

Proposed Rules

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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.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 3

Debt Management

AGENCY: Office of the Secretary, USDA.

ACTION: Proposed rule.

SUMMARY: The United States Department of Agriculture (USDA) proposes to amend its regulations that govern the management of debts owed to it by program participants and other debtors. The rule proposes changes to existing regulations to further implement the Debt Collection Improvement Act of 1996 (DCIA) and the Federal Claims Collection Standards. The changes will affect USDA requirements for collection and settlement of debts, including administrative offset of eligible payments, and referral to the Department of the Treasury (Treasury) for collection. These changes are intended to ensure that USDA debt collection procedures comply with current laws and Treasury regulations governing Federal debt management.

DATES: Comments should be submitted on or before July 29, 2003, in order to be ensured of consideration. Comments received after this date may be considered to the extent practicable.

ADDRESSES: Comments should be sent to Dale Theurer, Credit, Travel, and Accounting Policy Division, Office of the Chief Financial Officer, Department of Agriculture, Mail Stop 9010, Room 3417 South, 1400 Independence Avenue, SW., Washington, DC 20250. Comments may also be submitted via electronic mail to dtheurer@cfo.usda.gov. All comments, including names and addresses will become a matter of public record. A copy of this rule, and the comments received, may be obtained by contacting Mr. Theurer at (202) 720-1167.

FOR FURTHER INFORMATION CONTACT: Dale Theurer at (202) 720-1167. Persons with disabilities who require alternative means for communication (Braille, large

print, audio tape, etc.) should contact the USDA Target Center at (202) 720-2600 (voice and TDD).

SUPPLEMENTARY INFORMATION:

Classification

This rule is not a significant regulatory action as defined in Executive Order 12866.

Regulatory Flexibility Act

USDA certifies that this proposed rule will not have a significant impact on a substantial number of small entities as defined in the Regulatory Flexibility Act, Public Law 96-354, as amended (5 U.S.C. 601 *et seq.*).

Executive Order 12988

The proposed rule has been reviewed in accordance with Executive Order 12988. If this proposed rule is adopted, it preempts State laws that are inconsistent with its provisions. Before a judicial action may be brought concerning this rule or action taken under this rule, all administrative remedies must be exhausted.

Unfunded Mandates

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104-4, requires Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments or the private sector. This rule contains no Federal mandates, as defined by title II of the UMRA, for State, local, and tribal governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

Paperwork Reduction Act

USDA has determined that the provisions of the Paperwork Reduction Act of 1995, as amended, 44 U.S.C. 3501, *et seq.*, do not apply to any collections of information contained in this rule because any such collections of information are made during the conduct of administrative action taken by an agency against specific individuals or entities. 5 CFR 1320.4(a)(2).

Background and Purpose

On November 7, 2001, USDA published an advanced notice of proposed rulemaking (66 FR 56247) for revision of the USDA debt management regulations, 7 CFR part 3, to reflect promulgation of the revised Federal

Claims Collection Standards (FCCS) and to incorporate other USDA specific changes with respect to collection of debt by administrative offset. No comments were received on this notice.

USDA now publishes a rule proposing revisions to 7 CFR part 3 to comply with FCCS and further implement the Debt Collection Improvement Act of 1996. The new regulation when final will apply to all USDA agencies and corporations of USDA, such as the Commodity Credit Corporation (CCC). The regulations at 7 CFR 3.21(b) currently provide that each USDA agency may adopt their own debt collection regulations to apply in lieu of 7 CFR part 3. However, this proposed rule does not contemplate the promulgation of separate USDA agency regulations in lieu of 7 CFR part 3. Instead, 7 CFR part 3 will establish general debt collection procedures for all USDA agencies, except where an agency needs supplemental regulations to meet program-specific legal requirements. A specific provision refers the reader to 7 CFR part 1403 for CCC debt collection procedures, but it is the intent of CCC to adopt 7 CFR part 3 generally in a forthcoming revision of 7 CFR part 1403.

The current subpart A of part 3 is an original debt settlement authority provided specifically to USDA for specific credit and farm programs in the Act of December 20, 1944, as amended (12 U.S.C. 1150 *et seq.*) (1944 Act). The standards and sums in the 1944 Act are mostly obsolete, yet they remain in effect. At some point, the provisions of the 1944 Act were expanded upon with some additional regulatory requirements reflected in subpart A, and it apparently formed the core of USDA debt collection regulations until enactment of the Debt Collection Act of 1982, Public Law 97-365, and the subsequent promulgation of 7 CFR part 3, subpart B in implementation of that Act. However, subpart A still reads as if applicable to all USDA debt collection activities, and one program was recently added to the list of programs in § 3.10 even though those programs are not designated by law in the 1944 Act.

USDA finds that the authorities provided in the 1944 Act would be rarely used, if ever. Accordingly, this rule proposes to remove the text of the current 7 CFR part 3, subpart A, from 7 CFR part 3 entirely. To the extent that

use of that authority may ever be appropriate, USDA has reserved the right to collect, compromise, suspend, or terminate the collection of debts as otherwise authorized by law in “ 3.1(a)(2) of the proposed rule.

Subpart A of the proposed rule provides the purpose and scope of the rule, authority, definitions, and delegation of authority to USDA agency heads to exercise any of the functions provided by this part, except as otherwise provided.

Subpart B sets forth the standards for the administrative collection and compromise of claims. This subpart is an adaption of the language of the corresponding portion of the FCCS, 31 CFR part 901, regarding the administrative collection of claims. For the compromise of claims, suspension or termination of collection activities, and referrals to the Department of Justice (DOJ), §§ 3.19 to 3.21 direct USDA agencies to follow the procedures provided in the FCCS, 31 CFR parts 902–904. It also includes provisions for the reporting of debts to consumer or commercial credit reporting agencies; suspension or revocation of eligibility for loans and loan guarantees, licenses, permits, or privileges; liquidation of collateral; collection in installments; assessment of interest, penalties, and administrative costs; and use and disclosure of mailing addresses.

With respect to the collection of claims, the intent of this revision of 7 CFR part 3 is to encourage USDA agencies to issue demand letters for payment of a delinquent debt that notifies the debtor of all options the USDA agency has for collection of the debt, including discussions for alternative methods of payment, reporting to credit bureaus, collection through collection agencies, administrative offset, administrative wage garnishment, Federal salary offset (where applicable), tax refund offset, referral to the Department of the Treasury (Treasury) for collection through the Treasury Offset Program (TOP) or through cross-servicing, and litigation. Demand letters will provide debtors with notice of their rights to review the records related to the debt and request administrative review of the debt.

Subpart F of the proposed rule provides a consolidated administrative review process to review the validity and existence of the debt for all debt collection action authorized by DCIA for which DCIA requires due process prior to collection. The intent here is to provide agencies with the authority to have one notice and one administrative review as to the existence and validity

of the debt for all debt collection tools, whether the debt is collected internally by USDA or prior to referral of the debt to Treasury for collection. This does not preclude a prior hearing on a substantive program matter that may have given rise to the claim owed to USDA. Additionally, for purposes of administrative wage garnishment, the administrative review will concern only the validity and existence of the debt prior to referral to Treasury. Treasury, or its contractors, will service and issue USDA administrative wage garnishment orders, including establishment of repayment schedules, for which Treasury will provide debtors with an additional opportunity to seek USDA review of the current status of the debt and the burden of the proposed repayment schedule upon notice to the debtor of the proposed garnishment order itself.

Subpart C of the proposed rule describes the requirements for referral of debt to Treasury, and sets forth specific rules for referral to Treasury for cross-servicing. Under cross-servicing, Treasury acts on behalf of other Federal agencies to pursue collection of debts using a variety of means. All debts may be referred to Treasury for cross-servicing, including those that arise as a result of default under an instrument or agreement for which no further demand letter or due process review is required prior to initiating collection.

Subpart D of the proposed rule provides procedures for administrative offset through the mandatory TOP program and through non-centralized offset with other Federal agencies or by internal administrative offset within USDA. The existing Farm Service Agency (FSA) and CCC debt collection regulations include a provision that authorizes those agencies, upon receipt of a request for an offset of a FSA or CCC payment to satisfy a debt owed a creditor agency, to take a debtor's pro rata share of a payment to an entity (such as a partnership or corporation) of which the debtor is a part. The proposed rule would authorize each agency of USDA to take pro rata shares of payments to entities in order to satisfy an offset request received from Federal or USDA creditor agency provided that the entity received notice of the proposed offset from the creditor agency.

USDA will accomplish the administrative offset of tax refunds through referral to Treasury under TOP. Accordingly, to meet the 60-day notice and opportunity for review period required by law prior to offset of tax refunds, this rule provides that referrals to TOP will not be made until 60 days

after notice of the administrative offset is sent to the debtor, or until after completion of a review under subpart F if that occurs later. However, USDA internal administrative offsets shall be made 31 days after the date the notice of administrative offset is sent if no request for review under subpart F is received.

Subpart E of the proposed rule outlines the process USDA will use to collect debts using administrative wage garnishment. In demand letters sent to debtors, or separately, USDA will advise debtors that it will refer the debt to Treasury for collection through administrative wage garnishment if other sources for satisfaction of the debt are not available. Treasury requires that all debts referred to it for collection, using whatever collection tool, be legally enforceable. Accordingly, debtors will have the opportunity at this stage to seek review of the debt for purposes of assuring legal enforceability prior to referral to Treasury for administrative wage garnishment, administrative offset, tax refund offset, etc.

Once at Treasury, if Treasury or its designee determines that administrative wage garnishment is appropriate, Treasury or its designee will issue a proposed garnishment order to the debtor and provide the debtor with the opportunity to request review of the debt and repayment schedule in accordance with the administrative wage garnishment hearing procedures in 31 CFR 285.11. If the debtor requests such a hearing, Treasury will refer the request to the USDA creditor agency to which the debt is owed and the creditor agency will contact OCFO for designation of a hearing official. In consultation with the USDA creditor agency to which the debt is owed, OCFO will designate a hearing official. OCFO will forward the final determination of the hearing official to Treasury for implementation with respect to the subject garnishment order.

As discussed above, subpart F establishes procedures for a review or hearing on the validity and existence of the debt, if requested by the debtor upon receipt of a demand letter or notice to collect by one of the administrative mechanisms. For debt collection proceedings related to domestic programs initiated by FSA, CCC, the Rural Housing Service, the Rural Business-Cooperative Service, the Risk Management Agency, the Federal Crop Insurance Corporation, the Natural Resources Conservation Service, Rural Development, and the Rural Utilities Service (but not for programs authorized by the Rural Electrification Act of 1936

or the Rural Telephone Bank Act, 7 U.S.C. 901 *et seq.*), any administrative review will be conducted by the National Appeals Division (NAD) in accordance with 7 CFR part 11. For other USDA agencies, subpart E provides some flexibility as to how they will meet the administrative review requirement.

Subpart G of the proposed rule provides rules for Federal salary offset, for which there are separate review and hearing procedures required by law. Subpart G includes the provisions of the current 7 CFR part 3, subpart C, as modified to reflect changes made to the government wide Federal salary offset rules, 5 CFR part 550, by the Office of Personnel Management (OPM) to conform to DCIA (*see* 63 FR 72,099 (December 31, 1998)). While OPM requires its approval for significant changes to agency Federal salary offset regulations, OPM provided in the preamble to its December 31, 1998, final rule that such review and approval was not required for agency changes to conform to the changes it had made in that final rule. The changes to the USDA Federal salary offset rules proposed in this notice merely adopt the prior changes made by OPM, and thus, OPM approval is not required. These proposed rules also provide that the salaries of Farm Service Agency county executive directors and county office employees shall be subject to administrative offset in accordance with 7 CFR part 792 or part 1403.

Subpart H of the proposed rule incorporates the current text of 7 CFR part 3, subpart D, regarding reporting of discharge of debts to the Internal Revenue.

The current text of 7 CFR part 3, subpart E, regarding adjustment of certain civil monetary penalties, is redesignated as subpart I. The Adjusted Civil Monetary Penalties in newly redesignated subpart I will be updated at a later date by the Department and are not republished at this time.

List of Subjects in 7 CFR Part 3

Administrative practice and procedure, Agriculture, Claims, Debts, Garnishment of wages, Government employee, Hearing and appeal procedures, Pay Administration, Salaries, Wages.

For the reasons stated in the preamble, USDA proposes to revise 7 CFR part 3 as follows:

PART 3—DEBT MANAGEMENT

1. The authority citation for 7 CFR part 3 is revised to read as follows:

Authority: 5 U.S.C. 301; 31 U.S.C. 3701, 3711, 3716–18, 3720B; 31 CFR parts 285 and 901–904, unless otherwise noted.

2. Subpart E is redesignated as subpart I.

3. The table of contents and subparts A through D are revised, and subparts E through H are added, to read as follows:

PART 3—DEBT MANAGEMENT

Subpart A—General

Sec.

- 3.1 Purpose and scope.
- 3.2 Authority.
- 3.3 Definitions.
- 3.4 Delegations of authority.

Subpart B—Standards for the Administrative Collection and Compromise of Claims

- 3.10 Aggressive agency collection activity.
- 3.11 Demand for payment.
- 3.12 Reporting of consumer debts.
- 3.13 Contracting with private collection contractors and with entities that locate and recover unclaimed assets.
- 3.14 Suspension or revocation of eligibility for loans and loan guarantees, licenses, permits, or privileges.
- 3.15 Liquidation of collateral.
- 3.16 Collection in installments.
- 3.17 Interest, penalties, and administrative costs.
- 3.18 Use and disclosure of mailing addresses.
- 3.19 Standards for the compromise of claims.
- 3.20 Standards for suspending or terminating collection activities.
- 3.21 Referrals to the Department of Justice.

Subpart C—Referral of Debts to Treasury

- 3.30 General requirements.
- 3.31 Mandatory referral for cross-servicing.
- 3.32 Discretionary referral for cross-servicing.
- 3.33 Required certification.
- 3.34 Fees.

Subpart D—Administrative Offset

- 3.40 Scope.
- 3.41 Procedures for notification of intent to collect by administrative offset.
- 3.42 Debtor rights to inspect or copy records, submit repayment proposals, or request administrative review.
- 3.43 Non-centralized administrative offset.
- 3.44 Centralized administrative offset.
- 3.45 USDA payment authorizing agency offset of pro rata share of payments due entity in which debtor participates.
- 3.46 Offset against tax refunds.
- 3.47 Offset against amounts payable from Civil Service Retirement and Disability Fund.

Subpart E—Administrative Wage Garnishment

- 3.50 Purpose.
- 3.51 Scope.
- 3.52 Definitions.
- 3.53 Procedures.

Subpart F—Administrative reviews for administrative offset, administrative wage garnishment, and disclosed to credit reporting agencies

- 3.60 Applicability.
- 3.61 Presiding employee.
- 3.62 Procedures.

Subpart G—Federal Salary Offset

- 3.70 Scope of this subpart.
- 3.71 Definitions.
- 3.72 Coordinating offset with another Federal agency.
- 3.73 Determination of indebtedness.
- 3.74 Notice requirements before offset.
- 3.75 Request for a hearing.
- 3.76 Result if employee fails to meet deadlines.
- 3.77 Hearings.
- 3.78 Written decision following a hearing.
- 3.79 Review of USDA records related to debt.
- 3.80 Written agreement to repay debts as alternative to offset.
- 3.81 Procedures for salary offset: when deductions may begin.
- 3.82 Procedures for salary offset: types of collections.
- 3.83 Procedures for salary offset: methods of collections.
- 3.84 Procedures for salary offset: Imposition of interest, penalties, and administrative costs.
- 3.85 Non-waiver of rights.
- 3.86 Refunds.
- 3.87 Agency regulations.

Subpart H—Cooperation with the Internal Revenue Service

- 3.90 Reporting discharged debts to the Internal Revenue Service.

Subpart I—Adjusted Civil Monetary Penalties

- 3.91 Adjusted civil monetary penalties.

Authority: 5 U.S.C. 301; 31 U.S.C. 3701, 3711, 3716–18, 3720B; 31 CFR parts 285 and 901–904, unless otherwise noted.

Subpart A—General

§ 3.1 Purpose and scope.

(a) *In general.* (1) The regulations in this part prescribe standards and procedures for use by USDA agencies in the collection, compromise, suspension, or termination of debts owed to the United States.

(2) The regulations in this part apply to all debts of the United States subject to collection by USDA agencies, except as otherwise specified in this part or by statute.

(3) The regulations in this part do not preclude the Secretary from collection, compromise, suspension, or termination of debts as otherwise authorized by law. In such cases the laws and implementing regulations that are specifically applicable to claims collection activities of a particular agency generally shall take precedence over this part.

(b) *Agency specific regulations.* (1) The regulations of this part shall apply to the Commodity Credit Corporation (CCC) to the extent specified in 7 CFR part 1403.

(2) USDA agencies may issue regulations to supplement this part in order to meet the specific requirements of individual programs.

§ 3.2 Authority.

The regulations in this part are issued under the Debt Collection Act of 1982, as amended by the Debt Collection Improvement Act of 1996 (DCIA) (31 U.S.C. 3701 *et seq.*) and the Federal Claims Collection Standards issued pursuant to the DCIA by the Departments of the Treasury and Justice (31 CFR parts 901 through 904) that prescribe government-wide standards for administrative collection, compromise, suspension, or termination of agency collection action, disclosure of debt information to credit reporting agencies, referral of claims to private collection contractors for resolution, and referral to the Department of Justice for litigation to collect debts owed the Federal government. The regulations under this part also are issued under Treasury regulations implementing DCIA (31 CFR part 285) and related statutes and regulations governing the offset of Federal salaries (5 U.S.C. 5512 and 5514; 5 CFR part 550, subpart K) and administrative offset of tax refunds (31 U.S.C. 3720A).

§ 3.3 Definitions.

For the purpose of this part, except as where otherwise specifically provided, the term or terms:

(a) *Agency* means a subagency, office, or corporation within USDA subject to the authority or general supervision of the Secretary.

(b) *Centralized offset* means referral of a debt to the Treasury Offset Program (TOP) for offset of payments made to a debtor by Federal agencies other than USDA.

(c) *Claim* and *debt* are synonymous and interchangeable, and refer to an amount of money, funds, or property that has been determined by an agency official to be due the United States from any person, organization, or entity, except another Federal agency.

(d) *Contracting officer* has the same meaning as in 41 U.S.C. 601.

(e) *Credit reporting agencies* (also known as *credit bureaus*) means major consumer credit reporting agencies that have signed agreements with agencies to receive and integrate credit information (data) from voluntary subscribers (federal agencies and private sector entities) into their respective databases

for the purpose of generating credit reports for sale to purchasers of credit data.

(f) *Creditor agency* means a Federal agency or USDA agency to which a debtor owes a debt, including a debt collection center when acting in behalf of a creditor agency in matters pertaining to collection of the debt.

(g) *Debt collection center* means Treasury or other government agency or division, designated by the Secretary of the Treasury with authority to collect debt on behalf of creditor agencies in accordance with 31 U.S.C. 3711(g).

(h) *Debtor* means an individual, a public or private entity, a State, local or tribal government, or the person or entity with legal responsibility for assuming the obligation of the debtor, who owes a delinquent, nontax debt to the United States, but does not include another Federal agency.

(i) *Delinquent* means a debt that has not been paid by the date specified in the agency's initial written demand for payment or applicable agreement or instrument (including a post-delinquency payment agreement), unless other satisfactory payment arrangements have been made.

(j) *FCCS* means the Federal Claims Collection Standards published in 31 CFR parts 901 through 904.

(k) *Federal agency* means any other Department or entity within the Executive branch of the government.

(l) *Internal administrative offset* means a non-centralized administrative offset between a USDA creditor agency and a USDA payment authorizing agency.

(m) *Non-centralized administrative offset* means an agreement between a USDA creditor agency and a payment authorizing agency to offset the payments made by the payment authorizing agency to satisfy a USDA debt. An internal administrative offset is a type of non-centralized administrative offset.

(n) *OCFO* means the USDA Office of the Chief Financial Officer.

(o) *OGC* means the USDA Office of the General Counsel.

(p) *Payment authorizing agency* means a Federal agency or USDA agency that is authorized to disburse payments to a recipient.

(q) *Recoupment* means a special method for adjusting debts arising under the same transaction or occurrence, such as obligations arising under the same contract.

(r) *Reviewing officer* means a person designated by a creditor agency as responsible for conducting a hearing or providing documentary review on the

existence of the debt and the propriety of an administrative collection action.

(s) *Secretary* means the Secretary of Agriculture, unless otherwise specified.

(t) *Treasury* means the United States Department of the Treasury.

(u) *USDA* means the United States Department of Agriculture.

§ 3.4 Delegations of authority.

The head of an agency is authorized to exercise any or all of the functions provided by this part with respect to programs for which the head of the agency has delegated responsibility, and may delegate and authorize the redelegation of any of the functions vested in the head of the agency by this part, except as otherwise provided by this part.

Subpart B—Standards for the Administrative Collection and Compromise of Claims

§ 3.10 Aggressive agency collection activity.

An agency shall aggressively collect all debts arising out of activities of, or referred or transferred for collection services to, that agency. Collection activities shall be undertaken promptly with follow-up action taken as necessary.

§ 3.11 Demand for payment.

(a) *Demand letters.* Generally, debt collection is initiated with a written demand for payment to the debtor unless an applicable agreement or instrument (including a post-delinquency payment agreement) provides otherwise (such as providing USDA an immediate right to collect upon delinquency). Written demand as described in paragraph (b) of this section shall be made promptly upon a debtor of the United States in terms that inform the debtor of the consequences of failing to cooperate with the agency to resolve the debt. The specific content, timing, and number of demand letters shall depend upon the type and amount of the debt and the debtor's response, if any, to the agency's letters or telephone calls. Where statutes or agency regulations are specific as to the requirements for demand letters, an agency should follow its own procedures in formulating demand letters. Generally, one demand letter should suffice. In determining the timing of the demand letter(s), an agency should give due regard to the need to refer debts promptly to the Department of Justice for litigation, in accordance with 31 CFR 904.1 or otherwise. When necessary to protect the Government's interest (for example, to prevent the running of a statute of

limitations), written demand may be preceded by other appropriate actions under this part, including immediate referral for litigation.

(b) *Required notices.* In demand letters, the USDA creditor agency shall inform the debtor of:

(1) The nature and amount of the debt; and the facts giving rise to the debt;

(2) How interest, penalties, and administrative costs are added to the debt, the date by which payment should be made to avoid such charges, and that such assessments must be made unless excused in accordance with § 3.17;

(3) The date by which payment should be made to avoid the enforced collection actions described in paragraph (b)(6) of this section;

(4) The willingness of the creditor agency to discuss alternative payment arrangements and how the debtor may enter into a written agreement to repay the debt under terms acceptable to the agency (*see* § 3.16);

(5) The name, address, telephone number and email address (optional) of a contact person or office within the creditor agency;

(6) The intention of the creditor agency to enforce collection if the debtor fails to pay or otherwise resolve the debt, by taking one or more of the following actions:

(i) *Offset.* Offset the debtor's USDA payments and refer the debtor's debt to the Treasury Offset Program for offset against other Federal payments, including income tax refunds, in accordance with subpart D of this part;

(ii) *Private collection agency.* [Reserved].

(iii) *Credit reporting agency reporting.* Report the debt to a credit reporting agency in accordance with § 3.12;

(iv) *Administrative wage garnishment.* Refer the debt to Treasury in accordance with subpart E of this part for possible collection by garnishing the debtor's wages through administrative wage garnishment;

(v) *Litigation.* Refer the debt to the Department of Justice in accordance with 3.21 to initiate litigation to collection the debt;

(vi) *Referral to Treasury.* Referral of the debt to Treasury for collection in accordance with subpart C of this part;

(7) That USDA debts over 180 days delinquent must be referred to Treasury for the collection actions described in paragraph (b)(6) of this section;

(8) How the debtor may inspect and copy records related to the debt;

(9) How the debtor may request a review of the USDA creditor agency's determination that the debtor owes a debt and present evidence that the debt

is not delinquent or legally enforceable (*see* subpart F of this part);

(10) [Reserved].

(11) How a debtor who is a Federal employee subject to Federal salary offset may request a hearing (*see* subpart G of this part);

(12) How a debtor may request a waiver of the debt, if applicable;

(13) How the debtor's spouse may claim his or her share of a joint income tax refund by filing Form 8379 with the Internal Revenue Service (*see* <http://www.irs.gov>);

(14) How the debtor may exercise other statutory or regulatory rights and remedies available to the debtor;

(15) That certain debtors may be ineligible for Federal Government loans, guarantees, and insurance (*see* § 3.14);

(16) If applicable, the creditor agency's intention to suspend or revoke licenses, permits, or privileges (*see* § 3.14); and

(17) That the debtor should advise the creditor agency of a bankruptcy proceeding of the debtor or of another person liable for the debt being collected.

(c) *Exceptions to notice requirements.* A USDA creditor agency may omit from a demand letter one or more of the provisions contained in paragraphs (b)(6) through (b)(17) of this section if the USDA creditor agency, in consultation with OGC, determines that any provision is not legally required given the collection remedies to be applied to a particular debt.

(d) Agencies should exercise care to ensure that demand letters are mailed or hand-delivered on the same day that they are dated. There is no prescribed format for demand letters. Agencies should utilize demand letters and procedures that will lead to the earliest practicable determination of whether the debt can be resolved administratively or must be referred for litigation.

(e) Agencies should respond promptly to communications from debtors, within 30 days whenever feasible, and should advise debtors who dispute debts to furnish available evidence to support their contentions.

(f) Prior to the initiation of the demand process or at any time during or after completion of the demand process, if an agency determines to pursue, or is required to pursue, internal administrative offset, the procedures applicable to offset should be followed (*see* subpart D of this part). The availability of funds or money for debt satisfaction by internal administrative offset, and the agency's determination to pursue collection by internal administrative offset, shall release the

agency from the necessity of further compliance with paragraphs (a), (b), and (c) of this section.

(g) Prior to referring a debt for litigation under 31 CFR part 904, agencies should advise each debtor determined to be liable for the debt that, unless the debt can be collected administratively, litigation may be initiated. This notification should comply with Executive Order 12988 (3 CFR, 1996 Comp., p. 157) and may be given as part of a demand letter under paragraph (b) of this section or in a separate document. Litigation counsel for the Government should be advised that this notice has been given.

(h) When an agency learns that a bankruptcy petition has been filed with respect to a debtor, before proceeding with further collection action, the agency should immediately seek legal advice from OGC concerning the impact of the Bankruptcy Code on any pending or contemplated collection activities. Unless the agency determines that the automatic stay imposed at the time of filing pursuant to 11 U.S.C. 362 has been lifted or is no longer in effect, in most cases collection activity against the debtor should stop immediately. The agency should take the following steps:

(1) After seeking legal advice, a proof of claim should be filed in most cases with the bankruptcy court or the Trustee. Agencies should refer to the provisions of 11 U.S.C. 106 relating to the consequences on sovereign immunity of filing a proof of claim.

(2) If the agency is a secured creditor, it may seek relief from the automatic stay regarding its security, subject to the provisions and requirements of 11 U.S.C. 362.

(3) Offset is stayed in most cases by the automatic stay. However, agencies should seek legal advice from OGC to determine whether their payments to the debtor and payments of other agencies available for offset may be frozen by the agency until relief from the automatic stay can be obtained from the bankruptcy court. Agencies also should seek legal advice from OGC to determine whether recoupment is available.

§ 3.12 Reporting consumer debts.

(a) *Notice.* In demand letters to debtors sent in accordance with § 3.11, agencies shall inform debtors:

(1) The intent of the agency to report the delinquent consumer debt to credit reporting agencies after 60 calendar days;

(2) The specific information to be transmitted (*i.e.*, name, address, and taxpayers identification number, information about the debt);

(3) The actions which may be taken by the debtor to prevent the reporting (*i.e.* repayment in full or a repayment agreement); and

(4) The rights of the debtor to seek review of the existence of the debt in accordance with subpart F of this part.

(b) *Disclosure.* Disclosure of delinquent consumer debts must be consistent with the requirements of 31 U.S.C. 3711(e), the Privacy Act of 1974 (5 U.S.C. 552a), the Bankruptcy Code, and 31 CFR 5901.4.

(c) *Non-duplication of hearings.* When an agency has given a debtor any of the notices required by this part and an opportunity for administrative review under subpart F, the agency need not duplicate such notice and review opportunities before reporting the delinquent debt to credit bureaus.

(d) *Stay of disclosure.* Agencies shall not disclose a delinquent debt to a credit reporting agency if a debtor requests review under subpart F until a final determination is made by a reviewing official that upholds the agency intent to disclose.

(e) *Commercial debt.* The requirement of this section does not apply to commercial debts, although agencies should report commercial debts to commercial credit bureaus.

§ 3.13 Contracting with private collection contractors and with entities that locate and recover unclaimed assets. [Reserved.]

§ 3.14 Suspension or revocation of eligibility for loans and loan guaranties, licenses, permits, or privileges.

(a) Agencies are not permitted to extend financial assistance in the form of a loan, loan guarantee, or loan insurance to any person delinquent on a nontax debt owed to a Federal agency, except as otherwise authorized by law or upon waiver of application of this section by the Chief Financial Officer or the Deputy Chief Financial Officer. This prohibition does not apply to disaster loans. Agencies may extend credit after the delinquency has been resolved. The Secretary of the Treasury may exempt classes of debts from this prohibition and has prescribed standards defining when a "delinquency" is "resolved" for purposes of this prohibition. *See* 31 CFR 285.13 (Barring Delinquent Debtors From Obtaining Federal Loans or Loan Insurance or Guarantees).

(b) Similarly, agencies also are not permitted to extend financial assistance (either directly or indirectly) in the form of grants, loans, or loan guarantees to judgment debtors who have a judgment lien placed against their property until the judgment is satisfied, unless the agency grants a waiver in accordance

with agency regulations. *See* 31 U.S.C. 3201(e).

(c) In non-bankruptcy cases, agencies seeking the collection of statutory penalties, forfeitures, or other types of claims should consider the suspension or revocation of licenses, permits, or other privileges for any inexcusable or willful failure of a debtor to pay such a debt in accordance with the agency's regulations or governing procedures. The debtor should be advised in the agency's written demand for payment of the agency's ability to suspend or revoke licenses, permits, or privileges.

(d) Any agency making, guaranteeing, insuring, acquiring, or participating in, loans should consider suspending or disqualifying any lender, contractor, or broker from doing further business with the agency or engaging in programs sponsored by the agency if such lender, contractor, or broker fails to pay its debts to the Government within a reasonable time or if such lender, contractor, or broker has been suspended, debarred, or disqualified from participation in a program or activity by another Federal agency. Failure to pay a single substantial debt, or a number of outstanding debts (including disallowed costs and overrun payments, but not including sums owed to the Federal government under the Internal Revenue Code) owed to any Federal agency or instrumentality is grounds for nonprocurement suspension or debarment if the debt is uncontested and the debtor's legal administrative remedies for review of the debt are exhausted. *See* 7 CFR 3017.305(c)(3) and 3017.405(a)(2).

(e) The failure of any surety to honor its obligations in accordance with 31 U.S.C. 9305 should be reported to Treasury. Treasury will forward to all interested agencies notification that a surety's certificate of authority to do business with the Government has been revoked.

(f) The suspension or revocation of licenses, permits, or privileges also should extend to USDA programs or activities that are administered by the States on behalf of the Federal Government, to the extent that they affect the Federal Government's ability to collect money or funds owed by debtors. Therefore, States that manage USDA activities, pursuant to approval from the agencies, should ensure that appropriate steps are taken to safeguard against issuing licenses, permits, or privileges to debtors who fail to pay their debts to the Federal Government.

(g) In bankruptcy cases, before advising the debtor of an agency's intention to suspend or revoke licenses, permits, or privileges, agencies should

seek legal advice from OGC concerning the impact of the Bankruptcy Code, particularly 11 U.S.C. 362 and 525, which may restrict such action.

§ 3.15 Liquidation of collateral.

(a) In accordance with applicable statutes and regulations, agencies should liquidate security or collateral through the exercise of a power of sale in the security instrument or a nonjudicial foreclosure, and apply the proceeds to the applicable debt(s), if the debtor fails to pay the debt(s) within a reasonable time after demand and if such action is in the best interest of the United States. Collection from other sources, including liquidation of security or collateral, is not a prerequisite to requiring payment by a surety, insurer, or guarantor unless such action is expressly required by statute or contract.

(b) When an agency learns that a bankruptcy petition has been filed with respect to a debtor, the agency should seek legal advice from OGC concerning the impact of the Bankruptcy Code, including, but not limited to, 11 U.S.C. 362, to determine the applicability of the automatic stay and the procedures for obtaining relief from such stay prior to proceeding under paragraph (a) of this section.

§ 3.16 Collection in installments.

(a) Whenever feasible, agencies shall collect the total amount of a debt in one lump sum. If a debtor is financially unable to pay a debt in one lump sum, agencies may accept payment in regular installments. Agencies should obtain financial statements from debtors who represent that they are unable to pay in one lump sum and independently verify such representations whenever possible (*see* 31 CFR 902.2(g) for methods of verification). Agencies that agree to accept payments in regular installments should obtain a legally enforceable written agreement from the debtor that specifies all of the terms of the arrangement and that contains a provision accelerating the debt in the event of default.

(b) The size and frequency of installment payments should bear a reasonable relation to the size of the debt and the debtor's ability to pay. If possible, the installment payments should be sufficient in size and frequency to liquidate the debt in three years or less.

(c) Security for deferred payments should be obtained in appropriate cases. Agencies may accept installment payments notwithstanding the refusal of the debtor to execute a written

agreement or to give security, at the agency's option.

§ 3.17 Interest, penalties, and administrative costs.

(a) Except as provided in paragraphs (g), (h), and (i) of this section, agencies shall charge interest, penalties, and administrative costs on debts owed to the United States pursuant to 31 U.S.C. 3717. If not included in the agency's demand notice, an agency shall mail or hand-deliver a written notice to the debtor, at the debtor's most recent address available to the agency, explaining the agency's requirements concerning these charges except where these requirements are included in a contractual or repayment agreement. These charges shall continue to accrue until the debt is paid in full or otherwise resolved through compromise, termination, or waiver of the charges.

(b) Agencies shall charge interest on debts owed the United States as follows, except as otherwise required by law:

(1) Interest shall accrue from the date of delinquency, or as otherwise provided by law.

(2) Unless otherwise established in a contract, repayment agreement, or by statute, the rate of interest charged shall be the rate established annually by the Secretary of the Treasury in accordance with 31 U.S.C. 3717. Pursuant to 31 U.S.C. 3717, an agency may charge a higher rate of interest if it reasonably determines that a higher rate is necessary to protect the rights of the United States. The agency should document the reason(s) for its determination that the higher rate is necessary.

(3) The rate of interest, as initially charged, shall remain fixed for the duration of the indebtedness. When a debtor defaults on a repayment agreement and seeks to enter into a new agreement, the agency may require payment of interest at a new rate that reflects the current value of funds to the Treasury at the time the new agreement is executed. Interest shall not be compounded, that is, interest shall not be charged on interest, penalties, or administrative costs required by this section. If, however, a debtor defaults on a previous repayment agreement, charges that accrued but were not collected under the defaulted agreement shall be added to the principal under the new repayment agreement.

(c) Agencies shall assess administrative costs incurred for processing and handling delinquent debts. The calculation of administrative costs should be based on actual costs

incurred or upon estimated costs as determined by the assessing agency.

(d) Unless otherwise established in a contract, repayment agreement, or by statute, agencies shall charge a penalty, pursuant to 31 U.S.C. 3717(e)(2), not to exceed six percent a year on the amount due on a debt that is delinquent for more than 90 days. This charge shall accrue from the date of delinquency.

(e) Agencies may increase an "administrative debt" by the cost of living adjustment in lieu of charging interest and penalties under this section. "Administrative debt" includes, but is not limited to, a debt based on fines, penalties, and overpayments, but does not include a debt based on the extension of Government credit, such as those arising from loans and loan guarantees. The cost of living adjustment is the percentage by which the Consumer Price Index for the month of June of the calendar year preceding the adjustment exceeds the Consumer Price Index for the month of June of the calendar year in which the debt was determined or last adjusted. Increases to administrative debts shall be computed annually. Agencies should use this alternative only when there is a legitimate reason to do so, such as when calculating interest and penalties on a debt would be extremely difficult because of the age of the debt.

(f) When a debt is paid in partial or installment payments, amounts received by the agency shall be applied first to outstanding penalties, second to administrative charges, third to interest, and last to principal, except as otherwise required by law.

(g) Agencies shall waive the collection of interest and administrative charges imposed pursuant to this section on the portion of the debt that is paid within 30 days after the date on which interest began to accrue. Agencies may extend this 30-day period on a case-by-case basis. In addition, agencies may waive interest, penalties, and administrative costs charged under this section, in whole or in part, without regard to the amount of the debt, either under the criteria set forth in the Federal standards for the compromise of debts (31 CFR part 902), or if the agency determines that collection of these charges is against equity and good conscience or is not in the best interest of the United States.

(h) [Reserved.]

(i) Agencies are authorized to impose interest and related charges on debts not subject to 31 U.S.C. 3717, in accordance with the common law. Agencies shall consult OGC before imposing interest and related charges under common law for any debt.

§ 3.18 Use and disclosure of mailing addresses.

(a) When attempting to locate a debtor in order to collect or compromise a debt under this part or 31 CFR parts 902 through 904 or other authority, agencies may send a request Treasury to obtain a debtor's mailing address from the records of the Internal Revenue Service.

(b) Agencies are authorized to use mailing addresses obtained under paragraph (a) of this section to enforce collection of a delinquent debt and may disclose such mailing addresses to other agencies and to collection agencies for collection purposes.

§ 3.19 Standards for the compromise of claims.

An agency shall follow the standards set forth in 31 CFR part 902 for the compromise of debts pursuant to 31 U.S.C. 3711 arising out of the activities of, or referred or transferred for collection services to, that agency, except where otherwise authorized or required by law.

§ 3.20 Standards for suspending or terminating collection activities.

An agency shall follow the standards set forth in 31 CFR part 903 for the suspension or termination of collection activity pursuant to 31 U.S.C. 3711, except where otherwise authorized or required by law.

§ 3.21 Referrals to the Department of Justice.

An agency shall promptly refer to the Department of Justice for litigation debts on which aggressive collection activity has been taken in accordance with this part, and that cannot be compromised by the agency or on which collection activity cannot be suspended or terminated in accordance with 31 CFR parts 902 and 903. Agencies shall follow the procedures set forth in 31 CFR part 904 in making such referrals.

Subpart C—Referral of Debts to Treasury.

§ 3.30 General requirements.

(a) Agencies are required by law to transfer delinquent, nontax, legally enforceable debts to Treasury for collection through cross-servicing and through centralized administrative offset. Additionally, USDA has chosen to transfer debts to Treasury for collection through administrative wage garnishment. Agencies need not make duplicate referrals to Treasury for all of these purposes; a debt may be referred simultaneously for purposes of collection by cross-servicing, centralized administrative offset, and administrative wage garnishment where

applicable. However, in some instances a debt exempt from collection via cross-servicing may be subject to collection by centralized offset so simultaneous referrals are not always the norm. This subpart sets forth rules applicable to the transfer of debts to Treasury for collection by cross-servicing. Rules for transfer to Treasury for centralized offset are set forth in subpart D of this part, and for administrative wage garnishment in subpart E of this part.

(b) When debts are referred or transferred to Treasury, or Treasury-designated debt collection centers under the authority of 31 U.S.C. 3711(g), Treasury shall service, collect, or compromise the debts, or Treasury will suspend or terminate the collection action, in accordance with the statutory requirements and authorities applicable to the collection of such debts.

§ 3.31 Mandatory referral for cross-servicing.

(a) Agencies shall transfer to Treasury any legally enforceable nontax debt in excess of \$25, or combination of debts less than \$25 that exceeds \$25 (in the case of a debtor whose taxpayer identification number is unknown the applicable threshold is \$100), that has or have been delinquent for a period of 180 days or more in accordance with 31 CFR 285.12 so that Treasury may take appropriate action on behalf of the creditor agency to collect or compromise, or to suspend or terminate collection, of the debt, including use of debt collection centers and private collection contractors to collect the debt or terminate collection action.

(b) The requirement of paragraph (a) of this section does not apply to any debt that:

- (1) Is in litigation or foreclosure (*see* 31 CFR 385.12(d)(2) for definition);
- (2) Will be disposed of under an approved asset sale program (*see* 31 CFR 285.12(d)(3) for definition);
- (3) Has been referred to a private collection contractor for a period of time acceptable to Treasury;
- (4) Is at a debt collection center for a period of time acceptable to Treasury;
- (5) Will be collected under internal offset procedures within three years after the debt first became delinquent;
- (6) Is exempt from this requirement based on a determination by the Secretary of the Treasury that exemption for a certain class of debt is in the best interest of the United States. Federal agencies may request that the Secretary of the Treasury exempt specific classes of debts. Any such request by an agency must be sent to the Fiscal Assistant Secretary of the

Treasury by the USDA Chief Financial Officer.

(c) A debt is considered 180 days delinquent for purposes of this section if it is 180 days past due and is legally enforceable. A debt is past due if it has not been paid by the date specified in the agency's initial written demand for payment or applicable agreement or instrument (including a post-delinquency payment agreement) unless other satisfactory payment arrangements have been made. A debt is legally enforceable if there has been a final agency determination that the debt, in the amount stated, is due and there are no legal bars to collection action. Where, for example, a debt is the subject of a pending administrative review process required by statute or regulation and collection action during the review process is prohibited, the debt is not considered legally enforceable for purposes of mandatory transfer to Treasury and is not to be transferred even if the debt is more than 180 days past due. When a final agency determination is made after an administrative appeal or review process (including administrative review under subpart F of this part), the creditor agency must transfer such debt to Treasury, if more than 180 days delinquent, within 30 days after the date of the final decision.

§ 3.32 Discretionary referral for cross-servicing.

Agencies should consider referring legally enforceable nontax debts that are less than 180 days delinquent to Treasury or to Treasury-designated "debt collection centers" in accordance with 31 CFR 285.12 to accomplish efficient, cost effective debt collection if no USDA payments will be available to collect the debt through internal administrative offset under § 3.43.

§ 3.33 Required certification.

Agencies referring delinquent debts to Treasury for collection via cross-servicing must certify, in writing, that:

- (a) The debts being transferred are valid and legally enforceable;
- (b) There are no legal bars to collection; and
- (c) That the agency has complied with all prerequisites to a particular collection action under the laws, regulations or policies applicable to the agency, unless the agency and Treasury agree that Treasury will do so on behalf of the agency.

§ 3.34 Fees.

Federal agencies operating Treasury-designated debt collection centers are authorized to charge a fee for services

rendered regarding referred or transferred debts. The fee may be paid out of amounts collected and may be added to the debt as an administrative cost.

Subpart D—Administrative Offset

§ 3.40 Scope.

(a) This subpart sets forth the procedures to be used by agencies in collecting debts by administrative offset. The term "administrative offset" has the meaning provided in 31 U.S.C. 3701(a)(1).

(b) This section does not apply to:

- (1) Debts arising under the Social Security Act, except as provided in 42 U.S.C. 404;
 - (2) Payments made under the Social Security Act, except as provided for in 31 U.S.C. 3716(c) (*see* 31 CFR 285.4, Federal Benefit Offset);
 - (3) Debts arising under, or payments made under, the Internal Revenue Code (except for offset of tax refunds) or the tariff laws of the United States;
 - (4) Offsets against Federal salaries (such offsets are covered by subpart F of this part);
 - (5) Offsets under 31 U.S.C. 3728 against a judgment obtained by a debtor against the United States;
 - (6) Offsets or recoupments under common law, State law, or Federal statutes specifically prohibiting offsets or recoupments of particular types of debts;
 - (7) Offsets in the course of judicial proceedings, including bankruptcy; or
 - (8) Intracontractual offsets to satisfy contract debts taken by a contracting officer under the Contracts Disputes Act, 41 U.S.C. 601–613.
- (c) Unless otherwise provided for by contract or law, debts or payments that are not subject to administrative offset under 31 U.S.C. 3716 may be collected by administrative offset under the common law or other applicable statutory authority.
- (d) Supplemental provisions related to offsets by CCC may be found at 7 CFR part 1403 and for the Farm Service Agency (FSA) at 7 CFR part 792.
- (e) Unless otherwise provided by law, administrative offset of payments under the authority of 31 U.S.C. 3716 to collect a debt may not be conducted more than 10 years after the Government's right to collect the debt first accrued, unless facts material to the Government's right to collect the debt were not known and could not reasonably have been known by the official or officials of the Government who were charged with the responsibility to discover and collect such debts. This limitation does not apply to debts reduced to a judgment.

(f) In bankruptcy cases, agencies should seek legal advice from OGC concerning the impact of the Bankruptcy Code, particularly 11 U.S.C. 106, 362, and 553, on pending or contemplated collections by offset.

§ 3.41 Procedures for notification of intent to collect by administrative offset.

(a) Prior to initiation of collection by administrative offset, a creditor agency must:

(1) Send the debtor a written Notice of Intent to Collect by Administrative Offset, by mail or hand-delivery, of the type and amount of the debt, the intention of the agency to use non-centralized administrative offset (which includes a USDA internal administrative offset) to collect the debt 30 calendar days after the date of the Notice, the name of the Federal agency or USDA agency from which the creditor agency wishes to collect in the case of a non-centralized offset, the intent to refer the debt to Treasury for collection through centralized offset (including possible offset of tax refunds) 60 calendar days after the date of the Notice if the debt is not satisfied by offset within USDA or by agreement with another Federal agency, and an explanation of the debtor's rights under 31 U.S.C. 3716; and

(2) Give the debtor the opportunity:

(i) To inspect and copy agency records related to the debt;

(ii) For a review within the agency of the determination of indebtedness in accordance with subpart F of this part; and

(iii) To make a written agreement to repay the debt.

(b) The procedures set forth in paragraph (a) of this section are not required when:

(1) The offset is in the nature of a recoupment;

(2) The debt arises under a contract subject to the Contracts Disputes Act;

(3) The agency first learns of the existence of the amount owed by the debtor when there is insufficient time before payment would be made to the debtor/payee to allow for prior notice and an opportunity for review. When prior notice and an opportunity for review are omitted, the agency shall give the debtor such notice and an opportunity for review as soon as practicable and shall promptly refund any money ultimately found not to have been owed to the Government; or

(4) The agency previously has given a debtor any of the notice and review opportunities required under this part, with respect to a particular debt (*see, e.g.,* § 3.11).

(c) The Notice of Intent to Collect by Administrative Offset should be

included as part of a demand letter issued under § 3.11 to advise the debtor of all debt collection possibilities that the agency will seek to employ.

§ 3.42 Debtor rights to inspect or copy records, submit repayment proposals, or request administrative review.

(a) A debtor who intends to inspect or copy agency or USDA records with respect to the debt must notify the creditor agency in writing within 20 calendar days of receipt of the Notice of Intent to Collect by Administrative Offset by the debtor. In response, the agency must notify the debtor of the location, time, and any other conditions, consistent with part 1, subpart A of this title, for inspecting and copying, and that the debtor may be liable for reasonable copying expenses.

(b) The debtor may, in response to the Notice of Intent to Collect by Administrative Offset, propose to the creditor agency a written agreement to repay the debt as an alternative to administrative offset. Any debtor who wishes to do this must submit a written proposal for repayment of the debt, which must be received by the creditor agency within 20 calendar days of the date the notice was received by the debtor. In response, the creditor agency must notify the debtor in writing whether the proposed agreement is acceptable. In exercising its discretion, the creditor agency must balance the Government's interest in collecting the debt against fairness to the debtor.

(c) A debtor must request an administrative review of the debt under subpart F of this part within 30 days for purposes of a proposed collection by non-centralized administrative offset and within 60 days for purposes of a proposed collection by referral to Treasury for offset against other Federal payments that would include tax refunds.

§ 3.43 Non-centralized administrative offset.

(a) *Scope.* In cooperation with the Federal agency certifying or authorizing payments to the debtor, a creditor agency may make a request directly to a payment authorizing agency to offset a payment due a debtor to collect a delinquent debt, from for example, a Federal employee's lump sum payment upon leaving Government service in order to pay an unpaid advance. Also, non-centralized offsets include USDA internal administrative offsets, for example, of CCC payments to pay FSA delinquent debts. Unless prohibited by law, when centralized administrative offset is not available or appropriate, past due, legally enforceable nontax

delinquent debts may be collected through non-centralized administrative offset.

(b) *Effectuation of offset.* A non-centralized offset may be effected 31 days after the debtor receives a Notice of Intent to Collect by Administrative Offset, any time after the final determination in an administrative review conducted under subpart F of this part upholds the creditor agency's decision to offset, or any time after the creditor agency notifies the debtor that its repayment proposal submitted under § 3.42(c) is not acceptable if the 30-day period for the debtor to seek review of the Notice has expired, unless the creditor agency makes a determination under § 3.41(b)(3) that immediate action to effectuate the offset is necessary.

(c) *Certification.* A payment authorizing agency may conduct a non-centralized administrative offset only after certification by a creditor agency that:

(1) The debtor has been provided notice and opportunity for review as set forth in § 3.41; and

(2) The payment authorizing agency has received written certification from the creditor agency that the debtor owes the past due, legally enforceable delinquent debt in the amount stated, and that the creditor agency has fully complied with its regulations concerning administrative offset.

(d) *Responsibilities of payment authorizing agencies.* Payment authorizing agencies shall comply with offset requests by creditor agencies to collect debts owed to the United States, unless the offset would not be in the best interests of the United States with respect to the program of the payment authorizing agency, or would otherwise be contrary to law. Appropriate use should be made of the cooperative efforts of other agencies in effecting collection by administrative offset.

(e) *Application of recovered amounts to satisfaction of debts.* When collecting multiple debts by non-centralized administrative offset, agencies should apply the recovered amounts to those debts in accordance with the best interests of the United States, as determined by the facts and circumstances of the particular case, particularly the applicable statute of limitations.

§ 3.44 Centralized administrative offset.

(a) *Mandatory referral.* After the notice and review opportunity requirements of § 3.41 are met, an agency shall refer debts which are over 180 days delinquent to Treasury for collection through centralized offset 60 days after the agency has provided the

notice and opportunity for review required under § 3.41. If the debtor seeks review under subpart F of this part, referral of the debt must occur within 30 days of the final decision upholding the agency decision to offset the debt if the debt is more than 180 days delinquent.

(b) *Discretionary referral.* After the notice and review opportunity requirements of § 3.41 are met, and administrative review under subpart F is not sought or is unsuccessful on the part of the debtor, an agency may refer a debt that is less than 180 days delinquent.

(c) *Procedures for referral.* Agencies shall refer debts to Treasury for collection in accordance with Treasury procedures set forth in 31 CFR 285.5.

(d) *Payment authorizing agency responsibilities.*

(1) The names and taxpayer identifying numbers (TINs) of debtors who owe debts referred to Treasury under this section shall be compared to the names and TINs on payments to be made by Federal disbursing officials. Federal disbursing officials include disbursing officials of Treasury, the Department of Defense, the United States Postal Service, other Government corporations, and disbursing officials of the United States designated by Treasury. When the name and TIN of a debtor match the name and TIN of a payee and all other requirements for offset have been met, the payment authorizing agency must effect a payment to satisfy the debt.

(2) Any USDA official serving as a Federal disbursing official for purposes of effecting centralized offset under this section must notify a debtor/payee in writing that an offset has occurred to satisfy, in part or in full, a past due, legally enforceable delinquent debt. The notice shall include a description of the type and amount of the payment from which the offset was taken, the amount of offset that was taken, the identity of the creditor agency requesting the offset, and a contact point within the creditor agency who will respond to questions regarding the offset.

§ 3.45 USDA payment authorizing agency offset of pro rata share of payments due entity in which debtor participates.

(a) A USDA payment authorizing agency, to satisfy either a non-centralized or centralized offset under §§ 3.43 and 3.44, may offset:

(1) A debtor's pro rata share of USDA payments due any entity in which the debtor participates, either directly or indirectly, as determined by the creditor agency or the payment authorizing agency; or

(2) USDA payments due any entity that the debtor has established, or reorganized, transferred ownership of, or changed in some other manner the operation of, for the purpose of avoiding payment on the claim or debt, as determined by the creditor agency or the payment authorizing agency.

(b) Prior to exercising the authority of this section to offset any portion of a payment due an entity, the creditor agency must have provided notice to that entity in accordance with § 3.41 of its intent to offset payments to the entity in satisfaction of the debt of an individual debtor participating in that entity.

§ 3.46 Offset against tax refunds.

USDA will take action to effect administrative offset against tax refunds due to debtors under 26 U.S.C. 6402 in accordance with the provisions of 31 U.S.C. 3720A through referral for centralized offset under § 3.44.

§ 3.47 Offset against amounts payable from Civil Service Retirement and Disability Fund.

Upon providing the Office of Personnel Management (OPM) written certification that a debtor has been afforded the procedures provided in § 3.41, creditor agencies may request OPM to offset a debtor's anticipated or future benefit payments under the Civil Service Retirement and Disability Fund (Fund) in accordance with regulations codified at 5 CFR 831.1801 to 831.1808. Upon receipt of such a request, OPM will identify and "flag" a debtor's account in anticipation of the time when the debtor requests, or becomes eligible to receive, payments from the Fund. This will satisfy any requirement that offset be initiated prior to the expiration of the time limitations referenced in § 3.40(e).

Subpart E—Administrative Wage Garnishment

§ 3.50 Purpose.

This subpart provides USDA procedures for use of administrative wage garnishment to garnish a debtor's disposable pay to satisfy delinquent nontax debt owed to USDA creditor agencies.

§ 3.51 Scope.

(a) This subpart applies to any agency that administers a program that gives rise to a delinquent nontax debt owed to the United States and to any agency that pursues recovery of such debt.

(b) This subpart shall apply notwithstanding any provision of State law.

(c) Nothing in this subpart precludes the compromise of a debt or the suspension or termination of collection action in accordance with the provisions of this part or other applicable law.

(d) The receipt of payments pursuant to this subpart does not preclude an agency from pursuing other debt collection remedies under this part. An agency may pursue such debt collection remedies separately or in conjunction with administrative wage garnishment.

(e) This subpart does not apply to the collection of delinquent nontax debt owed to the United States from the wages of Federal employees from their Federal employment. Federal pay is subject to the salary offset procedures of subpart G of this part.

(f) Nothing in this subpart requires agencies to duplicate notices or administrative proceedings required by contract or other laws or regulations, or other provisions of this part.

§ 3.52 Definitions.

As used in this subpart the following definitions shall apply:

(a) *Disposable pay* means that part of the debtor's compensation (including, but not limited to, salary, bonuses, commissions, and vacation pay) from an employer remaining after the deduction of health insurance premiums and any amounts required by law to be withheld. For purposes of this section, "amounts required by law to be withheld" include amounts for deductions such as social security taxes and withholding taxes, but do not include any amount withheld pursuant to a court order.

(b) *Employer* means a person or entity that employs the services of others and that pays their wages or salaries. The term employer includes, but is not limited to, State and local Governments, but does not include an agency of the Federal Government.

(c) *Garnishment* means the process of withholding amounts from an employee's disposable pay and the paying of those amounts to a creditor in satisfaction of a withholding order.

(d) *Withholding order* means any order for withholding or garnishment of pay issued by an agency, or judicial or administrative body. For purposes of this section, the terms "wage garnishment order" and "garnishment order" have the same meaning as "withholding order."

§ 3.53 Procedures.

(a) USDA has determined to pursue administrative wage garnishment of USDA debtors by referral of nontax legally enforceable debts to Treasury for

issuance of garnishment orders by Treasury or its contractors.

(b) In the demand letter issued under § 3.11, agencies must notify debtors of their intent to refer to pursue garnishment of their disposable pay through referral of the debt to Treasury for issuance of an administrative wage garnishment order and provide debtors with the opportunity for review of the existence of the debt under subpart F of this part within 60 days.

(c) Upon expiration of the 60-day period for review, or upon completion of a review under subpart F that upholds the agency's determination of the debt, USDA will transfer the debt for collection through administrative wage garnishment as well as other means through cross-servicing or centralized offset.

(d) If Treasury elects to pursue collection through administrative wage garnishment, Treasury, or its contractor, will notify the debtor of its intent to initiate garnishment proceedings and provide the debtor with the opportunity to inspect and copy agency records related to the debt, enter into a repayment agreement, or request a hearing as to the existence or amount of the debt or the terms of the proposed repayment schedule under the proposed garnishment order, in accordance with 31 CFR 285.11.

(e) If the debtor requests a hearing at any time, Treasury will forward the request to the USDA creditor agency to which the debt is owed, and the creditor agency will contact OCFO for selection of a hearing official. The issuance of proposed garnishment orders by Treasury shall not be subject to appeal to the National Appeals Division. Hearings will be conducted in accordance with 31 CFR 285.11(f).

(f) OCFO shall provide a copy of the hearing official's final decision to Treasury for implementation with respect to the subject garnishment order.

Subpart F—Administrative reviews for administrative offset, administrative wage garnishment, and disclosed to credit reporting agencies.

§ 3.60 Applicability.

(a) This section establishes consolidated administrative review procedures for debts subject to administrative offset, administrative wage garnishment, and disclosure to credit reporting agencies, under subparts D and E of this part. A hearing or review under this section shall satisfy the required opportunity for administrative review by the agency of the determination of a debt for both administrative offset and administrative

wage garnishment that is required before transfer to Treasury for collection or collection by the agency through non-centralized offset.

(b) For debt collection proceedings initiated by FSA, CCC, the Rural Housing Service, the Rural Business-Cooperative Service, the Risk Management Agency, the Federal Crop Insurance Corporation, the Natural Resources Conservation Service, Rural Development, and the Rural Utilities Service (but not for programs authorized by the Rural Electrification Act of 1936 or the Rural Telephone Bank Act, 7 U.S.C. 901 *et seq.*), unless otherwise specified, any administrative review will be conducted by the National Appeals Division in accordance with 7 CFR part 11 and not the procedures of this subpart.

§ 3.61 Presiding employee.

An agency reviewing officer may be an agency employee or the agency may provide for reviews to be done by another agency through an interagency agreement. No agency employee may act as a reviewing officer for the consideration of collection by administrative offset in a matter for which the employee was a contracting officer or a debt management officer.

§ 3.62 Procedures.

(a) A debtor who receives a Notice of Intent to Collect by Administrative Offset, Notice of Disclosure to Credit Reporting Agencies, or Notice of Intent to Collect by Administrative Wage Garnishment, or more than one of these notices simultaneously, may request administrative review of the agency's determination that the debt exists and the amount of the debt. Any debtor who wishes to do this must submit a written explanation of why the debtor disagrees and seeks review. The request must be received by the creditor agency within 30 calendar days of the date the notice was delivered to the debtor.

(b) In response, the creditor agency must notify the debtor in writing whether the review will be by documentary review or by hearing. An oral hearing is not necessary with respect to debt collection systems in which a determination of indebtedness rarely involves issues of credibility or veracity and the agency has determined that review of the written record is ordinarily an adequate means to correct prior mistakes. The agency shall provide the debtor with a reasonable opportunity for an oral hearing when the debtor requests reconsideration of the debt and the agency determines that the question of the indebtedness cannot be resolved by review of the

documentary evidence, for example, when the validity of the debt turns on an issue of credibility or veracity. If the debtor requests a hearing, and the creditor agency decides to conduct a documentary review, the agency must notify the debtor of the reason why a hearing will not be granted. The agency must also advise the debtor of the procedures to be used in reviewing the documentary record, or of the date, location and procedures to be used if review is by a hearing.

(c) An oral hearing may, at the debtor's option, be conducted either in-person or by telephone conference. All travel expenses incurred by the debtor in connection with an in-person hearing will be borne by the debtor. All telephonic charges incurred during the hearing will be the responsibility of the agency.

(d) After the debtor requests a hearing, the hearing official shall notify the debtor of:

(1) The date and time of a telephonic hearing;

(2) The date, time, and location of an in-person oral hearing; or

(3) The deadline for the submission of evidence for a documentary review.

(e) Unless otherwise arranged by mutual agreement between the debtor and the agency, evidenced in writing, any documentary review or hearing will be conducted not less than 10 calendar days and no more than 45 calendar days after receipt of the request for review.

(f) Unless otherwise arranged by mutual agreement between the debtor and the agency, evidenced in writing, a documentary review or hearing will be based on agency records plus other relevant documentary evidence which may be submitted by the debtor within 10 calendar days after the request for review is received.

(g)(1) Hearings will be as informal as possible, and will be conducted by a reviewing officer in a fair and expeditious manner. The reviewing officer need not use the formal rules of evidence with regard to the admissibility of evidence or the use of evidence once admitted. However, clearly irrelevant material should not be admitted, whether or not any party objects. Any party to the hearing may offer exhibits, such as copies of financial records, telephone memoranda, or agreements, provided the opposing party is notified at least 5 days before the hearing.

(2) *Burden of proof.* (i) The agency will have the burden of going forward to prove the existence or amount of the debt.

(ii) Thereafter, if the debtor disputes the existence or amount of the debt, the

debtor must present by a preponderance of the evidence that no debt exists or that the amount of the debt is incorrect. In addition, the debtor may present evidence that repayment would cause a financial hardship to the debtor or that collection of the debt may not be pursued due to operation of law.

(3) Witnesses must testify under oath or affirmation.

(4) Debtors may represent themselves or may be represented at their own expense by an attorney or other person.

(5) The substance of all significant matters discussed at the hearing must be recorded. No official record or transcript of the hearing need be created, but if a debtor requested that a transcript be made, it will be at the debtor's expense.

(h) In the absence of good cause shown, a debtor who fails to appear at a hearing scheduled pursuant to paragraph (d) of this section will be deemed as not having timely filed a request for a hearing.

(i)(1) Within no more than 30 calendar days after the hearing or receipt of documentation for the documentary review, the reviewing officer will issue a written decision to the debtor and the agency, including the supporting rationale for the decision. The deadline for issuance of the decision may be extended by the reviewing officer for good cause for no more than 30 calendar days.

(2) The written decision shall include:

- (i) A summary of the facts presented;
- (ii) The hearing official's findings, analysis and conclusions; and
- (iii) Resolution of any significant procedural matter which was in dispute before or during the hearing or documentary review.

(3) The reviewing officer's decision constitutes final agency action for purposes of judicial review under the Administrative Procedure Act (5 U.S.C. 701 *et seq.*) as to the following issues:

(i) All issues of fact relating to the basis of the debt (including the existence of the debt and the propriety of administrative offset), in cases where the debtor previously had not been afforded due process; and

(ii) The existence of the debt and the propriety of administrative offset, in cases where the debtor previously had been afforded due process as to issues of fact relating to the basis of the debt.

(j) The reviewing officer will promptly distribute copies of the decision to the USDA Chief Financial Officer (CFO), the USDA agency CFO's, the agency debt management officer, the debtor, and the debtor's representative, if any.

Subpart G—Federal Salary Offset

Authority: 5 U.S.C. 5514; 5 CFR part 550, subpart K.

§ 3.70 Scope of this subpart.

(a) The provisions of this subpart set forth USDA procedures for the collection of a Federal employee's pay by salary offset to satisfy certain valid and past due debts owed the government.

(b) These regulations apply to:

- (1) Current USDA employees and other agencies who owe debts to USDA; and
- (2) Current USDA employees who owe debts to other agencies.

(c) These regulations do not apply to debts owed by Farm Service Agency county executive directors or county office employees. Salaries of those employees are subject to administrative offset as provided in 7 CFR part 792 or part 1403.

(d) These regulations do not apply to debts or claims arising under the Internal Revenue Code of 1954 (26 U.S.C. 1 *et seq.*); the tariff laws of the United States; or to any case where collection of a debt by salary offset is explicitly provided for or prohibited by another statute (*e.g.* travel advances in 5 U.S.C. 5705 or employee training expense in 5 U.S.C. 4108).

(e) These regulations identify the types of salary offset available to USDA, as well as certain rights provided to the employee, which include a written notice before deductions begin, the opportunity to petition for a hearing and to receive a written decision if a hearing is granted. The rights provided by this section do not extend to:

(1) Any adjustment to pay arising out of an employee's election 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 4 pay periods or less;

(2) A routine intra-agency adjustment of pay that is made to correct an overpayment of pay attributable to clerical or administrative errors or delays in processing pay documents, if the overpayment occurred within the 4 pay periods preceding the adjustment and, at the time of such adjustment, or as soon thereafter as practical, the individual is provided written notice of the nature and the amount of the adjustment and point of contact for contesting such adjustment; or

(3) Any adjustment to collect a debt amounting to \$50 or less, if, at the time of such adjustment, or as soon thereafter as practical, the individual is provided written notice of the nature and the

amount of the adjustment and a point of contact for contesting such adjustment.

(f) These regulations do not preclude an employee from:

(1) Requesting waiver of an erroneous overpayment under 5 U.S.C. 5584, 10 U.S.C. 2774, or 32 U.S.C. 716;

(2) Requesting waiver of any other type of debt, if waiver is available by statute; or

(3) Questioning the amount or validity of a debt, in the manner prescribed by this part.

(g) Nothing in these regulations precludes the compromise, suspension or termination of collection actions where appropriate under USDA regulations contained elsewhere.

§ 3.71 Definitions.

As used in this subpart the following definitions shall apply:

(a) *Agency* means an executive department or agency; a military department; the United States Postal Service; the Postal Rate Commission; the United States Senate; the United States House of Representatives; any court, court administrative office, or instrumentality in the judicial or legislative branches of the Government; or a Government corporation.

(b) *Debt* means:

(1) An amount owed to the United States from sources which include, but are not limited to, insured or guaranteed loans, fees, leases, rents, royalties, services, sales of real or personal property, overpayments, penalties, damages, interest, fines and forfeitures (except those arising under the Uniform Code of Military Justice).

(2) An amount owed to the United States by an employee for pecuniary losses where the employee has been determined to be liable due to his or her negligent, willful, unauthorized or illegal acts, including but not limited to:

(i) Theft, misuse, or loss of Government funds;

(ii) False claims for services and travel;

(iii) Illegal, unauthorized obligations and expenditures of Government appropriations;

(iv) Using or authorizing the use of Government owned or leased equipment, facilities, supplies, and services for other than official or approved purposes;

(v) Lost, stolen, damaged, or destroyed Government property;

(vi) Erroneous entries on accounting records or reports; and

(vii) Deliberate failure to provide physical security and control procedures for accountable officers, if such failure is determined to be the approximate cause for a loss of Government funds.

(c) *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 any amount required by law to be withheld (other than deductions to execute garnishment orders in accordance with 5 CFR parts 581 and 582). Among the legally required deductions that must be applied first to determine disposable pay are levies pursuant to the Internal Revenue Code (title 26, United States Code) and deductions described in 5 CFR 581.105(b) through (f).

(d) *Employee* means a current employee of an agency, including a current member of the Armed Forces or a Reserve of the Armed Forces, but does not include a Farm Service Agency county executive director or county office employee.

(e) *Hearing official* means a USDA administrative law judge or some other individual not under the control of the Secretary.

(f) *Salary offset* means a reduction of a debt by offset(s) from the disposable pay of an employee without his or her consent.

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

§ 3.72 Coordinating offset with another Federal agency.

(a) *When USDA is owed the debt.* When USDA is owed a debt by an employee of another agency, the other agency shall not initiate the requested offset until USDA provides the agency with a written certification that the debtor owes USDA a debt (including the amount and basis of the debt and the due date of the payment) and that USDA has complied with this subpart.

(b) *When another agency is owed the debt.* USDA may use salary offset against one of its employees who is indebted to another agency, if requested to do so by that agency. Such a request must be accompanied by a certification by the requesting agency that the person owes the debt (including the amount and basis of the debt and the due date of the payment) and that the agency has complied with its regulations required by 5 U.S.C. 5514 and 5 CFR part 550, subpart K.

(c) *Mandatory centralized offset.* Debts may be referred to Treasury under § 3.44 for collection through salary offset in accordance with 31 CFR 285.7.

§ 3.73 Determination of indebtedness.

(a) In determining that an employee is indebted to USDA and that 31 CFR parts 900 through 904 have been satisfied and that salary offset is appropriate, USDA will review the debt to make sure that it is valid and past due.

(b) If USDA determines that any of the requirements of paragraph (a) of this section have not been met, no determination of indebtedness shall be made and salary offset will not proceed until USDA is assured that the requirements have been met.

§ 3.74 Notice requirements before offset.

Except as provided in paragraph (b) of this section, salary offset will not be made unless USDA first provides the employee with a minimum of 30 calendar days written notice. This Notice of Intent to Offset Salary (Notice of Intent) will state:

(a) That USDA has reviewed the records relating to the debt and has determined that a debt is owed, the amount of the debt, and the facts giving rise to the debt;

(b) USDA's intention to collect the debt by means of deduction from the employee's current disposable pay until the debt and all accumulated interest are paid in full;

(c) The approximate beginning date, frequency, and amount 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; and the intention to continue the deductions until the debt is paid in full or otherwise resolved;

(d) An explanation of USDA requirements concerning interest, penalties and administrative costs; unless such payments are waived in accordance with 31 U.S.C. 3717 and § 3.17;

(e) The employee's right to inspect and copy USDA records relating to the debt;

(f) The employee's right to enter into a written agreement with USDA for a repayment schedule differing from that proposed by USDA, so long as the terms of the repayment schedule proposed by the employee are agreeable to USDA;

(g) The right to a hearing conducted by a hearing official on USDA's determination of the debt, the amount of the debt, or percentage of disposable pay to be deducted each pay period, so long as a petition is filed by the employee as prescribed by USDA;

(h) That the timely filing of a petition for hearing will stay the collection proceedings;

(i) That a final decision on the hearing will be issued at the earliest practical date, but not later than 60 calendar days

after the filing of the petition requesting the hearing, unless the employee requests, and the hearing officer grants, a delay in the proceedings;

(j) That any knowingly false or frivolous statements, representations, or evidence may subject the employee to:

(1) Disciplinary procedures appropriate under 5 U.S.C. chapter 75, 5 CFR part 752, or any other applicable statutes or regulations;

(2) Penalties under the False Claims Act, 31 U.S.C. 3729–3731, or any other applicable statutory authority; or

(3) Criminal penalties under 18 U.S.C. 286, 287, 1001, and 1002 or any other applicable statutory authority;

(k) Any other rights and remedies available to the employee under statutes or regulations governing the program for which the collection is being made;

(l) 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, unless there are applicable contractual or statutory provisions to the contrary;

(m) The method and time period for requesting a hearing; and

(n) The name and address of an official of USDA to whom communications should be directed.

§ 3.75 Request for a hearing.

(a) Except as provided in paragraph (c) of this section, an employee must file a petition for a hearing, that is received by USDA not later than 30 calendar days from the date of the USDA notice described in § 3.74, if an employee wants a hearing concerning:

(1) The existence or amount of the debt; or

(2) USDA's proposed offset schedule (including percentage).

(b) The petition must be signed by the employee and should identify and explain with reasonable specificity and brevity the facts, evidence and witnesses which the employee believes support his or her position. If the employee objects to the percentage of disposable pay to be deducted from each check, the petition should state the objection and the reasons for it.

(c) If the employee files a petition for hearing later than the 30 calendar days as described in paragraph (a) of this section, the hearing officer may accept the request if the employee can show that the delay was because of circumstances beyond his or her control or because of failure to receive notice of the filing deadline (unless the employee has actual notice of the filing deadline).

§ 3.76 Result if employee fails to meet deadlines.

An employee will not be granted a hearing and will have his or her disposable pay offset in accordance with USDA's offset schedule if the employee:

(a) Fails to file a petition for a hearing as prescribed in § 3.75; or

(b) Is scheduled to appear and fails to appear at the hearing.

§ 3.77 Hearings.

(a) If an employee timely files a petition for a hearing under § 3.75, USDA shall select the time, date, and location for the hearing.

(b)(1) Hearings shall be conducted by hearing official designated in accordance with 5 CFR 550.1107; and

(2) Rules of evidence shall not be adhered to, but the hearing official shall consider all evidence that he or she determines to be relevant to the debt that is the subject of the hearing and weigh it accordingly, given all of the facts and circumstances surrounding the debt.

(c) USDA will have the burden of going forward to prove the existence of the debt.

(d) The employee requesting the hearing shall bear the ultimate burden of proof.

(e) The evidence presented by the employee must prove that no debt exists or cast sufficient doubt such that reasonable minds could differ as to the existence of the debt.

§ 3.78 Written decision following a hearing.

Written decisions provided after a hearing will include:

(a) A statement of the facts presented at the hearing to support the nature and origin of the alleged debt and those presented to refute the debt;

(b) The hearing officer's analysis, findings and conclusions, considering all of the evidence presented and the respective burdens of the parties, in light of the hearing;

(c) The amount and validity of the alleged debt determined as a result of the hearing; and

(d) The payment schedule (including percentage of disposable pay), if applicable.

(e) The determination of the amount of the debt at this hearing is the final agency action on this matter regarding the existence and amount of the debt for purposes of executing salary offset under 5 U.S.C. 5514. However, even if the hearing official determines that a debt may not be collected by salary offset, but the creditor agency finds that the debt is still valid, the creditor agency may still seek collection of the

debt by other means authorized by this part.

(f) A final determination by the hearing official, regarding the existence and amount of a debt is subject to referral to Treasury under § 3.33 in the same manner as any other delinquent debt.

§ 3.79 Review of USDA records related to the debt.

(a) *Notification by employee.* An employee who intends to inspect or copy USDA records related to the debt must send a letter to USDA stating his or her intention. The letter must be received by USDA within 30 calendar days of the date of the Notice of Intent.

(b) *USDA response.* In response to the timely notice submitted by the debtor as described in paragraph (a) of this section, USDA will notify the employee of the location and time when the employee may inspect and copy USDA records related to the debt.

§ 3.80 Written agreement to repay debts as alternative to salary offset.

(a) *Notification by employee.* The employee may propose, in response to a Notice of Intent, a written agreement to repay the debt as an alternative to salary offset. Any employee who wishes to do this must submit a proposed written agreement to repay the debt that is received by USDA within 30 calendar days of the date of the Notice of Intent.

(b) *USDA response.* USDA will notify the employee whether the employee's proposed written agreement for repayment is acceptable. USDA may accept a repayment agreement instead of proceeding by offset. In making this determination, USDA will balance the USDA interest in collecting the debt against hardship to the employee. If the debt is delinquent and the employee has not disputed its existence or amount, USDA will accept a repayment agreement, instead of offset, for good cause such as, if the employee is able to establish that offset would result in undue financial hardship or would be against equity and good conscience.

§ 3.81 Procedures for salary offset: When deductions may begin.

(a) Deductions to liquidate an employee's debt will be by the method and in the amount stated in USDA's Notice of Intent to collect from the employee's current pay.

(b) If the employee filed a petition for a hearing with USDA before the expiration of the period provided for in § 3.75, then deductions will begin after the hearing officer has provided the employee with a hearing, and a final written decision has been rendered in favor of USDA.

(c) If an employee retires or resigns before collection of the amount of the indebtedness is completed, the remaining indebtedness will be collected according to the procedures for administrative offset (see subpart D of this part).

§ 3.82 Procedures for salary offset: Types of collections.

A debt will be collected in a lump-sum or in installments. Collection will be by lump-sum collection unless the employee is financially unable to pay in one lump-sum, or if the amount of the debt exceeds 15 percent of disposable pay for an ordinary pay period. In these cases, deduction will be by installments, as set forth in § 3.83.

§ 3.83 Procedures for salary offset: Methods of collections.

(a) *General.* A debt will be collected by deductions at officially-established pay intervals from an employee's current pay account, unless the employee and USDA agree to alternative arrangements for repayment under § 3.80.

(b) *Installment deductions.* Installment deductions will be made over a period not greater than the anticipated period of employment. The size and frequency of installment deductions will bear a reasonable relation to the size of the debt and the employee's ability to pay. However, the amount deducted for any period will not exceed 15 percent of the disposable pay from which the deduction is made, unless the employee has agreed in writing to the deduction of a greater amount. If possible, the installment payment will be sufficient in size and frequency to liquidate the debt in no more than three years. Installment payments of less than \$25 per pay period or \$50 a month will be accepted only in the most unusual circumstances.

(c) *Sources of deductions.* USDA will make deductions only from 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.

§ 3.84 Procedures for salary offset: Imposition of interest, penalties and administrative costs.

Interest, penalties and administrative costs will be charged in accordance with § 3.17.

§ 3.85 Non-waiver of rights.

So long as there are no statutory or contractual provisions to the contrary, no employee payment (or all or portion of a debt) collected under this subpart will be interpreted as a waiver of any

rights that the employee may have under 5 U.S.C. 5514.

§ 3.86 Refunds.

USDA will refund promptly to the appropriate individual amounts offset under this subpart when:

(a) A debt is waived or otherwise found not owing the United States (unless expressly prohibited by statute or regulation); or

(b) USDA is directed by an administrative or judicial order to refund deducted from the employee's current pay.

§ 3.87 Agency regulations.

USDA agencies may issue regulations or policies not inconsistent with Office of Personnel Management regulations (5 CFR part 550, subpart K) and regulations in this subpart governing the collection of a debt by salary offset.

Subpart H—Cooperation with the Internal Revenue Service.

Authority: 26 U.S.C. 61; 31 U.S.C. 3720A; I TFRM 4055.50.

§ 3.90 Reporting discharged debts to the Internal Revenue Service.

When USDA discharges a debt for less than the full value of the indebtedness, it will report the discharge to the Internal Revenue Service (IRS) in accordance with current IRS instructions.

Signed in Washington, DC, on May 14, 2003.

Ann M. Veneman,

Secretary of Agriculture.

[FR Doc. 03-13245 Filed 5-29-03; 8:45 am]

BILLING CODE 3410-KS-P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 948

[Docket No. FV03-948-1 PR]

Irish Potatoes Grown in Colorado; Increase in Membership on the Area No. 2 Colorado Potato Administrative Committee

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rule invites comments on a change that would increase the number of members on the Area No. 2 Colorado Potato Administrative Committee (Committee) from 12 to 14. The Committee locally administers the marketing order regulating the handling of Irish potatoes grown in Colorado.

Specifically, this rule would increase from seven to nine the number of producers serving on the Committee by adding a second representative from the district comprised of Chaffee County and Saguache County, and by creating a position for a representative for certified seed potato producers from Area No. 2. This rule would not change the number of handler representatives on the Committee, which would remain at five. The addition of two new producer members would provide the Committee with greater industry representation and therefore increased effectiveness.

DATES: Comments must be received by June 16, 2003.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250-0237; Fax: (202) 720-8938, or e-mail: moab.docketclerk@usda.gov. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at <http://www.ams.usda.gov/fv/moab.html>.

FOR FURTHER INFORMATION CONTACT:

Teresa Hutchinson, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1220 SW. Third Avenue, suite 385, Portland, Oregon 97204; telephone: (503) 326-2724, Fax: (503) 326-7440; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250-0237; telephone: (202) 720-2491, Fax: (202) 720-8938.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250-0237; telephone: (202) 720-2491, Fax: (202) 720-8938, or e-mail: Jay.Guerber@usda.gov.

SUPPLEMENTARY INFORMATION: This proposal is issued under Marketing Agreement No. 97 and Order No. 948, both as amended (7 CFR part 948), regulating the handling of Irish potatoes grown in Colorado, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing

Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act."

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This proposal has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This proposal will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule would increase from 12 to 14 the number of members on the Committee by adding a second producer representative for Chaffee County and Saguache County, and by creating a position for a producer representative for certified seed potato producers from Area No. 2. Consistent with § 948.52, each new member position would have an alternate who would have the same qualifications as the member. This rule would not change the number of handler representatives on the Committee, which would remain at five. This action was unanimously recommended by the Committee at a meeting on March 20, 2003.

Section 948.4 of the order establishes three subdivisions, or areas, within the State of Colorado, and § 948.50 provides authority for the establishment of a committee as an administrative agency for each area. Section 948.53 provides authority for the reestablishment of these areas or subdivisions of these areas, as well as the redistribution of representation within area subdivisions or among marketing organizations within the respective areas. Finally, § 948.6 provides a definition for seed potatoes.