



UNITED STATES
 NUCLEAR REGULATORY COMMISSION
 WASHINGTON, D. C. 20555

June 20, 1988

MEMORANDUM FOR: William G. McDonald, Director
 Office of Administration and
 Resources Management

FROM: Hudson B. Ragan
 Assistant General Counsel
 for Administration
 Office of the General Counsel

SUBJECT: PROPOSED REGULATIONS -- DEBT COLLECTION PROCEDURES

On May 27, 1988, you requested our review of a proposed rule to amend 10 CFR Part 15 of the Commission's regulations. In accordance with your request, our comments are provided below.

During the course of the review, the Director, Office of Enforcement raised the question of whether civil penalties assessed by NRC are required to be included under NRC's Part 15 debt collection procedures. The following advice was given to the Director, Office of Enforcement and members of your staff. Civil Penalties assessed by the NRC pursuant to Section 234 of the Atomic Energy Act and 10 CFR 2.205 are not required to be covered under the Part 15 debt collection procedures. See, Federal Claims Collection Act of 1966, Section 4, Pub. L. 89-508; 4 CFR § 101.4 of the Federal Claims Collection Standards. Since the NRC has a specific statutory provision and implementing regulations which are applicable to the compromise, mitigation, or termination of civil penalty claims, those authorities take precedence over the Federal Claims Collective Standards. See, 4 CFR § 101.4. However, the Federal Claims Collective Standards do govern where neither the specific statute (Section 234, of the Atomic Energy Act) nor its implementing regulations (10 CFR 2.205) govern such matters. *Id.* Consequently, civil penalties should continue to be excluded from coverage under 10 CFR Part 15, except for the purpose of assessing interest, penalties, and administrative costs under Section 15.37 since these changes are required to be assessed under the Debt Collection Act of 1982 (Pub.L. 97-365). Accordingly, based on my discussions with your staff, proposed Section 15.5 will be appropriately modified.

Based on a review of the language of the proposed rule as reflected in Enclosure A, this office has the following additional comments:

- ✓ (1) On page 2 of Enclosure A, the cite "47 FR 7616" should be changed to "47 FR 7615" and the cite "(31 U.S.C. 3701)" should be changed to read "(31 U.S.C. § 3701 et seq.)". On the third line from the bottom of the same page, the word "provision" should be changed to read "revision."

✓ (2) On page 12 of Enclosure A, Section 15.1(a) should be revised by inserting the words "in the form of money or property" after the word "Government" to make the provision consistent with 4 CFR § 101.2 of the Federal Claims Collection Standards ("Collection Standards") and 31 U.S.C. § 3711(a)(1).

open item ✓ (3) On page 12 of Enclosure A, Section 15 (b)(2) should be revised since Civil Penalties will generally not be covered by 10 CFR Part 15 except for the assessment of interest, penalty and administrative costs.

✓ (4) On page 13 of Enclosure A, the definition of "Administrative offset" under Section 15.2 should be revised since it does not reflect the definition contained in the Debt Collection Act of 1982 (See, § 10, Pub. L. 97-365 (31 U.S.C. § 3701(a)(1))).

✓ (5) The definition of "delinquent debt" under Section 15.2 tracks the definition of "delinquent" under section 4 CFR § 101.2 of the Collection Standards. Since the above "delinquent debt" is rarely, if ever, used under Part 15, the phrase "delinquent debt" under Section 15.2 should be changed to read "delinquent."

✓ (6) Under Section 15.2, the definition of "license" is broader than the definition of license as set forth in the Commission's rules of practice (See, 10 CFR § 2.4(i)). Unless the Debt Collection Act or Collection Standards provide(s) some compelling reason for such a broader definition, the definition of license should be revised by deleting "or other approval".

✓ (7) At the end of the definition of "Payment in full" under Section 15.2, the word "debt" should be changed to "debtor."

open item (8) The numbering under proposed Section 15.5(b) will have to change since civil penalties will generally not be covered by the Part 15 debt collection procedures.

✓ (9) In the heading of Subpart B, the word "Administration" should be changed to "Administrative."

comet needs to be done (10) Before the NRC can exercise the authority under Section 15.26 to disclose information concerning the debt to a consumer reporting agency, the Debt Collection Act requires that a notice under the Privacy Act indicating that information in a system of records may be disclosed to a consumer reporting agency (See, 31 U.S.C. § 3711(f)(1)). I do not believe that NRC's system of records currently provide for disclosure of debt information to consumer reporting agencies.

*See Donnie Grimsley
get the due along with amount paid*

consequently, the Regulatory Publications Branch, Division of Freedom of Information and Publications Services should be contacted to develop the appropriate modification to NRC's system of records.

✓ (11) Before disclosing information to a consumer reporting agency under Section 15.26, the Debt Collection Act requires that NRC must (1) provide the debtor, upon request, a review of the claim, including an opportunity for reconsideration of the initial decision on the claim, and (2) take reasonable action to locate a debtor for whom the NRC does not have a current address to send the notice called for under proposed Section 15.26(b), (See, 31 U.S.C. § 3711(f)(2) and (3)). These statutory requirements should be added to the proposed amendments to Part 15.

✓ (12) Under the Debt Collection Act the NRC is required to provide the debtor notice of the matters set forth in Section 15.26(b)(1), (2), (3) and (4) prior to disclosing to a consumer reporting agency that the debtor is responsible for the debt. (See, 31 U.S.C. § 3711(f)(1)). Consequently, the language of Section 15.26(b) indicating that the "NRC may include a notification . . ." of the matters in Section 15.26(b)(6) suggests that the NRC has discretion on what to include in the notification. The NRC does have discretion in choosing which written demand will include the Section 15.26(b) notification. However, if the NRC decides to disclose the matter to a consumer reporting agency, the NRC does not have discretion to determine whether the matters contained in Section 15.26(b)(1)-(4) will be included in the Section 15.26(b) notification.

(13) For proposed Section 15.33, the following comments are applicable:

✓ (a) The procedures for this section are consistent with Section 102.3 of the Federal Claims Collection Standards procedures for dealing generally with administrative offset. However, there are different procedures that govern two specific types of administrative offset. First, Section 102.4 of the Collection Standards govern offset against amounts payable from Civil Service Retirement Disability Funds. Second, 5 U.S.C. § 5514 governs offset against salary. The procedures for these two specific types of administrative offset are not covered by proposed Section 15.33. Consequently, proposed section should be appropriately revised.

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✓ (b) Since there are special procedures for salary offset, the statutory cite for those procedures (i.e. 5 U.S.C. 5514) should be inserted at the end of the first sentence of Section 15.33(a).

✓ (c) Section 15.33(a) indicates that the running of the 10 year statute of limitation on collection by administrative offset can be suspended where the "collection of fees has been deferred under other provision [sic] of this chapter." However, there does not appear to be a basis for such a suspension under the Federal Claim Collection Standards. Moreover, Part 15 does not appear to address a process for deferring collection of fees.

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✓ (d) Section 15.33(b)(2)(vi) should be modified to read:
"An opportunity for a hearing when required under the provisions of 4 CFR 102.3(c)"

✓ (e) In order to be consistent with 4 CFR § 102.3(e), Section 15.33(b)(3) should be modified to read:

"If the NRC learns that other agencies of the Federal government are holding funds payable to the debtor, the NRC shall provide the other agencies with written certification that the debt is owed to the NRC and that the NRC has complied with the provisions of 4 C.F.R. 102.3. The NRC will request that funds due the debtor"

(14) For proposed Section 15.37, the following comments apply:

✓ (a) In the third sentence of Section 15.37(d), the word "additional" should be inserted between the words "this waiver."

(b) The last sentence of Section 15.37(d) should be revised to read:

✓ "The NRC may grant such an additional waiver only when it finds merit in the explanation the debtor has submitted under § 15.31."

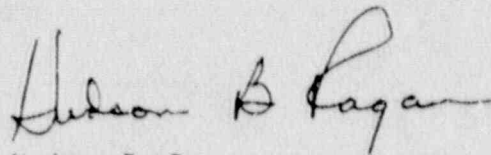
*See
new 15.37(h)*

✓ (c) 4 C.F.R. § 102.13(g) of the Federal Claims Collection Standards provides grounds under which an agency may waive interest, penalties, and/or administrative costs that are not addressed by

Section 15.37. It is not clear why those other grounds are not addressed or referenced as a basis for waiver.

- ✓ (15) Proposed Section 15.37(f) provides that the NRC "may" assess administrative costs resulting from a delinquent debt. However, Section 11 of the Debt Collection Act and 4 C.F.R. § 102.13(d) of the Federal Claims Collection Standards indicate that an agency "shall" assess such administrative costs.
- ✓ (16) For change number 21, the words "first sentence" should be substituted for "second line."
- ✓ (17) For proposed Section 15.61(d), the last sentence should be revised to read as follows:
"The NRC shall immediately notify GAO or DOJ, as appropriate, of any payments by the debtor."

Should you or your staff have any questions about these comments you may contact Donald Hassell of my staff at 492-1555.



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cc: W. Parler
J. Murray
J. Lieberman