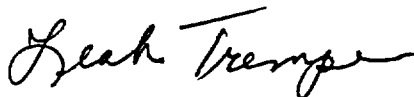


August 28, 2002

NOTE TO: Jesse Funches
Peter Rabideau
~~Charlotte Turner~~
~~Diane Dandolis~~

FROM:

Leah Tremper



SUBJECT: 10 CFR PART 16 FINAL RULE

You are requested to sign and/or concur on the attached 10 CFR Part 16 Final Rule.
This final rule has been concurred in by ADM, IG, OCIO and OGC. If you have any
questions, contact me at 415-7347.

[7590-01-P]

NUCLEAR REGULATORY COMMISSION

10 CFR Part 16

RIN 3150-AG96

Salary Offset Procedures for Collecting Debts Owed by Federal Employees
to the Federal Government

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations concerning the procedures used to collect debts that are owed to NRC by Federal employees. These amendments will conform NRC regulations to the legislative changes enacted in the Debt Collection Improvement Act of 1996 (DCIA) and the amended procedures presented in the Federal Claims Collection Standards (FCCS) issued by the Department of the Treasury (Treasury) and the Department of Justice (DOJ). The final action will allow the NRC to improve its collection of debts due the United States from Federal employees.

EFFECTIVE DATE: (Insert 30 days after publication in the Federal Register).

FOR FURTHER INFORMATION CONTACT: Leah Tremper, Office of the Chief Financial Officer, U.S. Nuclear Regulatory Commission, 11545 Rockville Pike, Rockville, MD 20852-2738, Telephone 301-415-7347.

SUPPLEMENTARY INFORMATION:

- I. Background
- II. Comments on Proposed Rule
- III. Section by Section Analysis
- IV. Voluntary Consensus Standards
- V. Finding of No Significant Environmental Impact
- VI. Paperwork Reduction Act
- VII. Regulatory Analysis
- VIII. Regulatory Flexibility Certification
- IX. Backfit Analysis

I. Background

On October 16, 1991 (56 FR 51829), the Nuclear Regulatory Commission (NRC) published a final rule concerning procedures for the collection of debts from Federal employees. Since then, the DCIA of 1996 (Pub. L. 104-134), was enacted on April 26, 1996. A major purpose of the DCIA of 1996 is to increase the collection of delinquent nontax debts owed to the Federal Government. Among other things, the DCIA of 1996 established a centralized process for withholding or reducing eligible Federal payments, including Federal salary payments, to pay the payee's delinquent debt owed to the United States. This process is known as "centralized administrative offset." The DCIA of 1996 requires Federal agencies to annually match their delinquent debtor records with records of Federal employees to identify Federal employees who owe delinquent debt to the Federal Government. The Treasury and other disbursing officials will match payments from the Federal Government, including Federal salary payments, for the purpose of offsetting the payments of those debtors who owe debt to the United States. When a match occurs and all the requirements for offset have been met, the payment will be offset to satisfy the debt in whole or part. To meet this responsibility, Treasury has established the Treasury Offset Program. Under the DCIA of 1996, Federal agencies are required to notify the Financial Management Service (FMS) of all past-due, legally enforceable

nontax debts owed to the United States that are over 180 days delinquent. The debts are included in the delinquent debtor database, and include debts owed by Federal employees that the NRC seeks to collect from the employee's pay account at another agency. Compliance with the administrative offset provisions of the DCIA of 1996 will accomplish salary offset. This rule establishes NRC's procedures for notifying Treasury of delinquent debtors for the purpose of matching NRC's debtors against the delinquent debtor database.

The FCCS (31 CFR Chapter IX and Parts 900, 901, 902, 903, and 904) were revised on November 22, 2000 (65 FR 70390). The revised FCCS clarify and simplify Federal debt collection procedures and reflect changes under the DCIA of 1996 and the General Accounting Office Act of 1996. The revised FCCS reflect legislative changes to Federal debt collection procedures enacted under the DCIA of 1996, Pub. L. 104-134, 110 Stat. 1321-358, as part of the Omnibus Consolidated Rescissions and Appropriations Act of 1996. The revised FCCS provide agencies with greater latitude to adopt agency-specific regulations, tailored to the legal and policy requirements applicable to the various types of Federal debt, to maximize the effectiveness of Federal debt collection procedures. The Secretary of the Treasury has been added as a co-promulgator of the FCCS in accordance with section 31001(g)(1)(C) of the DCIA of 1996. The Comptroller General has been removed as a co-promulgator in accordance with section 115(g) of the General Accounting Office Act of 1996, Pub. L. 104-316, 110 Stat. 3826 (October 19, 1996), (65 FR 70390 (November 22, 2000)). The Department of the Treasury and DOJ have published the revised FCCS as a joint final rule under new Chapter IX, 31 Code of Federal Regulations. The revised FCCS supersede the current FCCS codified at 4 CFR Parts 101-105.

The revised FCCS prescribe standards for Federal agency use in the administrative collection, offset, compromise, and the suspension or termination of collection activity for civil

claims for money, funds, or property, as defined by 31 U.S.C. 3701(b), unless specific Federal agency statutes or regulations apply to such activities, or as provided for by Title 11 of the United States Code when the claims involve bankruptcy. The revised FCCS also prescribe standards for referring debts to the Department of Justice for litigation.

II. Comments on Proposed Rule

On April 24, 2002 (67 FR 20059), the NRC published a proposed rule to amend its salary offset procedures to conform NRC regulations to the legislative changes enacted in the DCIA of 1996 and the revised FCCS. The comment period expired on July 8, 2002. No comments were received on the proposed rule.

III. Section by Section Analysis

Section 16.1 Purpose and Scope

This section is amended to (1) state the NRC is not limited to collection remedies contained in the revised FCCS, (2) delete the statement that these procedures do not apply to the Social Security Act, 42 U.S.C. 301 *et. seq.*, and (3) delete the reference to 4 CFR Parts 101-105 and substitute the reference to 31 CFR Chapter IX, Parts 900-904.

Section 16.3 Definitions

This section is amended to revise the definitions of "agency," "creditor agency," "debt and claim," "disposable pay," "employee," and "FCCS" to conform with the DCIA of 1996. Other definitions such as "centralized salary offset computer matching," "debt collection center,"

“delinquent debt record,” “disbursing official,” and “Treasury” have been added to conform to the definitions in the DCIA of 1996.

Section 16.7 Notice Requirements

This section is amended to state the amount of the intended deduction may be stated as a fixed dollar or a percentage of pay and delete the reference to 4 CFR 102.2(e) and substitute the reference to 31 CFR Chapter IX, 901.2(d).

Section 16.8 Information Collection Requirements: OMB Approval

This section is added to state that this part contains no information collection requirements and is not subject to the requirements of the Paperwork Reduction Act.

Section 16.9 Hearing

This section is amended to delete the reference to 4 CFR 102.3(c) and substitute the reference to 31 CFR Chapter IX, 901.3(e).

Section 16.13 Coordinating Offset With Another Federal Agency

This section is amended to change the section heading from “Coordinating offset with another Federal agency” to “Procedures for centralized administrative offset” and to include NRC’s procedures for offset.

Section 16.15 Procedures for Salary Offset.

This section is amended to change the section heading from “Procedures for Salary Offset” to “Procedures for Internal Salary Offset.”

Section 16.23 Interest, Penalties, and Administrative Charges

This section is amended to delete the reference to 4 CFR 102.13 and substitute the reference to 31 CFR Chapter IX, 901.9.

IV. Voluntary Consensus Standards

The National Technology Transfer and Advancement Act of 1995, Pub. L. 104-113, requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless using such a standard is inconsistent with applicable law or is otherwise impractical. In this final rule, the NRC is amending Part 16 to reflect the current requirements of the DCIA of 1996 and the revised FCCS. This action does not constitute the establishment of a standard that contains generally applicable requirements.

V. Finding of No Significant Environmental Impact

The Commission has determined, under the National Environmental Policy Act of 1969, as amended, and the Commission's regulations in Subpart A of 10 CFR Part 51, that this rule, if adopted, would not be a major Federal action significantly affecting the quality of the human environment and, therefore, an environmental impact statement is not required. This final rule is necessary to conform the NRC regulations to the amended procedures presented in the FCCS. Amending the procedures that the NRC uses to collect debts which are owed to it will not have any radiological environmental impact offsite and no impact on occupational radiation

exposure onsite. The rule does not affect nonradiological plant effluents and has no other environmental impact. The environmental assessment and finding of no significant impact, on which this determination is based, are available for inspection at the NRC Public Document Room, 11555 Rockville Pike, Rockville, Maryland, between 7:30 am and 4:15 pm except on Federal holidays.

VI. Paperwork Reduction Act

This final rule does not contain information collection requirements and, therefore, is not subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

VII. Regulatory Analysis

The final rule conforms NRC procedures for collecting debts owed to it with the amended procedures presented in the FCCS, the DCIA of 1996, 5 CFR Part 550 Pay Administration, and 31 CFR Part 285 Salary Offset and, as such, will not have a significant impact on state and local Governments and geographical regions; health, safety, and the environment; nor will it represent substantial costs to licensees, the NRC, or other Federal agencies. This constitutes the regulatory analysis for this final rule.

VIII. Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Commission certifies that this rule does not have a significant economic impact on a substantial number of small entities because this rule applies only to Federal agencies and employees.

IX. Backfit Analysis

The NRC has determined that the backfit rule does not apply to this final rule; therefore, a backfit analysis is not required for this final rule because these amendments are mandated by the DCIA of 1996 (Public Law 104-134, 110 Stat. 1321-358 (April 26, 1996)).

Small Business Regulatory Enforcement Fairness Act

In accordance with the Small Business Regulatory Enforcement Act of 1996, the NRC has determined that this action is not a major rule and has verified this determination with the Office of Information and Regulatory Affairs of OMB.

List of Subjects in 10 CFR Part 16

Administrative practice and procedures, debt collection, salary offset, Government employees, wages.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 552 and 553, the NRC is adopting the following amendments to 10 CFR part 16.

PART 16 -- SALARY OFFSET PROCEDURES FOR COLLECTING DEBTS OWED BY
FEDERAL EMPLOYEES TO THE FEDERAL GOVERNMENT

1. The authority citation for Part 16 is revised to read as follows:

AUTHORITY: Secs. 161, 186, 68 Stat. 948, 955, as amended (42 U.S.C. 2201, 2236); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); sec. 1, Pub. L. 97-258, 96 Stat. 972 (31 U.S.C. 3713); sec 5, Pub. L. 89-508, 80 Stat. 308, as amended (31 U.S.C. 3711, 3717, 3718); Pub. L. 97-365, 96 Stat. 1749; Federal Claims Collection Standards, 31 CFR Chapter IX, Parts 900-904; 31 U.S.C. Secs. 3701, 3716; 31 CFR Sec 285; 26 U.S.C. Sec 6402(d); 31 U.S.C. Sec. 3720A; 26 U.S.C. Sec. 6402(c); 42 U.S.C. Sec. 664; Pub. L. 104-134, as amended (31 U.S.C. 3713); 5 U.S.C. 5514; Executive Order 12988 (3 CFR, 1996 Comp., pp. 157-163); 5 CFR 550.

2. In §16.1 paragraph (b)(2) is removed, paragraphs (b)(3) and (b)(4) are redesignated as (b)(2) and (b)(3), paragraph (d) is revised, and paragraph (f) is added to read as follows:

§16.1 Purpose and scope.

* * * * *

(d) These procedures do not preclude the compromise, suspension, or termination of collection action where appropriate under the standards implementing the revised Federal Claims Collection Standards (FCCS), 31 U.S.C. 3711 *et seq.*, 31 CFR Chapter IX, Parts 900-904.

* * * * *

(f) The NRC is not limited to collection remedies contained in the revised FCCS. The FCCS is not intended to impair common law remedies.

3. In §16.3, the definition of agency, creditor agency, debt and claim, disposable pay, employee, and FCCS are revised, and the definitions of centralized salary offset computer matching, debt collection center, delinquent debt record, disbursing official, and Treasury are added in alphabetical order to read as follows:

§16.3 Definitions.

* * * * *

Agency means any agency of the executive, legislative, and judicial branches of the Federal Government, including Government corporations.

Centralized salary offset computer matching describes the computerized process used to match delinquent debt records with Federal salary payment records when the purpose of the match is to identify Federal employees who owe debt to the Federal Government.

Creditor agency means the agency to which the debt is owed, including a debt collection center when acting in behalf of a creditor agency in matters pertaining to the collection of a debt.

Debt and claim are used synonymously to refer to an amount of money, funds, or property that has been determined by an agency official to be owed to the United States from any person, organization, or entity, except another Federal agency. For the purposes of administrative offset under 31 U.S.C. 3716, the terms debt and claim include an amount of money, funds, or property owed by a person to a State (including past-due support being enforced by a State), the District of Columbia, American Samoa, Guam, the United States Virgin Islands, the Commonwealth of the Northern Mariana Islands, or the Commonwealth of Puerto Rico.

Debt collection center means the Department of the Treasury or other Government agency or division designated by the Secretary of the Treasury with authority to collect debts on behalf of creditor agencies.

Delinquent debt record refers to the information about a debt that an agency submits to Treasury when the agency refers the debt for collection by offset in accordance with the provision of 31 U.S.C. 3716.

Disbursing official means an official who has authority to disburse Federal salary payments pursuant to 31 U.S.C. 3321 or another law.

Disposable pay means that part of current basic pay, special pay, incentive pay, retired pay, retainer pay, or in the case of an employee not entitled to basic pay, other authorized pay remaining after the deduction of:

- (1) Any amount required by law to be withheld;

- (2) Amounts properly withheld for Federal, state or local income tax purposes;
- (3) Amounts deducted as health insurance premiums;
- (4) Amounts deducted as normal retirement contributions, not including amounts deducted for supplementary coverage; and
- (5) Amounts deducted as normal life insurance premiums not including amounts deducted for supplementary coverage.

Employee is any individual employed by any agency of the executive, legislative, and judicial branches of the Federal Government, including Government corporations.

FCCS means the Federal Claims Collection Standards jointly published by the Department of the Treasury and the Department of Justice at 31 CFR Chapter IX, Parts 900-904.

* * * * *

Treasury as used in 10 CFR Part 16 means the Department of the Treasury.

* * * * *

4. In §16.7, paragraphs (b)(3) and (b)(6) are revised to read as follows:

§16.7 Notice requirements.

* * * * *

(b) * * *

* * * * *

(3) The amount and frequency of the intended deduction (stated as a fixed dollar amount or as a percentage of pay, not to exceed 15 percent of disposable pay) and the intention to continue the deduction until the debt is paid in full or otherwise resolved.

* * * * *

(6) If not previously provided, the opportunity (under terms agreeable to the NRC) to establish a schedule for the voluntary repayment of the debt or to enter into a written agreement to establish a schedule for repayment of the debt in lieu of offset (31 CFR Chapter IX, Part 901.2). The agreement must be in writing, signed by the employee and the NRC, and documented in the NRC's files.

* * * * *

5. Section 16.8 is added to read as follows:

§16.8 Information collection requirements: OMB approval.

This part contains no information collection requirements, and, therefore, is not subject to the requirements of the Paperwork Reduction Act (44 U.S.C. 3501 *et. seq.*).

6. In §16.9, paragraph (b)(2) is revised to read as follows:

§16.9 Hearing.

* * * * *

(b) * * *

(2) The hearing must conform to procedures contained in the revised FCCS, 31 CFR Chapter IX, 901.3(e). The burden is on the employee to demonstrate either that the existence

or the amount of the debt is in error or that the terms of the repayment schedule would result in undue financial hardship or would be against equity and good conscience.

7. Section 16.13 is revised to read as follows:

§16.13 Procedures for centralized administrative offset.

(a) The NRC must notify Treasury of all debts that are delinquent as defined in the FCCS (over 180 days old) so that recovery may be made by centralized administrative offset. This includes those debts the NRC seeks to recover from the pay account of an employee of another agency via salary offset. The Treasury and other Federal disbursing officials will match payments, including Federal salary payments, against such debts. When a match occurs, and all the requirements for offset have been met, the payments will be offset to collect the debt. Prior to offset of the pay account of an employee, the NRC must comply with the requirements of 5 U.S.C. 5514, 5 CFR Part 550, and 10 CFR Part 15. Procedures for notifying Treasury of a debt for purposes of collection by centralized administrative offset are contained in 31 CFR Part 285 and 10 CFR 15.33. Procedures for internal salary offset are contained in §16.15 of this chapter.

(b) When the NRC determines that an employee of another Federal agency owes a delinquent debt to the NRC, the NRC will, as appropriate:

(1) Arrange for a hearing upon the proper petitioning by the employee;

(2) Provide the Federal employee with a notice and an opportunity to dispute the debt as contained in 5 U.S.C. 5514 and 10 CFR 15.26.

(3) Submit the debt to Treasury for centralized administrative offset and certify in writing that the debtor has been afforded the legally required due process notification.

(4) If collection must be made in installments, the NRC must advise the paying agency of the amount or percentage of disposable pay to be collected in each installment.

(c) Offset amount. (1) The amount offset from a salary payment under this section shall be the lesser of:

- (i) The amount of the debt, including any interest, penalties, and administrative costs; or
- (ii) An amount up to 15 percent of the debtor's disposable pay.

(2) Alternatively, the amount offset may be an amount agreed upon, in writing, by the debtor and the NRC.

(3) Offsets will continue until the debt, including any interest, penalties, and administrative costs, is paid in full or otherwise resolved to the satisfaction of the NRC.

(d) Priorities. (1) A levy pursuant to the Internal Revenue Code of 1986 shall take precedence over other deductions under this section.

(2) When a salary payment may be reduced to collect more than one debt, amounts offset under this section will be applied to a debt only after amounts offset have been applied to satisfy past due child support debt assigned to a State pursuant 26 U.S.C. 6402(c) and 31 CFR 285.7(h)(2).

(e) Notice. (1) Before offsetting a salary payment, the disbursing official, or the paying agency on behalf of the disbursing official, shall notify the Federal employee in writing of the date that deductions from salary will commence and of the amount of such deductions.

(2)(i) When an offset occurs under this section, the disbursing official, or the paying agency on behalf of the disbursing official, shall notify the Federal employee in writing that an offset has occurred including:

- (A) A description of the payment and the amount of the offset taken;
- (B) Identification of NRC as the agency requesting the offset; and,

(C) A contact point within the NRC that will handle concerns regarding the offset.

(ii) The information described in paragraphs (e)(2)(i)(B) and (e)(2)(i)(C) of this section does not need to be provided to the Federal employee when the offset occurs if such information was included in a prior notice from the disbursing official or paying agency.

(3) The disbursing official will advise the NRC of the names, mailing addresses, and taxpayer identifying numbers of the debtors from whom amounts of past-due, legally enforceable debt were collected and of the amounts collected from each debtor. The disbursing official will not advise the NRC of the source of payment from which such amounts were collected.

(f) Fees. Agencies that perform centralized salary offset computer matching services may charge a fee sufficient to cover the full cost of such services. In addition, Treasury or a paying agency acting on behalf of Treasury, may charge a fee sufficient to cover the full cost of implementing the administrative offset program. Treasury may deduct the fees from amounts collected by offset or may bill the NRC. Fees charged for offset shall be based on actual administrative offsets completed.

(g) Disposition of amounts collected. The disbursing official conducting the offset will transmit amounts collected for debts, less fees charged under paragraph (f) of this section, to NRC. If an erroneous offset payment is made to the NRC, the disbursing official will notify the NRC that an erroneous offset payment has been made. The disbursing official may deduct the amount of the erroneous offset payment from future amounts payable to the NRC. Alternatively, upon the disbursing official's request, the NRC shall return promptly to the disbursing official or the affected payee an amount equal to the amount of the erroneous payment (without regard to whether any other amounts payable to the agency have been paid). The disbursing official and the NRC shall adjust the debtor records appropriately.

8. Section 16.15 is amended by revising the section heading to read as follows:

§16.15 Procedures for internal salary offset.

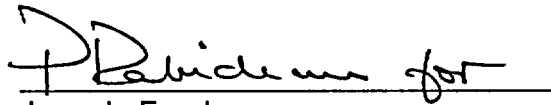
9. Section 16.23 is revised to read as follows:

§16.23 Interest, penalties, and administrative charges.

Charges may be assessed for interest, penalties, and administrative charges in accordance with the FCCS, 31 CFR Chapter IX, 901.9.

Dated at Rockville, Maryland, this 29th day of August 2002.

For the Nuclear Regulatory Commission.

A handwritten signature in black ink, appearing to read "Jesse L. Funches for", written over a horizontal line.

Jesse L. Funches,
Chief Financial Officer.

8. Section 16.15 is amended by revising the section heading to read as follows:

§16.15 Procedures for internal salary offset.

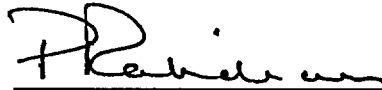
9. Section 16.23 is revised to read as follows:

§16.23 Interest, penalties, and administrative charges.

Charges may be assessed for interest, penalties, and administrative charges in accordance with the FCCS, 31 CFR Chapter IX, 901.9.

Dated at Rockville, Maryland, this 29th day of August 2002.

For the Nuclear Regulatory Commission.



Peter J. Rabideau,
Deputy Chief Financial Officer.

8. Section 16.15 is amended by revising the section heading to read as follows:

§16.15 Procedures for internal salary offset.

9. Section 16.23 is revised to read as follows:

§16.23 Interest, penalties, and administrative charges.

Charges may be assessed for interest, penalties, and administrative charges in accordance with the Revised FCCS, 31 CFR Chapter IX, 901.9.

Dated at Rockville, Maryland, this 29th day of August 2002.

For the Nuclear Regulatory Commission.

P. Rabideau (for)

Jesse L. Funches,
Chief Financial Officer.

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