withholdings and agency contributions will continue to be made.

§ 831.903 Mandatory separation.

(a) The mandatory separation provisions of 5 U.S.C. 8335(b) apply to all law enforcement officers and firefighters in primary and secondary positions. A mandatory separation under section 8335(b) is not an adverse action under part 752 of this chapter or a removal action under part 359 of this chapter. Section 831.503 provides the procedures for requesting an exemption from mandatory separation.

(b) In the event an employee is separated mandatorily under 5 U.S.C. 8335(b), or is separated for optional retirement under 5 U.S.C. 8336(c), and OPM finds that all or part of the minimum service required for entitlement to immediate annuity was in a position which did not meet the requirements of a primary or secondary position and the conditions set forth in this subpart, such separation will be considered erroneous.

§ 831.909 Reemployment.

An employee who has been mandatorily separated under 5 U.S.C. 8335(b) is not barred from reemployment in any position except a primary position after age 60. Service by a reemployed annuitant is not covered by the provisions of 5 U.S.C. 8336(c).

§ 831.910 Review of decisions.

The following decisions may be appealed to the Merit Systems Protection Board under procedures prescribed by the Board:

(a) The final decision of an agency head or OPM issued to an employee, former employee, or survivor as the result of a request for determination filed under § 831.906; and

(b) The final decision of an employing agency that a break in service referred to in § 831.904(a)(2) did not begin with an involuntary separation within the meaning of 5 U.S.C. 8336(d)(1).

§ 831.911 Oversight of coverage determinations.

(a) Upon deciding that a position is a law enforcement officer or firefighter position, each agency head must notify OPM (Attention: Associate Director for Retirement and Insurance) stating the title of each position, the number of incumbents, and whether the position is primary or secondary. The Director of OPM retains the authority to revoke an agency head's determination that a position is a primary or secondary position, or that an individual's service in any other position is creditable under 5 U.S.C. 8336(c).

(b) Each agency must establish a file containing each coverage determination made by an agency head under

§ 831.903 and § 831.904, and all background material used in making the determination.

(c) Upon request by OPM, the agency will make available the entire coverage determination file for OPM to audit to ensure compliance with the provisions of this subpart.

(d) Upon request by OPM, an agency must submit to OPM a list of all covered positions and any other pertinent information requested.

(e) A coverage determination issued by OPM or its predecessor, the Civil Service Commission, will not be reopened by an employing agency, unless the agency head determines that new and material evidence is available that, despite due diligence, was not available before the decision was issued.

[FR Doc. 93-29725 Filed 12-6-93; 8:45 am]

BILLING CODE 6325-01-10

SECURITIES AND EXCHANGE COMMISSION**17 CFR PART 204**

[Release No. 34-33277]

Debt Collection—Administrative Offset, Tax Refund Offset and Collection Services, Credit Bureau Reporting

AGENCY: Securities and Exchange Commission.

ACTION: Final rules.

SUMMARY: The Commission has added three new subparts to Part 204, Rules relating to Debt Collection, Subpart A, Administrative Offset, sets forth the procedures to collect a debt owed the U.S. Government, by Administrative offset; Subpart C, Tax Refund Offset, establishes procedures whereby delinquent debts owed to the Commission will be referred to the Internal Revenue Service (IRS) for collection by offset against Federal income tax refunds under 31 U.S.C. 3720A and Subpart D, Miscellaneous: Collection Services, Credit Bureau Reporting, sets forth the procedures by which the Commission may report delinquent debts to credit bureau/consumer reporting agencies and use the collection services to collect debt owed to the U.S. Government. The Commission is required by the Debt Collection Act of 1982 to adopt regulations and develop procedures to collect debts owed to the U.S. Government. These regulations will bring the Commission into compliance with federal debt collection requirements.

EFFECTIVE DATE: January 6, 1994.

FOR FURTHER INFORMATION CONTACT: Darrell Dockery (Branch Chief, Accounting), Glynis Long (Salary Offset Editor), or Henry Hoffman (Assistant Comptroller) at (202) 272-2408, Office of the Comptroller, Securities and Exchange Commission, 450 Fifth St. NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The Deficit Reduction Act¹ and the Cash Management Improvement Act Amendments of 1992² mandate the use of tax refund offset by all agencies. These Acts authorize the Internal Revenue Service (IRS) to reduce a tax refund by the amount of a past-due legally enforceable debt owed to the United States by a person or entity.³ The Commission must notify the Secretary of the Treasury at least once a year of the amount of all such debt.

In order to participate in the Tax Refund Offset Program with the IRS, the Commission must publish regulations on Tax Refund Offset, Salary Offset, and Administrative Offset.⁴ In addition, the Commission must report the debtor to a consumer or credit bureau reporting agency.⁵ If the Commission cannot collect the debt by Administrative Offset,⁶ or Salary Offset,⁷ then collection will be made through the Tax Refund Offset Program.

Subpart A—Administrative Offset—sets forth the procedures to collect, by Administrative offset, as defined in 31 U.S.C. Chapter 37, money payable by the United States Government to, or held by the Government for, a person to satisfy a debt the person owes the Government.

Subpart C—Tax Refund Offset—establishes procedures whereby delinquent debts owed to the Commission will be referred to the Internal Revenue Service (IRS) for collection by offset against Federal income tax refunds under 31 U.S.C. 3720A.

Subpart D—Miscellaneous: Collection Services, Credit Bureau Reporting, sets forth the procedures by which the Commission may report delinquent debts to consumer reporting agencies

¹ 31 U.S.C. 3720A, 6402.

² 31 U.S.C. 3720A.

³ Pursuant to Public Law 102-589 Section 3, the term "person" means an individual, a sole proprietorship, partnership, corporation, nonprofit organization, or any other form of business association.

⁴ 28 CFR 301.6402-6 *et seq.* Internal Revenue Service of the Department of the Treasury, Procedure and Administration.

⁵ 31 U.S.C. 3701, 3711, 3718 and the Federal Claims Collection Standards (FCCS) 4 CFR 102.8.

⁶ 31 U.S.C. 3718.

⁷ 5 U.S.C. 5514.

(see 31 U.S.C. 3701(a)(3), 3711). Pursuant to Section 13 of the Debt Collection Act (31 U.S.C. 3718), agencies are authorized to enter into contracts with the collection services to recover debts owed the United States. The Commission has authority to contract for collection services to recover delinquent debts in accordance with 31 U.S.C. 3718(c) and the Federal Claims Collection Standards (4 CFR 102.6).

The Commission must, 60 days prior to the Tax Refund Offset, notify the debtor through a letter of intent to report the legally enforceable debt to the credit organizations and/or to the Internal Revenue Service for the purpose of offsetting any Federal Tax Refund.⁸

Cost-Benefit analysis: The Commission believes that the procedures set forth in the Offset Regulations are the most efficient and least burdensome way for the Commission to meet the requirements of the Tax Refund Offset Program.

The Commission finds, in accordance with the Administrative Procedure Act,⁹ that this rule relates solely to agency organization, procedures, or practices. It is therefore not subject to the provisions of the Administrative Procedure Act requiring notice and opportunity for comment.

List of Subjects in 17 CFR Part 204

Claims, Debt collection, Government employees, Wages

Text of Amendments

For the reasons set out in the preamble, Title 17, Chapter II of the Code of Federal Regulations is amended by adding Subparts A, C and D to Part 204 to read as follows:

PART 204—RULES RELATING TO DEBT COLLECTION

Subpart A—Administrative Offset

Sec.

- 204.1 Applicability and scope.
- 204.2 Definitions.
- 204.3 General.
- 204.4 Demand for payment—notice.
- 204.5 Debtor's failure to respond.
- 204.6 Agency review.
- 204.7 Hearing.
- 204.8 Written agreement for repayment.
- 204.9 Administrative offset procedures.
- 204.10 Civil and Foreign Service Retirement Fund.
- 204.11 Jeopardy procedure.
- 204.12–204.29 [Reserved]
- * * *

Subpart C—Tax Refund Offset

- 204.50 Purpose.
- 204.51 Past-due legally enforceable debt.
- 204.52 Notification of intent to collect.
- 204.53 Reasonable attempt to notify.
- 204.54 Commission action as a result of consideration of evidence submitted in response to the notice of intent.
- 204.55 Change in notification to Internal Revenue Service.
- 204.56 Administrative charges.
- 204.57–204.74 [Reserved]

Subpart D—Miscellaneous: Credit Bureau Reporting, Collection Services

- 204.75 Collection services.
- 204.76 Use of credit bureau or consumer reporting agencies.
- 204.77 Referrals to collection agencies.

Subpart A—Administrative Offset

Authority: 31 U.S.C. 3716, 4 CFR 102.

§ 204.1 Applicability and scope.

(a) The procedures authorized for administrative offset are contained in Section 10 of the Debt Collection Act (codified at 31 U.S.C. 3716). The Act requires that notice procedures be observed by the agency. The debtor is also afforded an opportunity to inspect and copy government records pertaining to the claim, enter into an agreement for repayment, and to a review of the claim (if requested). Like salary offset, agencies may cooperate with one another in order to effectuate recovery of the claim.

(b) The provisions of this subpart apply to the collection of debts owed to the United States arising from transactions with the Securities and Exchange Commission (Commission). Administrative offset is authorized under Section 5 of the Federal Claims Collection Act of 1966, as amended by the Debt Collection Act of 1982 (31 U.S.C. 3716). These regulations are consistent with the Federal Claims Collection Standards on administrative offset issued jointly by the Department of Justice and the General Accounting Office (4 CFR part 102).

§ 204.2 Definitions.

(a) *Administrative offset* as defined in 31 U.S.C. 3701(a)(1) means withholding money payable by the United States Government to, or held by the Government for, a person to satisfy a debt the person owes the Government.

(b) *Person* includes a natural person or persons, profit or nonprofit corporation, partnership, association, trust, estate, consortium, or other entity which is capable of owing a debt to the United States Government except that agencies of the United States, or of any State or local government shall be excluded.

§ 204.3 General.

(a) The Chairperson of the Commission (or designee) will determine the feasibility of collection by administrative offset on a case-by-case basis for each claim established. The Chairperson (or designee) will consider the following issues in making a determination to collect a claim by administrative offset:

- (1) Can administrative offset be accomplished?
- (2) Is administrative offset practical and legal?
- (3) Does administrative offset best serve and protect the interest of the U.S. Government?
- (4) Is administrative offset appropriate given the debtor's financial condition?

(b) The Chairperson (or designee) may initiate administrative offset with regard to debts owed by a person to another agency of the United States Government, upon receipt of a request from the head of another agency or his or her designee, and a certification that the debt exists and that the person has been afforded the necessary due process rights.

(c) The Chairperson (or designee) may request another agency which holds funds payable to a Commission debtor to offset that debt against the funds held and will provide certification that:

- (1) The debt exists; and
 - (2) The person has been afforded the necessary due process rights.
- (d) No collection by administrative offset shall be made on any debt that has been outstanding for more than 10 years unless facts material to the Government's right to collect the debt were not known, and reasonably could not have been known, by the official or officials responsible for discovering the debt.

(e) Administrative offset under this subpart may not be initiated against:

- (1) A debt in which administrative offset of the type of debt involved is explicitly provided for or prohibited by another statute;
- (2) Debts owed by other agencies of the United States or by any State or local Government; or
- (3) Debts arising under the Internal Revenue Code of 1954; the Social Security Act; or the tariff laws of the United States.

(f) The procedures for administrative offset in this subpart do not apply to the offset of Federal salaries under 5 U.S.C. 5514.

§ 204.4 Demand for payment—notice.

(a) Whenever possible, the Commission will seek written consent from the debtor to initiate immediate collection before starting the formal notification process.

⁸ 31 U.S.C. 3720A(b)(2).

⁹ 5 U.S.C. 553(b)(3)(A).

(b) In cases where written agreement to collect cannot be obtained from the debtor, a formal notification process shall be followed, (4 CFR 102.2). Prior to collecting a claim by administrative offset, the Commission shall send to the debtor, by certified or registered mail with return receipt, a written demand for payment in terms which inform the debtor of the consequences of failure to cooperate. A total of three progressively stronger written demands at not more than 30 day intervals will normally be made unless a response to the first or second demand indicates that a further demand would be futile or the debtor's response does not require rebuttal, or other pertinent information indicates that additional written demands would be unnecessary. In determining the timing of the demand letters, the Commission should give due regard to the need to act promptly so that, as a general rule, if necessary to refer the debt to the Department of Justice for litigation, such referral can be made within one year of the final determination of the fact and the amount of the debt. When appropriate to protect the Government's interests (for example, to prevent the statute of limitations from expiring), written demand may be preceded by other appropriate actions, including immediate referral for litigation.

(c) Before offset is made, a written notice will be sent to the debtor. This notice will include:

- (1) The nature and amount of the debt;
- (2) The date when payment is due (not less than thirty days from the date of mailing or hand delivery of the notice);
- (3) The agency's intention to collect the debt by administrative offset, including asking the assistance of other Federal agencies to help in the offset whenever possible, if the debtor has not made payment by the payment due date or has not made an arrangement for payment by the payment due date;
- (4) Any provision for interest, late payment penalties and administrative charges, if payment is not received by the due date;
- (5) The possible reporting of the claim to consumer reporting agencies and the possibility that the Commission will forward the claim to a collection agency;
- (6) The right of the debtor to inspect and copy the Commission's records related to the claim;
- (7) The right of the debtor to request a review of the determination of indebtedness and, in the circumstances described below, to request an oral hearing from the Commission's designee;

(8) The right of the debtor to enter into a written agreement with the agency to repay the debt in some other way; and

(9) In appropriate cases, the right of the debtor to request a waiver.

(d) Claims for payment of travel advances and employee training expenses require notification prior to administrative offset as described in this section. Because no oral hearing is required, notice of the right to a hearing need not be included in the notification.

§ 204.5 Debtor's failure to respond.

If the debtor fails to respond to the notice described in § 204.4 (c) by the proposed effective date specified in the notice, the Commission may take further action under this section or under the Federal Claims Collection Standards (4 CFR parts 101 through 105). The Commission may collect by administrative offset if the debtor:

- (a) Has not made payment by the payment due date;
- (b) Has not requested a review of the claim within the agency as set out in § 204.6; or
- (c) Has not made an arrangement for payment by the payment due date.

§ 204.6 Agency review.

(a) A debtor may dispute the existence of the debt, the amount of the debt, or the terms of repayment. A request to review a disputed debt must be submitted to the Commission official who provided notification within 30 calendar days of the receipt of the written notice described in § 204.4(c).

(b) The Commission will provide a copy of the record to the debtor and advise him/her to furnish available evidence to support his or her position. Upon receipt of the evidence, the written record of indebtedness will be reviewed and the debtor will be informed of the results of that review.

(c) Pending the resolution of a dispute by the debtor, transactions in any of the debtor's accounts maintained by the Commission may be temporarily suspended. Depending on the type of transaction, the suspension could preclude its payment, removal, or transfer, as well as prevent the payment of interest or discount due thereon. Should the dispute be resolved in the debtor's favor, the suspension will be immediately lifted.

(d) During the review period, interest, penalties, and administrative costs authorized under the Federal Claims Collection Act of 1966, as amended, will continue to accrue.

§ 204.7 Hearing.

(a) A debtor will be provided a reasonable opportunity for an oral

hearing by the Commission's designee when:

(1) (i) By statute, consideration must be given to a request to waive the indebtedness;

(ii) The debtor requests waiver of the indebtedness; and

(iii) The waiver determination rests on an issue of creditability or veracity; or

(2) The debtor requests reconsideration and the Commission's designee determines that the question of indebtedness cannot be resolved by reviewing the documentary evidence.

(b) In cases where an oral hearing is provided to the debtor, the Commission's designee will conduct the hearing, and provide the debtor with a written decision 30 days after the hearing.

§ 204.8 Written agreement for repayment.

If the debtor requests a repayment agreement in place of offset, the Commission has discretion and should use sound judgment to determine whether to accept a repayment agreement in place of offset. If the debt is delinquent and the debtor has not disputed its existence or amount, the Commission will not accept a repayment agreement in place of offset unless the debtor is able to establish that offset would cause undue financial hardship or be unjust. No repayment arrangement will be considered unless the debtor submits a financial statement, executed under penalty of perjury, reflecting the debtor's assets, liabilities, income, and expenses. The financial statement must be submitted within ten business days of the Commission's request for the statement. At the Commission's option, a confession-judgment note or bond of indemnity with surety may be required for installment agreements.

Notwithstanding the provisions of this section, any reduction or compromise of a claim will be governed by 4 CFR part 103 and 31 CFR 5.3.

§ 204.9 Administrative offset procedures.

(a) If the debtor does not exercise the right to request a review within the time specified in § 204.4, or if as a result of the review, it is determined that the debt is due and no written agreement is executed, then administrative offset shall be ordered in accordance with this subpart without further notice.

(b) *Travel advance.* The Commission will deduct outstanding advances provided to Commission travelers from other amounts owed the traveler by the agency whenever possible and practicable. Monies owed by an employee for outstanding travel

advances that cannot be deducted from other travel amounts due that employee will be collected through salary offset as described in subpart B of this part.

(c) *Requests for offset to other Federal agencies.* The Chairperson (or his or her designee) may request that a debt owed to the Commission be administratively offset against funds due and payable to a debtor by another Federal agency. In requesting administrative offset, the Commission, as creditor, will certify in writing to the Federal agency holding funds of the debtor:

- (1) That the debtor owes the debt;
- (2) The amount and basis of the debt; and
- (3) That the Commission has complied with the requirements of 31 U.S.C. 3716, its own administrative offset regulations and the applicable provisions of 4 CFR part 102 with respect to providing the debtor with due process.

(d) *Requests for offset from other Federal agencies.* Any Federal agency may request that funds due and payable to its debtor by the Commission be administratively offset in order to collect a debt owed to such Federal agency by the debtor. The Commission shall initiate the requested offset only upon:

- (1) Receipt of written certification from the creditor agency:
 - (i) That the debtor owes the debt;
 - (ii) The amount and basis of the debt;
 - (iii) That the agency has prescribed regulations for the exercise of administrative offset; and
 - (iv) That the agency has complied with its own administrative offset regulations and with the applicable provisions of 4 CFR part 102, including providing any required hearing or review.

(2) A determination by the Commission that collection by offset against funds payable by the Commission would be in the best interest of the United States as determined by the facts and circumstances of the particular case, and that such offset would not otherwise be contrary to law.

§ 204.10 Civil and Foreign Service Retirement Fund.

(a) Unless otherwise prohibited by law, the Commission may request that monies due and payable to a debtor from the Civil Service Retirement and Disability Fund, the Foreign Service Retirement Fund or any other Federal retirement fund be administratively offset in reasonable amounts in order to collect in one full payment or a minimal number of payments, debts owed the United States by the debtor. Such

requests shall be made to the appropriate officials of the respective fund servicing agency in accordance with such regulations as may be prescribed by the Chairperson of that agency. The requests for administrative offset will certify in writing the following:

- (1) The debtor owes the United States a debt and the amount of the debt;
- (2) The Commission has complied with applicable regulations and procedures; and
- (3) The Commission has followed the requirements of the Federal Claims Collection Standards as described in this subpart.

(b) Once the Commission decides to request offset under paragraph (a) of this section, it will make the request as soon as practical after completion of the applicable procedures in order that the fund servicing agency may identify and flag the debtor's account in anticipation of the time when the debtor requests or becomes eligible to receive payments from the fund. This will satisfy any requirements that offset be initiated prior to expiration of the statute of limitations.

(c) If the Commission collects part or all of the debt by other means before deductions are made or completed pursuant to paragraph (a) of this section, the Commission shall act promptly to modify or terminate its request for offset.

(d) This section does not require or authorize the fund servicing agency to review the merits of Commission's determination relative to the debt.

§ 204.11 Jeopardy procedure.

The Commission may effect an administrative offset against a payment to be made to the debtor prior to the completion of the procedures required by § 204.4(c) if failure to take the offset would substantially jeopardize the Commission's ability to collect the debt, and the time available before the payment is to be made does not reasonably permit the completion of those procedures. Such prior offset shall be promptly followed by the completion of those procedures. Amounts recovered by offset but later found not to be owed to the Commission shall be promptly refunded.

§ 204.12-204.29 [Reserved]

Subpart C—Tax Refund Offset

Authority: 5 U.S.C. 8347(a) and 8461(g), 31 U.S.C. 3720A.

§ 204.50 Purpose.

This subpart establishes procedures for the Commission to refer past-due legally enforceable debts to the Internal Revenue Service (IRS) for offset against the income tax refunds of an individual, sole proprietorship, partnership, corporation, nonprofit organization or any other form of business association, (31 U.S.C. 3720A(4)) owing debts to the Commission. In the case of refunds of business associations, this section applies only to refunds payable on or after January 1, 1995 (31 U.S.C. 3720A(5)). It specifies the agency procedures and the rights of the debtor applicable to claims referred under the Federal Tax Refund Offset Program for the collection of debts owed to the Commission.

§ 204.51 Past-due legally enforceable debt.

A past-due legally enforceable debt for referral to the IRS is a debt that:

- (a) Resulted from:
 - (1) Erroneous payments made under the Civil Service Retirement or the Federal Employees' Retirement Systems; or
 - (2) Unpaid health or life insurance premiums due under the Federal Employees' Health Benefits or Federal Employees' Group Life Insurance Programs; or
 - (3) Any other statute administered by the Commission;
- (b) Is an obligation of a debtor;
- (c) Except in the case of a judgment debt, has been delinquent at least three months but not more than ten years at the time the offset is made;
- (d) Is at least \$25.00;
- (e) With respect to which the individual's rights described in the collection of debts owed to the Civil Service Retirement and Disability Fund (5 CFR 831.1301 through 831.1309) have been exhausted;

(f) With respect to which either:

- (1) The Commission's records do not contain evidence that the person owing the debt (or his or her spouse) has filed for bankruptcy under title 11 of the United States Code; or

(2) The Commission can clearly establish at the time of the referral that the automatic stay under 11 U.S.C. 362 has been lifted or is no longer in effect with respect to the person owing the debt or his or her spouse, and the debt was not discharged in the bankruptcy proceeding;

(g) Cannot currently be collected under the salary offset provisions of 5 U.S.C. 5514(a)(1);

(h) Is not eligible for administrative offset under 31 U.S.C. 3716(a) because of 31 U.S.C. 3716(c)(2), or cannot currently be collected as an

administrative offset by the Commission under 31 U.S.C. 3716(a) against amounts payable to the debtor by the Commission; and

(i) Has been disclosed by the Commission to a consumer reporting agency as authorized by 31 U.S.C. 3711(f), unless the consumer reporting agency would be prohibited from reporting information concerning the debt by reason of 15 U.S.C. 1681c, or unless the amount of the debt does not exceed \$100.

§ 204.52 Notification of Intent to collect.

(a) *Notification before submission to the IRS.* A request for reduction of an IRS income tax refund will be made only after the Commission makes a determination that an amount is owed and past-due and gives or makes a reasonable attempt to give the debtor 60 days written notice of the intent to collect by IRS tax refund offset.

(b) *Contents of notice.* The Commission's notice of intent to collect by IRS tax refund offset (Notice of Intent) will state:

(1) The amount of the debt;
(2) That unless the debt is repaid within 60 days from the date of the Commission's Notice of Intent, the Commission intends to collect the debt by requesting the IRS to reduce any amounts payable to the debtor as a Federal income tax refund by an amount equal to the amount of the debt and all accumulated interest and other charges;

(3) A mailing address for forwarding any written correspondence and a contact name and a telephone number for any questions; and

(4) That the debtor may present evidence to the Commission that all or part of the debt is not past due or legally enforceable by:

(i) Sending a written request for a review of the evidence to the address provided in the notice;

(ii) Stating in the request the amount disputed and the reasons why the debtor believes that the debt is not past due or is not legally enforceable; and

(iii) Including in the request any documents that the debtor wishes to be considered or stating that the additional information will be submitted within the remainder of the 60-day period.

§ 204.53 Reasonable attempt to notify.

In order to constitute a reasonable attempt to notify the debtor, the Commission must have used a mailing address for the debtor obtained from the IRS pursuant to 26 U.S.C. 6103(m)(2) within a period of one year preceding the attempt to notify the debtor, unless the Commission received clear and concise notification from the debtor that

notices from the agency are to be sent to an address different from the address obtained from IRS. Clear and concise notice means that the debtor has provided the agency with written notification, including the debtor's name and identifying number (as defined in 26 CFR 301.6109-1), and the debtor's intent to have the agency notices sent to the new address.

§ 204.54 Commission action as a result of consideration of evidence submitted in response to the notice of intent.

(a) *Consideration of evidence.* If, as a result of the Notice of Intent, the Commission receives notice that the debtor will submit additional evidence or receives additional evidence from the debtor within the prescribed time period, any notice to the IRS will be stayed until the Commission can:

(1) Consider the evidence presented by the debtor; and

(2) Determine whether or not all or a portion of the debt is still past due and legally enforceable; and

(3) Notify the debtor of its determination.

(b) *Notification to the debtor.*

Following review of the evidence, the Commission's designee will issue a written decision notifying the debtor whether the Commission has sustained, amended, or canceled its determination that the debt is past-due and legally enforceable. The notice will advise the debtor of any further action to be taken and explain the supporting rationale for the decision.

(c) *Commission action on the debt.*

(1) The Commission will notify the debtor of its intent to refer the debt to the IRS for offset against the debtor's Federal income tax refund if it sustains its decision that the debt is past-due and legally enforceable. The Commission will also notify the debtor whether the amount of the debt remains the same or is modified; and

(2) The Commission will not refer the debt to the IRS for offset against the debtor's Federal income tax refund if it reverses its decision that the debt is past due and legally enforceable.

§ 204.55 Change in notification to Internal Revenue Service.

(a) Except as noted in paragraph (b) of this section, after the Commission sends the IRS notification of an individual's liability for a debt, the Commission will promptly notify the IRS of any change in the notification, if the Commission:

(1) Determines that an error has been made with respect to the information contained in the notification;

(2) Receives a payment or credits a payment to the account of the debtor

named in the notification that reduces the amount of the debt referred to the IRS for offset; or

(3) Receives notification that the individual owing the debt has filed for bankruptcy under Title 11 of the United States Code or has been adjudicated bankrupt and the debt has been discharged.

(b) The Commission will not notify the IRS to increase the amount of a debt owed by a debtor named in the Commission's original notification to the IRS.

(c) If the amount of a debt is reduced after referral by the Commission and offset by the IRS, the Commission will refund to the debtor any excess amount and will promptly notify the IRS of any refund made by the Commission.

§ 204.56 Administrative charges.

All administrative charges incurred in connection with the referral of the debts to the IRS will be assessed on the debt and thus increase the amount of the offset.

§ 204.57-204.74 [Reserved]

Subpart D—Miscellaneous: Credit Bureau Reporting, Collection Services

Authority: 31 U.S.C. 3701, 3711, 3718.

§ 204.75 Collection services.

Section 13 of the Debt Collection Act (31 U.S.C. 3718) authorizes agencies to enter into contracts for collection services to recover debts owed the United States. The Act requires that certain provisions be contained in such contracts, including:

(a) The agency retains the authority to resolve a dispute, including the authority to terminate a collection action or refer the matter to the Attorney General for civil remedies; and

(b) The contractor is subject to the Privacy Act of 1974, as it applies to private contractors, as well as subject to State and Federal laws governing debt collection practices.

§ 204.76 Use of credit bureau or consumer reporting agencies.

(a) The Commission may report delinquent debts to consumer reporting agencies (See 31 U.S.C. 3701(a)(3), 3711). Sixty days prior to release of information to a consumer reporting agency, the debtor shall be notified, in writing, of the intent to disclose the existence of the debt to a consumer reporting agency. Such notice of intent may be a separate correspondence or included in correspondence demanding direct payment. The notice shall be in conformance with 31 U.S.C. 3711(f) and the Federal Claims Collection

Standards. The Commission shall provide, in this notice, the debtor with:

(1) An opportunity to inspect and copy agency records pertaining to the debt;

(2) An opportunity for an administrative review of the legal enforceability or past due status of the debt;

(3) An opportunity to enter into a repayment agreement on terms satisfactory to the Commission to prevent the Commission from reporting the debt as overdue to consumer reporting agencies, and provide deadlines and method for requesting this relief;

(4) An explanation of the rate of interest that will accrue on the debt, that all costs incurred to collect the debt will be charged to the debtor, the authority for assessing these costs, and the manner in which the Commission will calculate the amount of these cost;

(5) An explanation that the Commission will report the debt to the consumer reporting agencies to the detriment of the debtor's credit rating; and

(6) A description of the collection actions that the agency may take in the future if those presently proposed actions do not result in repayment of the loan obligation, including the filing of a lawsuit against the borrower by the agency and assignment of the debt for collection by offset against Federal income tax refunds or the filing of a lawsuit against the debtor by the Federal Government.

(b) The information that may be disclosed to the consumer reporting agency is limited to:

(1) The debtor's name, address, social security number or taxpayer identification number, and any other information necessary to establish the identity of the individual;

(2) The amount, status, and history of the claim; and

(3) The Commission program or activity under which the claim arose.

§ 204.77 Referrals to collection agencies.

(a) The Commission has authority to contract for collection services to recover delinquent debts in accordance with 31 U.S.C. 3718(c) and the Federal Claims Collection Standards (4 CFR 102.6).

(b) The Commission will use private collection agencies where it determines that their use is in the best interest of the Government. Where the Commission determines that there is a need to contract for collection services, the contract will provide that:

(1) The authority to resolve disputes, compromise claims, suspend or

terminate collection action, or refer the matter to the Department of Justice for litigation or to take any other action under this Part will be retained by the Commission;

(2) Contractors are subject to the Privacy Act of 1974, as amended, to the extent specified in 5 U.S.C. 552a(m) and to applicable Federal and State laws and regulations pertaining to debt collection practices, such as the Fair Debt Collection Practices Act, 15 U.S.C. 1692;

(3) The contractor is required to strictly account for all amounts collected;

(4) The contractor must agree that uncollectible accounts shall be returned with appropriate documentation to enable Commission to determine whether to pursue collection through litigation or to terminate collection; and

(5) The contractor must agree to provide any data in its files relating to paragraphs (a) (1), (2) and (3) of Section 105.2 of the Federal Claims Collection Standards upon returning the account to the Commission for subsequent referral to the Department of Justice for litigation.

(c) The Commission will not use a collection agency to collect a debt owed by a current employed or retired Federal employee, if collection by salary or annuity offset is available.

By the Commission.

Dated: December 3, 1993.

Jonathan G. Katz

Secretary.

[FR Doc. 93-29973 Filed 12-3-93; 4:19 pm]

BILLING CODE 8010-01-P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Parts 500 and 625

[FHWA/FTA Docket No. 92-14]

RIN 2125-AC97

Federal Transit Administration

49 CFR Part 614

RIN 2132-AA47

Management and Monitoring Systems

AGENCIES: Federal Highway Administration (FHWA), Federal Transit Administration (FTA), DOT.

ACTION: Correction to interim final rule.

SUMMARY: This document adds the caption ADDRESSES to the preamble of the interim final rule on Management and Monitoring Systems which was published Wednesday, December 1, 1993 (58 FR 63442), FR Doc. 93-29096.

DATES: Comments on this interim final rule must be received on or before January 31, 1994.

FOR FURTHER INFORMATION CONTACT: For information on the general provisions, Mr. Tony Solury, 202-366-5003. For information on a specific system: Highway pavement—Mr. Frank Botelho, 202-366-1336; Bridges—Mr. Dan O'Connor, 202-366-1567; Highway safety—Mr. Fred Small, 202-366-2171; Traffic congestion—Mr. Sheldon Edner, 202-366-4066; Public transportation facilities and equipment—Mr. Sean Libberton, 202-366-0055; Intermodal transportation facilities and systems—Mr. Dane Ismart, 202-366-4071; Traffic monitoring—Mr. Ed Kashuba, 202-366-0175. Mr. Wilbert Baccus, FHWA Office of the Chief Counsel, 202-366-0780. Office hours are 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except legal Federal holidays.

In FR Doc. 93-29096, published on Wednesday, December 1, 1993 (58 FR 63442), after the caption for DATES add the caption for ADDRESSES to read as follows:

ADDRESSES: Submit written, signed comments to FHWA/FTA Docket No. 92-14, Federal Highway Administration, HCC-10, room 4232, 400 Seventh Street, SW., Washington, DC 20590. All comments will be available for examination at the above address between 8:30 a.m. and 3:30 p.m., e.t., Monday through Friday, except legal Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard.

(23 U.S.C. 315; 49 CFR 1.46)

Issued on: December 1, 1993.

Theodore A. McConnell,
Chief Counsel.

[FR Doc. 93-29816 Filed 12-6-93; 8:45 am]

BILLING CODE 4910-22-P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 936

Oklahoma Permanent Regulatory Program

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

ACTION: Final Rule; Approval of Amendment.

SUMMARY: OSM is approving, with exceptions and additional requirements, an amendment to the Oklahoma