

**List of Subjects in 40 CFR Part 300**

Environmental protection, Air pollution control. Chemicals, Hazardous substances, Hazardous waste, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Dated: September 16, 1996.

Chuck Clarke,

*Regional Administrator, Region 10.*

For the reasons set out in the preamble, 40 CFR part 300 is amended as follows:

**PART 300—[AMENDED]**

1. The authority citation for part 300 continues to read as follows:

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR 1991 Comp., p. 351; E.O. 12580, 52 FR 2923, 3 CFR 1987 Comp., p. 193.

**Appendix B—[Amended]**

2. Table 2 of Appendix B to part 300 is amended by removing the site for McChord Air Force Base (Wash Rack/Treat) Tacoma, Washington.

[FR Doc. 96–24482 Filed 9–25–96; 8:45 am]

BILLING CODE 6560–50–P

**FEDERAL MARITIME COMMISSION****46 CFR Part 505**

[Docket No. 96–15]

**Administrative Offset**

**AGENCY:** Federal Maritime Commission.

**ACTION:** Final rule.

**SUMMARY:** This final rule adopts, without change, the existing regulations on administrative offset promulgated by the Department of the Treasury as mandated by the Debt Collection Improvement Act of 1996. The rule allows the Commission to collect by administrative offset any delinquent debt owed it and sets forth the minimum due process rights that must be provided to the debtor when the Commission seeks to collect a debt by administrative offset.

**EFFECTIVE DATE:** October 28, 1996.

**FOR FURTHER INFORMATION CONTACT:** Robert D. Bourgoin, General Counsel, Federal Maritime Commission, 800 North Capitol Street, NW., Washington, DC 20573, (202) 523–5740.

**SUPPLEMENTARY INFORMATION:** The Debt Collection Improvement Act of 1996, Pub. L. 104–134, Chapter 10, section 31001, 101 Stat. 1321–358 (“Act”), requires that before collecting a claim by

administrative offset, a federal agency must either adopt, without change, regulations on collecting by administrative offset promulgated by the Departments of Justice or Treasury or the General Accounting Office, or prescribe regulations on collecting by administrative offset consistent with the aforementioned regulations. Administrative offset means the withholding of funds otherwise payable by the United States to a person, or held by the U.S. for a person, to satisfy a claim or debt.

In compliance with the Act, the Federal Maritime Commission adopts as a final rule the existing regulations of the Department of the Treasury set forth at 31 CFR 5.30 (1995), which incorporate the Federal Claims Collection Standards on administrative offset issued jointly by the Department of Justice and the General Accounting Office as set forth in 4 CFR 102.3. The purpose of the regulations is to protect the minimum due process rights that must be afforded to the debtor when an agency seeks to collect a debt by administrative offset, including the ability to verify, challenge, and compromise claims, and access to administrative appeals procedures which are both reasonable and protect the interests of the United States.

Notice and an opportunity for public comment are not necessary prior to issuance of this final rule because it is interpretive in nature and implements a definitive statutory scheme mandated by the Act. In addition, notice and an opportunity for public comment are unnecessary inasmuch as both were provided previously when the Federal Claims Collection Standards were enacted, 49 FR 8897, March 9, 1984, and when the Treasury regulations were implemented, 52 FR 52, January 2, 1987.

The Commission certifies pursuant to the Regulatory Flexibility Act, 5 U.S.C. 605(b), that this rule will not have a significant economic impact on a substantial number of small entities, including small businesses, small organizational units, and small governmental jurisdictions because it merely facilitates collection of already incurred debts.

The rule does not contain any collection of information requirements as defined by the Paperwork Reduction Act of 1995, as amended. Therefore, Office of Management and Budget review is not required.

**List of Subjects in 46 CFR Part 505**

Administrative offset, Administrative practice and procedure, Claims, Debt collections.

Part 505 of Title 46 of the Code of Federal Regulations is added to read as follows:

**PART 505—ADMINISTRATIVE OFFSET**

- 505.1 Scope of regulations.
  - 505.2 Definitions.
  - 505.3 General.
  - 505.4 Notification procedures.
  - 505.5 Agency review.
  - 505.6 Written agreement for repayment.
  - 505.7 Administrative offset.
  - 505.8 Jeopardy procedure.
- Authority: 31 U.S.C. 3701; 31 U.S.C. 3711; 31 U.S.C. 3716.

**§ 505.1 Scope of regulations.**

These regulations apply to the collection of debts owed to the United States arising from transactions with the Commission, or where a request for an offset is received by the Commission from another agency. 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 as set forth in 4 CFR 102.3.

**§ 505.2 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 non-profit 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.

**§ 505.3 General.**

(a) The Chairman or his or her designee, after attempting to collect a debt from a person under section 3(a) of the Federal Claims Collection Act of 1966, as assembled (31 U.S.C. 3711(a)), may collect the debt by administrative offset subject to the following:

(1) The debt is certain in amount; and  
(2) It is in the best interests of the United States to collect the debt by administrative offset because of the decreased costs of collection and the acceleration in the payment of the debt.

(b) The Chairman, or his or her 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 Chairman, or his or her designee, may request another agency that holds funds payable to a Commission debtor to offset the 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) If the six-year period for bringing action on a debt provided in 28 U.S.C. 2415 has expired, then administrative offset may be used to collect the debt only if the costs of bringing such action are likely to be less than the amount of the debt.

(e) 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 and collecting such debt.

(f) These regulations do not apply to:

- (1) A case in which administrative offset of the type of debt involved is explicitly provided for or prohibited by another statute; or
- (2) Debts owed by other agencies of the United States or by any State or local government.

#### **§ 505.4 Notification procedures.**

Before collecting any debt through administrative offset, a notice of intent to offset shall be sent to the debtor by certified mail, return receipt requested, at the most current address that is available to the Commission. The notice shall provide:

- (a) A description of the nature and amount of the debt and the intention of the Commission to collect the debt through administrative offset;
- (b) An opportunity to inspect and copy the records of the Commission with respect to the debt;
- (c) An opportunity for review within the Commission of the determination of the Commission with respect to the debt; and
- (d) An opportunity to enter into a written agreement for the repayment of the amount of the debt.

#### **§ 505.5 Agency review.**

(a) A debtor may dispute the existence of the debt, the amount of 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 § 505.4.

(b) If the debtor requests an opportunity to inspect or copy the Commission's records concerning the

disputed claim, 10 business days will be granted for the review. The time period will be measured from the time the request for inspection is granted or from the time the copy of the records is received by the debtor.

(c) Pending the resolution of a dispute by the debtor, transactions in any of the debtor's account(s) maintained in 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 1996, as amended, will continue to accrue.

#### **§ 505.6 Written agreement for repayment.**

A debtor who admits liability but elects not to have the debt collected by administrative offset will be afforded an opportunity to negotiate a written agreement for the repayment of the debt. If the financial condition of the debtor does not support the ability to pay in one lump-sum, reasonable installments may be considered. No installment 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 10 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.

#### **§ 505.7 Administrative offset.**

(a) If the debtor does not exercise the right to request a review within the time specified in § 505.5 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 these regulations without further notice.

(b) Requests for offset to other Federal agencies. The Chairman or his or her designee may request that funds due and payable to a debtor by another Federal agency be administratively offset in order to collect a debt owed to the Commission by that debtor. 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 agency 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.

(c) 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.

#### **§ 505.8 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 §§ 505.4 and 505.5 of this part if failure to take the offset would substantially jeopardize the Commission's ability to collect the debt, and the time 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.

By the Commission.  
Joseph C. Polking,  
Secretary.  
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