



[Billing Code: 4710-37]

DEPARTMENT OF STATE

22 CFR Part 34

[Public Notice: 8771]

RIN: 1400-AD60

Debt Collection

AGENCY: Department of State.

ACTION: Final rule.

SUMMARY: The Department of State (hereinafter, “State” or “the Department”) is amending its debt collection regulations to permit debt notices to be sent by electronic mail to certain debtors and to reflect a change in federal law, which authorizes the offset of Federal non-tax payments to collect delinquent federal debt without regard to the amount of time the debt has been delinquent.

DATES: This rule will become effective on **[Insert date of publication in the *Federal Register*]**.

FOR FURTHER INFORMATION CONTACT: Elizabeth Amory, Office of the Legal Adviser, United States Department of State (843)746-0558, AmoryEA@state.gov.

SUPPLEMENTARY INFORMATION:

I. Background

This rule amends State's debt collection regulations found at 22 CFR part 34 to permit debt notices to be sent by electronic mail and to reflect the 2008 amendment to 31 U.S.C. 3716(e), which authorizes the offset of Federal non-tax payments to collect delinquent federal debt without regard to the amount of time the debt has been delinquent.

State's regulations at 22 CFR 34.8(a) and 34.13 currently require that debt collection notices be hand-delivered or sent by first class mail. In some situations, sending debt notices by email is a more effective and efficient means of ensuring actual receipt of the notice by the debtor in a timely manner. For example, for a debtor who is a current State employee and, therefore, has been assigned a State email account, the delivery of a notification via that email account will allow the debtor to receive the notice more quickly, reliably, and conveniently than if it were sent by first class mail. This is especially true for employees serving overseas for whom it takes longer to receive first class mail.

With modernization of State's information systems, State is able to verify the delivery of notices sent to its own email addresses, rather than first class mail. Notice by email may also be a more effective and efficient means of notifying a debtor who is a State contractor or a vendor who uses email regularly to communicate with State (e.g., when submitting invoices). In these situations, it is

in the interest of both parties for State to have the ability to utilize email for purposes of debt collection notification.

22 CFR 34.10(7) currently refers to the ten-year limitation on the offset of Federal nontax debts in order to collect delinquent Federal debts, which was eliminated by Section 14219 of the Food, Conservation and Energy Act of 2008, Public Law 110-234. This statute amended 31 U.S.C. 3716(e) to provide that no limitation on the period within which an offset may be initiated or taken, pursuant to that section, shall be effective. This proscription is mandatory; therefore, State must amend its regulations to remove the 10-year cutoff.

Regulatory Analysis

Administrative Procedure Act: This rulemaking is exempt from the notice-and-comment provisions of the Administrative Procedure Act (APA) under the “good cause” exemption of 5 U.S.C. 553(b)(3)(B). The Department finds that, given the Congressional mandate to eliminate the limitation on the period within which an offset may be initiated or taken, notice and public comment on this rulemaking are unnecessary. Further, the rules affecting the method by which the Department provides debt collection notice to its employees relate solely to agency procedure and practice (5 U.S.C. 553(b)(3)(A)). This rule is effective upon publication, pursuant to 5 U.S.C. 553(d)(3).

Regulatory Flexibility Act: The Department, in accordance with the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), has reviewed this regulation and, by approving it, certifies that this final rule will not have a significant economic impact on a substantial number of small entities.

Unfunded Mandated Reform Act of 1995: This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Act of 1996: This rule is not a major rule as defined by the Small Business Regulatory Enforcement Act of 1996 in 5 U.S.C. 804.

Executive Orders 12866 and 13563: The Department does not consider this rule to be a “significant regulatory action” under Executive Order 12866, section 3(f), Regulatory Planning and Review. In addition, the Department is exempt from Executive Order 12866 except to the extent that it is promulgating regulations in conjunction with or interrelated to a domestic agency that are significant regulatory actions. The Department has nevertheless reviewed the regulation to ensure its consistency with the regulatory philosophy and principles set forth in Executive Order 12866. This rulemaking updating the provisions of 22 CFR part 34 is part of

the Department of State's retrospective review, mandated by EO 13563. The benefit of the rulemaking is that in certain instances email notification of debt provides a more effective and efficient delivery mechanism than first class mail. This is particularly the case for the Department's global and mobile workforce. Postage costs are also eliminated by leveraging the Department's messaging system in lieu of first class mail delivery.

Executive Order 12988: The Department has reviewed this regulation in light of sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to eliminate ambiguity, minimize litigation, establish clear legal standards, and reduce burden.

Executive Orders 13132 and 12372: This regulation will not have substantial direct effects on the States, the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, the Department determines that this rule does not have sufficient federalism implications to require consultations or warrant the preparation of a federalism summary impact statement. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on federal programs and activities do not apply to this regulation.

Executive Order 13175: The Department has determined that this rulemaking will not have tribal implications, will not impose substantial direct compliance costs on Indian tribal governments, and will not pre-empt tribal law. Accordingly, the requirements of Executive Order 13175 do not apply to this rulemaking.

Paperwork Reduction Act: This rule does not impose any new or revised reporting or recordkeeping requirements subject to the Paperwork Reduction Act, 44 U.S.C. chapter 35.

List of Subjects in 22 CFR Part 34

Administrative practice and procedure, Claims, Debts, Garnishment of wages, Government employee, Hearing and appeal procedures, Pay administration, Salaries, Wages.

Accordingly, for the reasons stated in the preamble, 22 CFR part 34 is amended as follows:

PART 34 -- DEBT COLLECTION

1. The authority citation for part 34 is revised to read as follows:

AUTHORITY: 31 U.S.C. 3701-3719; 5 U.S.C. 5514; 31 CFR part 285; 31 CFR parts 900-904; 5 CFR part 550, subpart K.

2. Revise paragraph (a) of § 34.8 to read as follows:

§ 34.8 Notice and demand for payment.

(a) STATE shall promptly hand deliver, send by first class mail to the debtor's most current address in the records of STATE, or, in appropriate circumstances, send by electronic mail to the debtor's most current address in the records of STATE, at least one written notice. Written demand under this subpart may be preceded by other appropriate actions under this part and or the FCCS, including but not limited to actions taken under the procedures applicable to administrative offset, including salary offset.

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§ 34.7 [Amended]

3. Remove paragraph (a)(7) from § 34.7.

4. Revise the introductory text of § 34.13 to read as follows:

§ 34.13 Notice requirements before offset.

Except as provided in §34.16, salary offset deductions will not be made unless STATE first provides the employee with a written notice that he/she owes a debt to the Federal Government at least 30 calendar days before salary offset is to be initiated. When STATE is the creditor agency, this notice of intent to offset an employee's salary shall be hand-delivered or sent by electronic mail to the employee's STATE issued electronic mail address and will state:

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May 30, 2014
Date

Patrick F. Kennedy
Under Secretary of State
For Management

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