



[Billing Code: 6750-01S]

FEDERAL TRADE COMMISSION

16 CFR Part 1

Administrative Debt Collection Procedures

AGENCY: Federal Trade Commission (FTC).

ACTION: Final rule.

SUMMARY: The FTC is publishing procedures for the administrative collection of debts, including those arising under judgments and orders of the Commission. These procedures, where applicable, will allow the use of administrative offset and tax refund offset to satisfy such debts. The use of these tools is expected to enhance the FTC's enforcement and collection efforts. The FTC is also making a technical revision to its existing rule for administrative garnishment of non-Federal wages to update the name of the Treasury Department agency responsible for cross-servicing debts.

DATES: This rule is effective on **[Insert date of publication in the FEDERAL REGISTER]**.

FOR FURTHER INFORMATION CONTACT: Stephen Dowdell, Enforcement Division, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue N.W., Stop CC-9528 Washington, DC 20580, (202) 326-2814.

SUPPLEMENTARY INFORMATION: The FTC is issuing final rules to publish procedures to use debt collection tools authorized by Government-wide Federal Claims Collection Standards ("FCCS") and applicable Federal debt collection statutes for amounts owed to the United States. These rules supplement and complement the Commission's existing administrative wage garnishment rule for non-Federal wages, 16 CFR 1.100, to collect amounts that may be owed to the FTC, including amounts owed under Commission orders and judgments. These additional procedures, where applicable, will enable the use of administrative offset against other Federal

payments that may be due to the debtor, including a tax refund offset, to satisfy such debts. These rules are not intended to, and do not create, any separate or additional rights to notice or opportunity to challenge the amount or validity of debts that have already been reduced to judgment or are otherwise legally final and binding, such as debts arising from judgments or orders entered upon the consent or agreement of the debtor. (In addition, the FTC is updating 16 CFR 1.100 to substitute the “Bureau of the Fiscal Service” for the former name of that agency, the “Financial Management Service.”) These rules do not require notice and public comment under the Administrative Procedure Act, because they are agency rules of practice and adopt applicable Government-wide regulations without material change. *See* 5 U.S.C. 553(b)(A) & (B). Similarly, the Commission also finds good cause to dispense with the 30-day delay in the effective date normally required by the Administrative Procedure Act. 5 U.S.C. 553(d). No hardship will be imposed on debtors by the rules’ immediate implementation. Rather, the public will benefit because the rule revisions codify procedures governing the use of debt collection tools authorized by the FCCS and applicable Federal debt collection statutes.

The rules have two parts. Under Subpart P, the Commission’s administrative debt collection activities shall be conducted in accordance with applicable Government-wide debt collection regulations, including the Federal Claims Collection Standards (FCCS), 31 CFR parts 900-904, jointly promulgated by the Departments of Justice and Treasury, and related Treasury debt collection regulations, 31 CFR part 285, utilized when the Commission refers a debt to Treasury for collection, including the centralized offset of Federal payments by Treasury. Furthermore, consistent with 31 U.S.C. 3716(b)(1), Subpart P expressly adopts, without change, applicable FCCS provisions governing the use of administrative offset in Federal debt collection activities. Subpart Q applies to tax refund offsets, and sets forth the procedures that shall apply

when the Commission refers a debt to Treasury for collection by such means, consistent with the Federal statutes governing administrative offset generally (31 U.S.C. 3716) and tax refund offset specifically (31 U.S.C. 3720A), and the corresponding provisions of the FCCS and Treasury part 285 regulations, *supra*.

List of Subjects in 16 CFR Part 1

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

For the reasons stated in the preamble, the Federal Trade Commission amends part 1, title 16, Code of Federal Regulations, as follows:

PART 1—GENERAL PROCEDURES

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

AUTHORITY: Sec. 6, 38 Stat. 721 (15 U.S.C. 46), unless otherwise noted.

§ 1.100 [Amended]

2. Amend § 1.100 by removing from paragraph (a) the phrase “Financial Management Service” and adding in its place the phrase “Bureau of the Fiscal Service”.

§§ 1.102-1.109 [Added and Reserved]

3. In subpart O, add and reserve §§ 1.102-1.109.
4. Add new subparts P and Q to read as follows:

Subpart P—Administrative Debt Collection, including Administrative Offset

§1.110 Application of Government-wide administrative claims collections standards and adoption of administrative offset regulations.

§§1.111-1.119 [Reserved]

Subpart Q—Tax Refund Offset

§1.120 Purpose.

§1.121 Notification of intent to collect.

§1.122 Commission action as a result of consideration of evidence submitted in response to the notice of intent.

§1.123 Change in notification to Bureau of the Fiscal Service.

§1.124 Interest, penalties, and costs.

Subpart P—Administrative Debt Collection, including Administrative Offset

Authority: 31 U.S.C. 3701 *et seq.*

§1.110 Application of Government-wide administrative claims collections standards and adoption of administrative offset regulations.

- (a) The Commission shall apply the Federal Claims Collection Standards (FCCS), 31 CFR parts 900-904, in the administrative collection, offset, compromise, suspension, termination, and referral 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 Commission shall also follow Department of Treasury regulations set forth at 31 CFR part 285, as applicable, for administrative debt collection, including centralized offset of federal payments to collect non-tax debts that may be owed to the Commission, 31 CFR 285.5. Nothing in this subpart shall be construed to supersede or require the Commission to provide additional notice or other procedures that may have already been provided or afforded to a debtor in the course of administrative or judicial litigation or otherwise.

(b) For purposes of 31 U.S.C. 3716(b)(1), the Commission adopts without change the regulations on collection by administrative offset set forth at 31 CFR 901.3 and other relevant sections of the FCCS applicable to such offset.

§§1.111-1.119 [Reserved]

Subpart Q—Tax Refund Offset

Authority: 31 U.S.C. 3716 and 3720A, 31 CFR 285.2(c).

§1.120 Purpose.

This subpart establishes procedures for the Commission's referral of past-due legally enforceable debts to the Department of the Treasury's Bureau of the Fiscal Service (Fiscal Service) for offset against the tax refund payments of the debtor, consistent with applicable Fiscal Service regulations and definitions set forth in 31 CFR 285.2 and 285.5.

§1.121 Notification of intent to collect.

(a) *Notification before tax refund offset.* Reduction of a tax refund payment will be made only after the Commission makes a determination that an amount is owed and past-due and gives or makes a reasonable attempt to give the debtor 60 days written notice of the intent to collect by tax refund offset.

(b) *Contents of notice.* The Commission's notice of intent to collect by tax refund offset will state:

- (1) The amount of the debt;
- (2) That unless the debt is repaid within 60 days from the date of the notice, the Commission intends to collect the debt by requesting a reduction of any amounts payable to the debtor as a Federal tax refund payment by an amount equal to the amount of the debt and all accumulated interest and other charges;

(3) That the debtor, within 60 days from the date of the notice, has an opportunity to make a written agreement to repay the amount of the debt, unless such opportunity has previously been provided;

(4) A mailing address for forwarding any written correspondence and a contact name and a telephone number for any questions; and

(5) That the debtor may present evidence to the Commission that all or part of the debt is not past due or legally enforceable by:

(i) Sending a written request for a review of the evidence to the address provided in the notice;

(ii) Stating in the request the amount disputed and the reasons why the debtor believes that the debt is not past due or is not legally enforceable; and

(iii) Including in the request any documents that the debtor wishes to be considered or stating that the additional information will be submitted within the remainder of the 60-day period.

(c) A debtor may dispute the existence or amount of the debt or the terms of repayment, except with respect to debts established by a judicial or administrative order. In those cases, the debtor may not dispute matters or issues already settled, litigated, or otherwise established by such order, including the amount of the debt or the debtor's liability for that debt, except to the extent that the debtor alleges that the amount of the debt does not reflect payments already made to repay the debt in whole or part.

§1.122 Commission action as a result of consideration of evidence submitted in response to the notice of intent.

(a) *Consideration of evidence.* If, in response to the notice provided to the debtor under §1.121, the Commission is notified that the debtor will submit additional evidence, or the Commission receives additional evidence from the debtor within the prescribed time, tax refund offset will be stayed until the Commission can:

- (1) Consider the evidence presented by the debtor;
 - (2) Determine whether all or a portion of the debt is still past due and legally enforceable;
- and
- (3) Notify the debtor of its determination, as set forth in paragraph (b) of this section.

(b) *Commission action on the debt.* (1) If, after considering any additional evidence from the debtor, the Commission determines that the debt remains past-due and legally enforceable, the Commission will notify the debtor of its intent to refer the debt to the Fiscal Service for offset against the debtor's Federal tax refund payment, including whether the amount of the debt remains the same or is modified; or

(2) If, after considering any additional evidence from the debtor, the Commission determines that no part of the debt remains past-due and legally enforceable, the Commission will so notify the debtor and will not refer the debt to the Fiscal Service for offset against the debtor's Federal tax refund payment.

§1.123 Change in notification to Bureau of the Fiscal Service.

After the Commission sends the Fiscal Service notification of a debtor's liability for a debt, the Commission will promptly notify the Fiscal Service if the Commission:

(a) Determines that there is a material error or other material change in the information contained in the notification, including in the amount of the debt, subject to any additional due

process requirements, where applicable, under this subpart or the Federal Claims Collection Standards, if the amount of debt has increased;

(b) Receives a payment or credits a payment to the account of the debtor named in the notification that reduces the amount of the debt referred to Fiscal Service for offset; or

(c) Otherwise concludes that such notification is appropriate or necessary.

§1.124 Interest, penalties, and costs.

To the extent permitted or required by 31 U.S.C. 3717 or other law, regulation, or order, all interest, penalties, and costs applicable to the debt or incurred in connection with its referral for collection by tax refund offset will be assessed on the debt and thus increase the amount of the offset.

By direction of the Commission.

Donald S. Clark
Secretary.

[FR Doc. 2016-313 Filed: 1/15/2016 8:45 am; Publication Date: 1/19/2016]