



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

AD 44-1

OCT 26 1990

MEMORANDUM FOR: Diane B. Dandois, Chief
License Fee & Debt Collection Branch
Division of Accounting & Finance
Office of the Controller

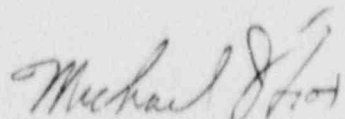
FROM: Michael J. Fox, Chief
Policy & Labor Relations
Office of Personnel

SUBJECT: SALARY OFFSET

NECENTR

NETOP

On September 7, 1990 we sent a copy of proposed rules on Salary Offset Procedures to the union for their comment. As of today we have not received any such comments, therefore, you may proceed with implementation as appropriate.


Michael J. Fox, Chief
Policy & Labor Relations
Office of Personnel

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Proposed Rules

Federal Register

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 16

RIN 3150-AD44

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

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is proposing to establish procedures to collect certain debts owed by Federal employees to the NRC and other Federal agencies by deduction(s) from their pay. This proposed rule established 10 CFR part 16 and is necessary to conform NRC regulations to the Debt Collection Act of 1982 which requires each agency to establish a salary offset program for the collection of these debts.

DATES: Submit comments by October 26, 1990. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

ADDRESSES: Send comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch.

Hand deliver comments to: 11555 Rockville Pike, One White Flint North, Rockville, Maryland, between 7:30 a.m. and 4:15 p.m., Federal workdays.

Examine comments received at: The NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC 20555.

FOR FURTHER INFORMATION CONTACT: Diane B. Dandois, Chief, License Fee and Debt Collection Branch, Division of Accounting and Finance, Office of the Controller, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 492-7225.

SUPPLEMENTARY INFORMATION: The Debt Collection Act of 1982 (Pub. L. 97-365) requires each agency to establish a salary offset program for the collection of debts owed by Federal employees to the Federal Government. Debt collection efforts under these programs resulted in the collection of \$52 million in FY 1988.

The Office of Personnel Management (OPM) regulations governing the salary offset program establish certain minimum standards and procedures that must be incorporated into each agency's salary offset regulations (5 CFR 550.1104) and require each agency to submit proposed regulations to OPM for review and approval prior to their becoming final rules (5 CFR 550.1105). The NRC has forwarded a copy of this proposed rule to OPM in order to comply with 5 CFR 550.1105.

The NRC is proposing to establish a new part in 10 CFR chapter I (part 16) that would contain the provisions necessary to meet this obligation. The proposed 10 CFR part 16 provides procedures for the NRC to collect debts owed to the Federal Government by administrative offset from a Federal employee's salary without his or her consent. This rule applies to all Federal employees who owe debts to the NRC and to current employees of the NRC who owe debts to other Federal agencies.

Concurrently with publication of 10 CFR part 16 as a final rule, the NRC intends to amend 10 CFR part 15, Debt Collection Procedures, to specify that the salary offset provisions of 10 CFR part 16 apply to the collection of certain debts owed Federal employees to the NRC and other agencies.

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 statement is not required. Amending the procedures to be used by the Commission to collect debts which are owed to it and other Federal agencies by Federal employees through salary offset will have no radiological environmental impact offsite and no impact on occupational

radiation exposure onsite. The proposed 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, 2120 L Street, (Lower Level), NW., Washington, DC.

Paperwork Reduction Act Statement

This proposed rule contains no information collection requirements and therefore is not subject to the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.).

Regulatory Analysis

This proposed rule will bring NRC procedures for collecting debts owed it and other Federal agencies by Federal employees into conformance with current statutory and regulatory guidance and requirements and, as such, does not have a significant impact on state and local governments and geographical regions, health, safety, and the environment; nor does it represent substantial costs to licensees, the NRC, or other Federal agencies. This constitutes the regulatory analysis for this proposed rule.

Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Commission certifies that this rule, if adopted, will not have a significant economic impact on a substantial number of small entities since it does not cover debts owed the NRC by small entities. As a result, a regulatory flexibility analysis has not been prepared.

Backfit Analysis

The Commission has determined that the backfit rule, 10 CFR 50.109, does not apply to this proposed rule and, therefore, that a backfit analysis is not required for this proposed rule because it does not involve any provisions which would impose backfits as defined in 10 CFR 50.109(a)(1).

List of Subjects in 10 CFR Part 16

Claims, Debt collection, Government employees, Wages.

For the reasons set out in the preamble and under authority of the Atomic Energy Act of 1954, as amended;

the Energy Reorganization Act of 1974, as amended; the Debt Collection Act of 1982, as amended; the Federal Claims Collection Act of 1908, as amended; 5 CFR 550.1101-1106, subpart K; and 5 U.S.C. 552 and 553, the NRC is proposing to adopt 10 CFR part 16.

1. A new part 16 is added to 10 CFR chapter I.

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

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- 16.13 Coordinating offset with another Federal agency.
- 16.15 Procedures for salary offset.
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- 16.19 Statute of limitations.
- 16.21 Non-waiver of rights.
- 16.23 Interest, penalties, and administrative costs.

Authority: Sec. 165, 66 Stat. 946, as amended (42 U.S.C. 2201); sec. 203, 66 Stat. 1242, as amended (42 U.S.C. 5841); sec. 3, Pub. L. 89-508, 80 Stat. 308, as amended (21 U.S.C. 3711, 3717, 3718); sec. 5, Pub. L. 89-508, 80 Stat. 308, as amended (51 U.S.C. 3726); Debt Collection Act of 1982, Pub. L. 97-385, 96 Stat. 1749-1756; Federal Claims Collection Standards, 4 CFR Parts 101-106; 5 U.S.C. 5576, as amended; 5 CFR 550.1101-550.1106.

§ 16.1 Purpose and scope.

(a) This part provides procedures for the collection by administrative offset of a Federal employee's salary without his/her consent to satisfy certain debts owed to the Federal Government. This part applies to all Federal employees who owe debts to the Nuclear Regulatory Commission (NRC) and to current employees of the NRC who owe debts to other Federal agencies. This part does not apply when the employee consents to recovery from his/her current pay account.

(b) These procedures do not apply to debts or claims arising under:

- (1) The Internal Revenue Code of 1954, as amended, 26 U.S.C. 1 et seq.;
- (2) The Social Security Act, 42 U.S.C. 301 et seq.;
- (3) The tariff laws of the United States; or
- (4) Any case where a collection of a debt by salary offset is explicitly provided for or prohibited by another statute.

(c) These procedures do not apply to any adjustment to pay arising out of an employee's selection of coverage or a change in coverage under a Federal

benefits program requiring periodic deductions from pay if the amount to be recovered was accumulated over four pay periods or less.

(d) These procedures do not preclude the compromise, suspension, or termination of collection action where appropriate under the standards implementing the Federal Claims Collection Act, 31 U.S.C. 3711 et seq., 4 CFR parts 101 through 105.

(e) This part does not preclude an employee from requesting waiver of an overpayment under 5 U.S.C. 5584, 10 U.S.C. 2774, or 32 U.S.C. 716 or in any way questioning the amount or validity of the debt by submitting a subsequent claim to the General Accounting Office. This part does not preclude an employee from requesting a waiver pursuant to other statutory provisions applicable to the particular debt being collected.

§ 16.3 Definitions.

For the purposes of this part, the following definitions apply:

Administrative charges are those amounts assessed by NRC to cover the costs of processing and handling delinquent debts due the Government.

Administrative offset 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 United States Government.

Agency means an executive agency as is defined at 5 U.S.C. 105 including the U.S. Postal Service, the U.S. Postal Rate Commission, a military department as defined at 5 U.S.C. 162, an agency or court in the judicial branch, an agency of the legislative branch including the U.S. Senate and House of Representatives and other independent establishments that are entities of the Federal Government.

Creditor agency means the agency to which a debt is owed.

Debt means an amount which has been determined by an appropriate NRC official or an appropriate official of another agency to be owed to the United States from sources which include loans insured or guaranteed by the United States and all other amounts due the United States from fees, losses, rents, royalties, services, sales of real or personal property, overpayments, penalties, damages, interests, fines, forfeitures (except those arising under the Uniform Code of Military Justice), and all other similar sources.

Disposable pay means the amount that remains from an employee's 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 after required

deductions for social security, Federal state or local income tax; health insurance premiums; retirement contributions; life insurance premiums; Federal employment taxes; and any other deductions that are required to be withheld by law. Deductions described in 5 CFR 561.105 (b) through (f) are excluded when determining disposable pay subject to salary offset.

Employee means a current employee of an agency, including a current member of the Armed Forces or a Reserve of the Armed Forces (Reserves).

FCCS means the Federal Claims Collection Standards jointly published by the Justice Department and the General Accounting Office at 4 CFR parts 101-105.

Hearing official means an individual responsible for conducting any hearing with respect to the existence or amount of a debt claimed or the repayment schedule if not established by written agreement between the employee and the NRC, and who renders a decision on the basis of such hearing.

Paying agency means the agency that employs the individual who owes the debt and authorizes the payment of his/her current pay.

Salary offset means an administrative offset to collect a debt under 5 U.S.C. 5514 by deduction(s) at one or more officially established pay intervals from the current pay account of an employee without his or her consent.

Waiver means the cancellation, remission, forgiveness, or non-recovery of a debt allegedly owed by an employee to an agency as permitted or required by 5 U.S.C. 5584, 10 U.S.C. 2774, 32 U.S.C. 716, 5 U.S.C. 8346(b), or any other law.

§ 16.5 Application.

The regulations in this part are to be followed when:

- (a) The NRC is owed a debt by an individual currently employed by another Federal agency;
- (b) The NRC is owed a debt by an individual who is a current employee of the NRC; or
- (c) The NRC employs an individual who owes a debt to another Federal agency.

§ 16.7 Notice requirements.

(a) If the NRC is the creditor agency, deductions will not be made unless the NRC provides the employee with a signed written notice of the debt at least 30 days before salary offset commences. The notice will be delivered in person or by certified or registered mail, return receipt requested, with receipt returned as proof of delivery.

(b) The written notice must contain:

(1) A statement that the debt is owed and an explanation of its origin, nature, and amount;

(2) The NRC's intention to collect the debt by deducting from the employee's current disposable pay account;

(3) The amount, frequency, proposed beginning date, and duration of the intended deduction(s);

(4) An explanation of interest, penalties, and administrative charges, including a statement that these charges will be assessed unless excused in accordance with the Federal Claims Collection Standards at 4 CFR part 101-105;

(5) The employee's right to inspect and copy government records pertaining to the debt or, if the employee or his or her representative cannot personally inspect the records, to request and receive a copy of these records;

(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 (4 CFR 102.2(e)). The agreement must be in writing, signed by both the employee and the NRC, and documented in the NRC's files;

(7) The employee's right to a hearing conducted by an official arranged for by the NRC (an administrative law judge, or alternatively, a hearing official not under the control of the head of the agency) if a petition is filed as prescribed in § 16.9;

(8) The methods and time period for petitioning for hearings;

(9) A statement that the timely filing of a petition for a hearing will stay the commencement of collection proceedings;

(10) A statement that a final decision on the hearing will be issued not later than 60 days after the filing of the petition requesting the hearing unless the employee requests and the hearing official grants a delay in the proceedings;

(11) A statement that knowingly false or frivolous statements, representations, or evidence may subject the employee to appropriate disciplinary procedures under chapter 75 of title 5, United States Code and 5 CFR part 752, penalties under the False Claims Act, sections 3729-3731 of title 31, United States Code or other applicable statutory authority, or criminal penalties under sections 286, 287, 1001 and 1002 of title 18, United States Code or any other applicable statutory authority;

(12) A statement of other rights and remedies available to the employee

under statutes or regulations governing the program for which the collection is being made; and

(13) Unless there are contractual or statutory provisions to the contrary, a statement that amounts paid on or deducted for the debt which are later waived or found not owed to the United States will be promptly refunded to the employee.

§ 16.9 Hearing.

(a) *Request for hearing.* (1) An employee shall file a petition for a hearing in accordance with the instruction outlined in the creditor agency's notice of offset.

(2) If the NRC is the creditor agency, a hearing may be requested by filing a written petition addressed to the Controller stating why the employee disputes the existence or amount of the debt or the repayment schedule if it was established by written agreement between the employee and the NRC. The employee shall sign the petition and fully identify and explain with reasonable specificity all the facts, evidence, and witnesses, if any, which the employee believes support his or her position. The petition for a hearing must be received by the Controller no later than fifteen (15) calendar days after receipt of the notice of offset unless the employee can show that the delay in meeting the deadline date was because of circumstances beyond his or her control or because of failure to receive notice of the time limit (unless otherwise aware of it).

(b) *Hearing procedures.* (1) The hearing will be presided over by a hearing official arranged by NRC (an administrative law judge or, alternatively, a hearing official not under the supervision or control of the head of the agency.)

(2) The hearing must conform to procedures contained in the Federal Claims Collection Standards 4 CFR 102.3(c). 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.

(3) An employee is entitled to representation of his or her choice at any stage of the proceeding. NRC attorneys may not be provided as representatives for the debtor. The NRC will not compensate the debtor for representation expenses, including hourly fees for attorneys, travel expenses, and costs for reproducing documents.

§ 16.11 Written decision.

(a) The hearing official will issue a written opinion no later than 60 days after the hearing.

(b) The written opinion must include:

(1) A statement of the facts presented to demonstrate the nature and origin of the alleged debt;

(2) The hearing official's analysis, findings, and conclusions;

(3) The amount and validity of the debt; and

(4) The repayment schedule, where appropriate.

§ 16.13 Coordinating offset with another Federal agency.

(a) *The NRC as the creditor agency.* When the NRC determines that an employee of a 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) Certify in writing that the employee owes the debt, the amount and basis of the debt, the date on which payment is due, the date the Government's right to collect the debt accrued, and that NRC procedures for salary offset implementing 5 U.S.C. 5514 have been approved by the Office of Personnel Management;

(3) 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;

(4) Advise the paying agency of the actions taken under 5 U.S.C. 5514(a) and provide the dates on which action was taken unless the employee has consented to salary offset in writing or signed a statement acknowledging receipt of procedures required by law. The written consent or acknowledgment must be sent to the paying agency;

(5) Except as otherwise provided in this paragraph (a), the NRC must submit a debt claim containing the information specified in paragraphs (a) (2) through (4) of this section and an installment agreement (or other instruction on the payment schedule), if applicable, to the employee's paying agency;

(6) Upon receipt of notification that the employee has transferred to another agency before the debt is collected in full, the NRC will submit a properly certified claim to the new paying agency so that collection can be resumed;

(7) If the employee is in the process of separating, the NRC will submit its debt claim to the paying agency as provided in paragraphs (a) (2) through (5) of this section. The paying agency will certify any amounts already collected, notify the employee, and send a copy of the

certification and notice of the employee's separation to the NRC. If the paying agency is aware that the employee is entitled to Civil Service Retirement and Disability Fund or similar payments, it will certify to the agency responsible for making the payments that the employee owes a debt (including the amount) and that the provisions of this part have been followed. The NRC will submit a properly certified claim to the agency responsible for making such payments so collection can be made:

(8) If the employee has already separated and all payments due from the paying agency have been paid, the NRC may request, unless otherwise prohibited, that money payable to the employee from the Civil Service Retirement and Disability Fund or other similar funds be collected by administrative offset.

(b) *The NRC as the paying agency.* (1) Upon receipt of a properly certified debt claim from another agency, the NRC will schedule deductions to begin at the next established pay interval. The employee must receive written notice indicating that the NRC has received a certified debt claim from the creditor agency, the amount of the debt, the date salary offset will begin, and the amount of the deduction(s). The NRC may not review the merits of the creditor agency's determination of the validity or the amount of the certified claim.

(2) Upon receipt of an incomplete debt claim from a creditor agency, the NRC will return the debt claim to the creditor agency with a notice that procedures under 5 U.S.C. 5514 and 5 CFR part 550, subpart K, must be followed and a properly certified debt claim received before action will be taken to collect from the employee's current pay account.

(3) If the employee transfers to another agency after the creditor agency has submitted its debt claim to the NRC and before the debt is collected completely, the NRC will certify the total amount collected. The NRC will furnish one copy of the certification to the employee. The NRC will furnish a copy to the creditor agency with notice of the employee's transfer.

§ 16.15 Procedures for salary offset.

(a) Deductions to liquidate an employee's debt will be by the method and in the amount stated in the NRC's notice of intention to offset as provided in § 16.7. Debts will be collected in one lump sum where possible. If the employee is financially unable to pay in one lump sum, collection must be made in installments.

(b) Debts will be collected by deduction at officially established pay intervals from an employee's current pay account unless alternative arrangements for repayment are made.

(c) Installment deductions will be made over a period not greater than the anticipated period of employment. The size of installment deductions must bear a reasonable relationship to the size of the debt and the employee's ability to pay. The deduction for the pay intervals for any period may not exceed 15% of disposable pay unless the employee has agreed in writing to a deduction of a greater amount.

(d) Offset against any subsequent payment due an employee who retires or resigns or whose employment or period of active duty ends before collection of the debt is completed is provided for in accordance with 31 U.S.C. 3716. These payments include but are not limited to final salary payment or lump-sum leave due the employee from the paying agency as of the date of separation to the extent necessary to liquidate the debt.

§ 16.17 Refunds.

(a) The NRC will refund promptly any amounts deducted to satisfy debts owed to the NRC when the debt is waived, found not owed to the NRC, or when directed by an administrative or judicial order.

(b) The creditor agency will promptly return any amounts deducted by NRC to satisfy debts owed to the creditor agency when the debt is waived, found not owed, or when directed by an administrative or judicial order.

(c) Unless required or permitted by law or contract, refunds under this section may not bear interest.

§ 16.18 Statute of limitations.

If a debt has been outstanding for more than 10 years after the agency's right to collect the debt first accrued, the agency may not collect by salary offset unless facts material to the Government's right to collect were not known and could not reasonably have been known by the NRC official or officials who were charged with the responsibility for discovery and collection of the debts.

§ 16.21 Non-waiver of rights.

An employee's involuntary payment of all or any part of a debt collected under these regulations will not be construed as a waiver of any rights that the employee may have under 5 U.S.C. 5514 or any other provision of contract or law, unless there are statutes or contract(s) to the contrary.

§ 16.23 Interest, penalties, and administrative charges.

Charges may be assessed for interest, penalties, and administrative charges in accordance with the Federal Claims Collection Standards, 41 CFR 102.13.

Dated at Rockville, Maryland, this 14th day of September 1990.

For the Nuclear Regulatory Commission
James M. Taylor,
Executive Director for Operations.
[FR Doc. 90-22770 Filed 9-25-90; 8:45 am]
BILLING CODE 7005-01-0

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 325

RIN 3084-AAB2

Capital Maintenance

AGENCY: Federal Deposit Insurance Corporation ("FDIC").

ACTION: Notice of proposed rule.

SUMMARY: In 1985, the FDIC adopted minimum supervisory leverage capital ratios of primary and total capital to total assets in assessing the capital adequacy of state-chartered banks that are not members of the Federal Reserve System ("state nonmember banks"). In 1989, the FDIC adopted minimum supervisory risk-based capital ratios of core and total capital to risk-weighted assets.

The FDIC risk-based capital policy statement also indicated that the risk-based capital framework did not replace or eliminate the existing part 325 leverage ratios but that, once the risk-based framework was implemented, the FDIC would consider whether the part 325 definitions of capital for leverage purposes and the minimum leverage ratios should be amended. In this regard, the FDIC now is proposing to amend part 325 to:

(1) Replace the primary and total capital definitions with a Tier 1 (core) capital definition;

(2) Eliminate the minimum 5.5 percent primary and 6 percent total capital ratio requirements for state nonmember banks and replace them with a minimum 3 percent Tier 1 leverage capital ratio requirement for the most highly-rated banks (i.e., those that would be assigned a composite CAMEL rating of (1) that are not anticipating or experiencing any significant growth; all other state nonmember banks would need to meet a minimum leverage ratio that is at least 100 to 200 basis points above this minimum, (i.e., an absolute minimum