

# Rules and Regulations

Federal Register

Vol. 73, No. 1

Wednesday, January 2, 2008

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

## DEPARTMENT OF AGRICULTURE

### Office of the Secretary

#### 7 CFR Part 3

#### Debt Management

**AGENCY:** Office of the Secretary, USDA.

**ACTION:** Final Rule.

**SUMMARY:** The United States Department of Agriculture (USDA) amends its regulations that govern the management of debts owed to it by program participants and other debtors to implement the Debt Collection Improvement Act of 1996 (DCIA) and the revised 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.

**DATES:** This rule is effective February 1, 2008.

**FOR FURTHER INFORMATION CONTACT:** Dale Theurer, Credit, Travel, and Grants Policy Division, Office of the Chief Financial Officer, Department of Agriculture, Mail Stop 9010, Room 3417 South, 1400 Independence Avenue, SW., Washington, DC 20250, (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:

##### Executive Order 12866

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

##### Regulatory Flexibility Act

USDA certifies that this 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.*). No comments from small entities were received on the proposed rule. This regulation will not impose significant costs on small entities because this regulation only impacts small entities who receive payments from USDA agencies and who are delinquent on debts owed to USDA agencies.

##### Executive Order 12988

The rule has been reviewed in accordance with Executive Order 12988. This rule 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.

On May 30, 2003, USDA published a proposed rule to revise 7 CFR part 3.

USDA received comments from four groups in response to the proposed rule: two from USDA agencies, one from a State, and one from an organization representing grassroots farm and rural advocacy organizations. Changes made to the proposed rule reflected in the final rule and responses to the comments are as follows.

##### Section 3.1

A new paragraph (c) is added to section 3.1 to cover two types of debts the collection of which are not subject to these regulations. The first is the collection of debts owed by USDA employees for delinquent or improper charges under their government travel card accounts. Collection of these debts is provided for by separate statutory procedures. The Travel and Transportation Reform Act provides guidelines for deduction of disposable pay from a USDA employee to satisfy a debt owed by the employee to a private contractor, in this instance the travel card contractor. However, if the employee disputes the debt, the procedures for commercial garnishment of Federal employees specified in 5 U.S.C. 5520a, as implemented at 5 CFR part 582, must be followed.

The second type is collection of debts under the Food Stamp Program. One commenter, a state Department of Health and Welfare, noted the difficulties in applying these debt collection procedures to debts owed by individuals under the Food Stamp Program for overpayments. While debts owed under the Food Stamp Program are subject to collection under the DCIA, additional provisions of the Food Stamp Act govern the collection of these debts. The collection of Food Stamp Program debts owed by individual recipients is not covered by this rule and instead will be covered by the regulations at 7 CFR 273.18.

However, the commenter cast its question in terms of whether the proposed regulations would apply to State agencies, while the substance of its comments noted the problems of applying these regulations to collection of debts owed by individual Food Stamp Program recipients. While the final rule is revised to reflect that it does not apply to individual Food Stamp Program recipients, it will continue to apply to States for debts otherwise owed

by the States as States under the Food Stamp Program, as States are included in the definition of “debtor” in section 3.3(h). These procedures, as applicable to States, will be complementary to any specific procedures for the collection of State debts (as well as those of Food Stamp retailers) provided in the Food Stamp Act, as permitted by § 3.1(a)(2) and 3.1(b)(2).

One commenter objected to the removal from 7 CFR part 3 of the debt collection procedures under the Act of December 20, 1944 (12 U.S.C. 1150, *et seq.*) (1944 Act). As indicated in the preamble to the proposed rule, it is unlikely that collection under that Act will ever be initiated.

The 1944 Act authorizes the Secretary to compromise certain debts of \$1,000 or less if certain factors are not met, including that “the debtor is unable to pay said indebtedness in full and has no reasonable prospect of being able to do so” (12 U.S.C. 1150(2)). This criterion is similar to that in the FCCS provisions that allow an agency to compromise a claim of \$100,000 or less: “[t]he debtor is unable to pay the full amount in a reasonable time” (31 CFR 902.2(a)(1)). Accordingly, USDA has determined that the minimum requirement of the 1944 Act will be met by application of the FCCS standards in any event and thus redundant regulations for the small debts covered by the 1944 Act are not required.

The 1944 Act further authorizes the Secretary to cancel debts of less than ten dollars in certain limited circumstances. *See* 12 U.S.C. 1150. Again, USDA has determined that application of the FCCS standards for compromise of debt at 31 CFR 902.2 would cover the same circumstances as set forth in the statute.

In any event, as noted in the preamble to the proposed rule, the authority to take action under the 1944 Act is reserved by the language of § 3.1(a)(2).

### Section 3.2

One commenter suggested that the terms “commercial debt” and “consumer debt” should be defined with respect to reporting to credit-reporting bureaus. The commenter also suggested that commercial debt reporting also should be subject to due process requirements, which is addressed below. With respect to the definitions, USDA has relied upon the Financial Management Service, Department of Treasury “Guide to the Federal Credit Bureau Program” to define “commercial debt” as a debt arising from a business activity and a “consumer debt” as a debt arising from a personal activity. For example, a loan to a farmer to obtain additional land or

equipment is considered a commercial loan whereas a loan to the same farmer to purchase a personal residence would be a consumer loan.

Two commenters urged USDA to use consistent deadlines and definition of “day” for purposes of calculating deadlines. The issue of consistent deadlines is addressed below, however “day” has been defined as a calendar day unless otherwise specified.

One commenter noted that the Farm Service Agency (FSA) has for many years defined a debt as “delinquent” as payments that have not been made 30 days after the due date. The commenter also noted that the preamble to the FCCS specifically provided that agencies may further define “delinquency” depending on specific agency program requirements and particular types of debt. Accordingly, the definition of “delinquent” has been amended to provide USDA agencies the flexibility to define “delinquency” as required by statute or regulation by adding the phrase “or as otherwise defined by program specific statutes or regulations” to the definition.

One commenter noted that a definition of an “offset” itself had been omitted. Accordingly, a definition of “offset” has been added, which necessitated the addition of definitions for the terms “payee” and “person,” and a revision of the definition of the term “debtor.” These definitions are drawn from the Treasury offset regulation definitions at 31 CFR 285.5.

One commenter suggested that a definition for “cross-servicing” be added to the regulation. “Cross-servicing” refers to the mandatory requirement in the DCIA to transfer to Treasury all debts that have been delinquent for 180 days or more so that Treasury can take action to collect the debt. It is a separate and distinct process from transfer to Treasury for collection pursuant to centralized administrative offset under Treasury Offset Program (TOP), and there are separate statutory requirements in the DCIA for transfer of delinquent debts to Treasury generally and transfer of debts for administrative offset. Treasury regulations cover the two mandatory transfer requirements in separate provisions. *See* 31 CFR 285.12 (cross-servicing) and 31 CFR 285.5 (centralized offset through TOP).

USDA understands that existence of two separate Treasury transfer mechanisms is confusing but it is required by law. Since “cross-servicing” is a description of a process, USDA declines to add a definition that would be nothing more than restating the cross-servicing process as already set out in § 3.31 of the proposed rule.

### Section 3.11

Paragraph (b) has been reformatted to clarify when OGC consultation should be sought in determining whether to remove an item from a demand letter.

### Section 3.31

Paragraph (a) is revised to delete the words “or more” after “180 days” because the statutory requirement is that debts be transferred after 180 days.

### Section 3.41

Paragraph (b)(3) is revised to clarify that the authority for an agency to offset payments prior to notice and an opportunity to review applies only in the cases of non-centralized administrative offsets.

Paragraph (b)(4) provided that only one chance would be given for notice and review opportunities “with respect to a particular debt.” One commenter suggested that this be revised to state “with respect to a particular delinquency” so that if a borrower became delinquent on a debt once, received the notice, and became current on payments in response, and later then became delinquent again, the borrower would receive notice and opportunity for review again for the second delinquency. The language “with respect to a particular debt” comes directly from the FCCS; therefore, USDA declines to make the recommended change.

“Debt” as defined in these regulations is not synonymous with “loan.” This comment, however, does suggest the need to clarify the USDA position with respect to due process procedures for delinquencies on loans paid on an installment basis, which is done with the addition of a new language in paragraph (b)(4). With respect to loans that are repaid on an installment basis, the borrower may go in and out of being current or delinquent on the loan many times over the life of the loan. Based on its consultation with the Financial Management Service of the Department of the Treasury regarding such installment loans, USDA takes the position that, at a minimum, only one opportunity for review need be provided for the first delinquent installment payment. For credit reporting, this means that the first notice may provide that the borrower will be reported as delinquent and provide due process review rights, but once the account is set up at the credit reporting agency, then USDA in the future simply may update the status of the account as to its current or delinquent status without further notice to the borrower. For referral to TOP, the

first notice may advise the borrower of referral of the delinquency, and all future delinquencies to TOP, with an opportunity for review but thereafter the borrower may be notified only that a delinquency has been referred to TOP without further opportunity for review. Any interest accrued or any installments coming due after the offset is initiated also would not require a new notice and opportunity to review. Program specific regulations may provide for more opportunities for due process review.

#### *Section 3.44*

Paragraph (d) generally is amended to reflect, in cases of centralized administrative offset, the additional warning notices required for offset of debts against recurring payments as required by 31 CFR 285.5(g)(1) and (2) and the priorities for collecting multiple debts owed by a payee, as required by 31 CFR 285.5(f)(3). Since these changes incorporate already applicable requirements in the Treasury regulations, no further comment is required.

Finally, there were a number of comments of a general nature about the proposed rule for which general modifications were made or for which the agency declined to modify the rule.

#### *Words of Authority*

One commenter noted that the proposed rule in many instances used the term "should" which was ambiguous as to its binding effect in contrast to the mandatory terms "shall" and "must" and the permissive term "may." The final rule is modified accordingly to convert "should" into either mandatory or permissive terms, except where use of the term "should" is appropriate as encouraging agency action but not requiring it.

#### *Consistent Deadlines*

As noted above, the term "day" has been defined to be a calendar day and references to "working" days have been removed. The reference to "working" days was incorporated from the prior 7 CFR part 3, but there is no statutory or regulatory requirement for the term, therefore USDA has opted for consistent use of calendar days.

Two commenters noted that in some cases, deadlines were calculated from the date of a notice or request, and in others, from date of receipt of a notice or request. One commenter in particular questioned how USDA would determine the date of receipt. Accordingly, all deadlines have been changed to reflect calculation from the date of the notice or request except where the regulations of other agencies require calculation

from the date of receipt of a notice or request. This is consistent with the position taken by the Departments of Justice and Treasury which concluded in promulgating the final FCCS that calculating the date from when the notice was sent met statutory and constitutional requirements.

The same two commenters also noted that there were 10, 20, 30, and 60 day deadlines used throughout the proposed rule which was confusing, and suggested that a consistent deadline should be used for simplicity.

A particular objection was raised to the difference between the 30-day deadline to seek review for noncentralized offset and the 60-day deadline set for centralized offset through referral to the TOP. This difference is necessitated by the different statutory and regulatory requirements that apply to these offsets. Any debt referred to TOP for administrative offset may be collected through a variety of tools, including offset of tax refunds. The tax refund statute requires that 60 days be allowed for a debtor to seek review of a tax refund offset. *See* 31 U.S.C. 3720A. On the other hand, the FCCS and the DCIA only require that agencies provide an opportunity for a debtor to seek administrative review, an opportunity to review records related to the debt, and an opportunity to enter into a written repayment agreement prior to centralized offset, without specifying any specific time period for such. *See* 31 CFR 901.3(b)(4)(ii)(B). Further, for noncentralized offset, the offset may even be initiated in certain circumstances prior to the review. *See* 31 CFR 901.3(b)(4)(iii)(C).

Without a mandatory prescribed time period for these opportunities, USDA simply incorporated the existing timelines from the current 7 CFR part 3 for these procedures. However, in light of the comment, USDA has changed the period for seeking inspection of records or proposing a repayment plan to 30 days from the date of the Notice of Intent to Collect by Administrative Offset to be consistent with the 30-day deadline for seeking administrative review of the proposed offset. However, USDA has retained the 60-day deadline for centralized offset and 30-day deadline for noncentralized offset. USDA does not see the need to extend the deadline for the internal offset of payments to its debtors to 60 days. The longer time period likely only would result in more payments being offset prior to the due process review in accordance with 31 CFR 901.3(b)(4)(iii)(C).

One commenter also noted that the proposed regulation presents a debtor with the dilemma of either seeking administrative review or filing a repayment plan, or doing both simultaneously. USDA has revised the final rule to allow a debtor 15 days to file a proposed repayment plan in the event of a decision adverse to a debtor or employee under subpart F or § 3.78.

Finally, USDA has retained the timelines for various actions in administrative hearings conducted under § 3.62. Those deadlines come from the existing provisions of part 3, have not proven problematic in the past, and preserve flexibility for the hearing official in conducting these information proceedings.

#### *Statute of Limitations*

One commenter requested that USDA clarify the application of the statute of limitations to collection by administrative offset by eliminating the qualifying language in § 3.40(e) and the reference to the Office of Personnel Management "flagging" civil service retirement and disability accounts prior to time those benefits begin. USDA declines to modify this language which is taken directly from the FCCS.

#### *Review of Reporting of Commercial Debts*

One commenter suggested that if agencies are going to report commercial debts to credit reporting agencies as recommended in § 3.12(e), then the pre-reporting requirements applicable to reporting of consumer debts as set forth in § 3.12 also should apply to commercial debt. These protections for consumer debt reporting are required by statute. USDA declines to apply those protections to commercial debts in the absence of any statute or regulation requiring Federal agencies to do so.

#### *Loan Servicing Timetables*

With respect to farm loan programs, one commenter contended that the primary purpose of the Farm Loan Program to serve as a lender of last resort and keep family farmers on the land was inconsistent with the increased general government interest in debt collection activities, and that the debt collection activities of USDA with respect to the Farm Loan Program should be secondary to that primary purpose. The commenter suggested that this did not require according complete precedence to loan making and loan servicing, but rather only coordination of debt collection with loan making and servicing activities. To that extent, the commenter suggested that the provisions of the proposed rule present

certain inefficiencies in its requirements for referral of debts to Treasury and reporting of delinquent debts (§§ 3.11(b)(7) and 3.31(c)) in light of the requirement for FSA issuance of a "Notice of Availability of Loan Servicing Programs" when a borrower is 90 days past due on scheduled loan payments or FSA finds the borrower in non-monetary default, to which the borrower has 60 days to respond. The commenter noted similar inefficiencies with respect to the reporting to credit reporting agencies (where applicable) (§ 3.12(a)(1)) and the charging of a 6 percent penalty on delinquent debts. Given that successful resolution of an application for loan servicing could moot these referrals, reports, and penalties, the commenter suggests that these provisions of the proposed rule be amended to state that implementation of these provisions will occur only after resolution of all pending loan servicing applications.

USDA declines to revise the rule as suggested. First, this rule is intended as a general rule for debt collection for the entire Department, not only farm loan programs. As noted in § 3.1(b)(2), USDA agencies may issue regulations to supplement these Department regulations in order to meet the specific requirements of individual programs. Second, § 3.31(b)(1) provides that referrals to Treasury for cross-servicing are not applicable to debts in litigation and foreclosure, and only legally enforceable debts may be referred to Treasury for centralized offset (*see* § 3.41(c) and 31 CFR 285.5(d)(1)). Third, FSA farm loan debt is commercial debt, not consumer debt, so the commenter's comments on § 3.12(a)(1) are inapplicable. Finally, the up to 6 percent penalty can be avoided if borrowers take action to bring their accounts current in a timely manner, or making necessary financial arrangements to avoid becoming delinquent.

#### *Installment Loans*

One commenter suggested, with particular reference to § 3.16, that the proposed rule's emphasis on collection of the entirety of a debt failed to distinguish between collecting the total amount of the debt from the collection of a missed installment payment. The comment apparently assumes that use of the word "debt" in the proposed regulation equates to an entire loan held by a borrower. As the definitions make clear, the term "debt" only refers to amounts determined to be due the United States, e.g., the amount of any given installment payment or payments due on a loan or loans at a given time,

not the entire amount of a loan or loans. Further, the proposed regulation also covers debts owed USDA other than debts arising under loans, for example, civil penalties owed for program violations, disallowed costs under grants, etc. Accordingly, USDA declines to make the commenter's suggested change to the proposed rule to specify "the debt or missed installment payment."

#### *3.16(c)—Additional Security*

One commenter noted that most farm program loan debts already are secured, and thus no extra security would be needed to assure the government of adequate protection. Accordingly, the commenter recommended that the regulation should include guidance with respect to the types of cases in which taking additional security would be appropriate.

If a debt already is secured, then additional security would not be warranted. However, USDA declines to add further guidance as to when security should be obtained for unsecured deferred payments under an installment repayment plan in order to afford agencies maximum flexibility to require, or not require, such security in appropriate cases.

#### *Review of Rejection of Repayment Plan*

One commenter stated that the rejection by the agency of a repayment plan offered under § 3.42(b) seems to be a "denial" constituting an adverse agency decision appealable to the National Appeals Division (NAD), and that this should be stated in the final rule.

USDA disagrees with this comment. An offer of a repayment plan is an offer to the agency which the agency is not required to accept; it is not a request for a decision of the agency under agency program statutes and regulations that the agency has denied. Further, § 3.42(a) requires that agency decisions with respect to inspection or copying of records be consistent with 7 CFR part 1, subpart A, decisions under which expressly are not appealable to NAD. *See* 7 CFR 11.1 (definition of "participant").

#### *Exempt Farm Program Payments*

One commenter requested that the Secretary of Agriculture exempt all farm disaster payments from both referral to Treasury for cross-servicing and administrative offset, and that the final rule include a provision recognizing the authority of the Secretary of Agriculture to exempt other payments from administrative offset.

The commenter misinterprets the DCIA and fails to understand that offset and cross-servicing are two distinct processes. The Secretary of Agriculture has no authority to exempt debts from the statutory requirements for referral for cross-servicing or administrative offset or to exempt certain payments from offset. Only the Secretary of the Treasury has the authority to exempt certain payments from offset if offset would "tend to interfere substantially with or defeat the purposes of the payment certifying agency's program." 7 U.S.C. 3716(c)(3). The Secretary of the Treasury exempts classes of payments for programs upon request by a payment agency only if the standards set by Treasury for such exemptions are met. *See* 31 CFR 285.5(e)(7). This trumps the current USDA debt collection regulations that allow USDA to make that determination. *See* 7 CFR 3.23(b)(3) (2005). Similarly, the Secretary of the Treasury may exempt any class of debt from referral for cross-servicing upon request of an executive agency (31 U.S.C. 3711(g)(2)(B)) in accordance with the criteria specified in 31 CFR 285.12(d)(5).

#### **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 amends 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.

■ 2. Subpart E is redesignated as subpart I.

■ 3. 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. [Reserved]
- 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 of Debts to 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 Disclosure to Credit Reporting Agencies

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

#### Subpart G—Federal Salary Offset

- 3.70 Scope.
- 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 Hearing.
- 3.78 Written decision following a hearing.
- 3.79 Review of USDA records related to the debt.
- 3.80 Written agreement to repay debts as alternative to salary offset.
- 3.81 Procedures for salary offset: when deductions may begin.

- 3.82 Procedures for salary offset: types of collection.
- 3.83 Procedures for salary offset: methods of collection.
- 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.

#### 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 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.

(c) *Inapplicability.* The regulations of this part shall not apply to:

- (1) Collection of debts owed government travel card contractors by USDA employees;
- (2) Collection of debts owed by individual Food Stamp Program recipients for whom debt collection procedures are provided under 7 CFR 273.18.

##### § 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 Treasury and Justice (31 CFR parts 901–904) 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 Justice for litigation to collect debts owed the 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:

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

*Centralized administrative 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.

*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.

*Commercial debt* means a debt arising out of a business activity.

*Consumer debt* means a debt arising out of a personal activity.

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

*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.

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

*Day* means calendar day unless otherwise specified.

*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).

*Debtor* means a person who owes a delinquent, nontax debt to the United States.

*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, or as otherwise defined by program specific statutes or regulations.

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

*Government* or *Federal government* means the government of the United States, unless otherwise specified.

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

*Justice* means the United States Department of Justice.

*NAD* means the *USDA National Appeals Division*.

*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.

*Offset* means withholding funds payable by the United States to, or held by the United States for, a person to satisfy a debt owed by the payee.

*OGC* means the USDA Office of the General Counsel.

*Payee* means a person who is due a payment from a payment authorizing agency, and includes a person who is entitled to all or part of a payment.

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

*Person* means an individual, corporation, partnership, association, organization, State or local government, or any other type of public or private entity other than a Federal agency.

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

*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.

*Secretary* means the Secretary of Agriculture, unless otherwise specified.

*Treasury* means the United States Department of the Treasury.

*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 shall 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 shall give due regard to the need to refer debts promptly to 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:

(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 must 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 TOP for offset against other Federal payments, including income tax refunds, in accordance with subpart D;

(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 for possible collection by garnishing the debtor's wages through administrative wage garnishment;

(v) *Litigation*. Refer the debt to Justice in accordance with § 3.21 to initiate litigation to collect 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 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 must advise the creditor agency of the filing of any bankruptcy proceedings 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) 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 shall 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 shall 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 shall respond promptly to communications from debtors, within 30 days of receipt whenever feasible, and shall 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 must be followed (*see* subpart D). 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 shall advise each debtor determined to be liable for the debt that, unless the debt can be collected administratively, litigation may be initiated. This notification shall comply with Executive Order 12988 (3 CFR, 1996 Comp., pp. 157–163) 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 shall 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 shall immediately seek legal advice from OGC concerning the impact of the Bankruptcy Code on any pending or contemplated collection activities. Unless the agency is advised 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 must stop immediately. The agency should take the following steps:

(1) After seeking legal advice, a proof of claim must be filed in most cases with the bankruptcy court or the Trustee. Agencies shall 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 may 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 may seek legal advice from OGC to determine whether recoupment is available.

### § 3.12 Reporting of 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 days;

(2) The specific information to be transmitted (*i.e.*, name, address, and taxpayer 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.

(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 901.4.

(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 guarantees, 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 USDA Chief Financial Officer (CFO) or Deputy CFO. 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 must 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 shall 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 must 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 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 405(a)(2).

(e) The failure of any surety to honor its obligations in accordance with 31 U.S.C. 9305 shall 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 may extend to USDA programs or activities that are administered by the States on behalf of the government, to the extent that they affect the government's ability to collect money or funds owed by debtors. Therefore, States that manage USDA activities, pursuant to approval from the agencies, shall ensure that appropriate steps are taken to safeguard against issuing licenses, permits, or privileges to debtors who fail to pay their debts to the government.

(e) In bankruptcy cases, before advising the debtor of an agency's intention to suspend or revoke licenses, permits, or privileges, agencies may 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 may liquidate security or collateral through a sale 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 may 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 shall 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 shall obtain a legally enforceable written agreement from the debtor that specifies all 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 shall bear a reasonable relation to the size of the debt and the debtor's ability to pay. If possible, the installment payments shall be sufficient in size and frequency to liquidate the debt in three years or less.

(c) Security for deferred payments shall 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) 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 must 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 shall 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 may 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 (*i.e.*, this does not apply to interest or administrative penalties determined by an applicable agreement or instrument such as a loan contract) 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 parts 902–904 of title 31 or other authority, agencies may send

a request to Treasury to obtain a debtor's mailing address from the records of the Internal Revenue Service (IRS).

(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 of Debts to Justice.**

An agency shall promptly refer to 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 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 administrative 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 administrative offset are set forth in subpart D, and for administrative wage garnishment in subpart E.

(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 (TIN) is unknown the applicable threshold is \$100), that has or have been delinquent for a period of 180 days 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)(i) 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 CFO.

(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), 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 shall 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) 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);

(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 Contract Disputes Act, 41 U.S.C. 601–613.

(c) Unless otherwise provided 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 the Commodity Credit Corporation (CCC) may be found at 7 CFR part 1403 and for the Farm Service Agency 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 may 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 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 administrative offset, the intent to refer the debt to Treasury for collection through centralized administrative offset (including possible offset of tax refunds) 60 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; 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) In the case of a non-centralized administrative offset, 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). With respect to loans paid on an installment basis, notice and opportunity to review under this part may only be provided once for the life of the loan upon the occurrence of the first delinquent installment. Subsequently, if an agency elects this option, credit reporting agencies may be furnished periodically with updates as

to the current or delinquent status of the loan account and the borrower may receive notice of referral to TOP for delinquent installments without further opportunity for review. Any interest accrued or any installments coming due after the offset is initiated also would not require a new notice and opportunity to review.

(c) The Notice of Intent to Collect by Administrative Offset shall 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 30 days of the date of the Notice of Intent to Collect by Administrative Offset. 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. A decision by the agency under this paragraph shall not be subject to review under subpart F or by NAD under 7 CFR part 11.

(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 30 days of the date of the Notice of Intent to Collect by Administrative Offset or 15 days after the date of a decision adverse to the debtor under subpart F. 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. A decision by the agency under this paragraph shall not be subject to review under subpart F or by NAD under 7 CFR part 11.

(c) A debtor must request an administrative review of the debt under subpart F within 30 days of the date of the Notice of Intent to Collect by Administrative Offset for purposes of a proposed collection by non-centralized administrative offset and within 60 days of the date of the Notice of Intent to Collect by Administrative Offset 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 administrative offsets include USDA internal administrative offsets, for example, of CCC payments to pay Farm Service Agency (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 administrative offset may be effected 31 days after the date of the Notice of Intent to Collect by Administrative Offset, any time after the final determination in an administrative review conducted under subpart F 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 shall 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 administrative offset 61 days after the date of the Notice of Intent to Collect by Administrative Offset provided in accordance with § 3.41. If the debtor seeks review under subpart F, 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 part 285.5.

(d) *Payment authorizing agency responsibilities.* (1) The names and 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 offset a payment to satisfy the debt.

(2) Any USDA official serving as a Federal disbursing official for purposes of effecting centralized administrative 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 must include the information set forth in paragraph (d)(4) of this section.

(3) As described in 31 CFR 285.5(g)(1) and (2), any USDA official serving as a Federal disbursing official for purposes of centralized administrative offset under this section shall furnish a warning notice to a payee/debtor prior to beginning offset of recurring payments. Such warning notice shall include the information set forth in paragraph (d)(4) of this section.

(4) 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.

(5) The priorities for collecting multiple payments owed by a payee/debtor shall be those set forth in 31 CFR 285.5(f)(3).

**§ 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 administrative 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 administrative 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 through 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:

*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.

*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.

*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.

*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) Pursuant to § 3.11, agencies must notify debtors of their intent 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 within 60 days of the date of the demand letter.

(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 administrative 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 the Office of the CFO (OCFO) for selection of a hearing official. The issuance of proposed garnishment orders by Treasury shall not be subject to appeal to NAD under 7 CFR part 11. 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 Disclosure 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. 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 administrative 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 NAD 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 the above 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 60 days of the date of the notice in the case of a Notice of Intent to Collect by Administrative Offset that includes referral to Treasury for offset against other Federal payments including tax refunds and 30 days in the case of all other notices.

(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 days and no more than 45 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 days after the request for review is received.

(g)(1) *Hearings.* 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 five 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 prove 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 (f)(4) of this section will be deemed as not having timely filed a request for a hearing.

(i)(1) Within no more than 30 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 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 CFO, the agency CFO (if any), 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.

(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 employees of 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 FSA 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 and 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 four 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 four 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:

**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.

**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 proximate cause for a loss of government funds.

**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 section 581.105(b) through (f) of part 5 of this title.

**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 FSA county executive director or county office employee.

**Hearing official** means a USDA administrative law judge or some other

individual not under the control of the Secretary.

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

*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 these regulations.

(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 administrative 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 days written notice. This Notice of Intent to Offset Salary 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 employee's 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 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 must 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 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 must 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 must state the objection and the reasons for it.

(c) If the employee files a petition for a hearing later than the 30 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 Hearing.**

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

(b)(1) Hearings shall be conducted by the 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 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;

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

(e) The determination that 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; and

(f) Notice that the 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 days of the date of the Notice of Intent to Offset Salary.

(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 to Offset Salary, 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 days of the date of the Notice of Intent to Offset Salary or 15 days after the date of a hearing decision issued under § 3.78.

(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 Offset Salary 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 collection.**

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 collection.**

(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 these regulations 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 these regulations when:

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

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

**§ 3.87 Agency regulations.**

USDA agencies may issue regulations or policies not inconsistent with OPM 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; 1 TFRM 4055.50.

#### § 3.90 Reporting discharged debts to the Internal Revenue Service.

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

Signed at Washington, DC on December 20, 2007.

**Charles F. Conner,**

*Acting Secretary of Agriculture.*

[FR Doc. E7-25388 Filed 12-31-07; 8:45 am]

BILLING CODE 3410-KS-P

## NUCLEAR REGULATORY COMMISSION

### 10 CFR Part 72

RIN 3150-AI23

#### List of Approved Spent Fuel Storage Casks: HI-STORM 100 Revision 4, Confirmation of Effective Date

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Direct final rule: Confirmation of effective date.

**SUMMARY:** The Nuclear Regulatory Commission (NRC) is confirming the effective date of January 8, 2008, for the direct final rule that was published in the **Federal Register** on October 25, 2007 (72 FR 60543). This direct final rule amended the NRC's regulations to revise the HI-STORM 100 cask system listing to include Amendment No. 4 to Certificate of Compliance (CoC) No. 1014.

**DATES: Effective Date:** The effective date of January 8, 2008, is confirmed for this direct final rule.

**ADDRESSES:** Documents related to this rulemaking, including any comments received, may be examined at the NRC Public Document Room, located at One White Flint North, 11555 Rockville Pike, Rockville, MD 20852.

**FOR FURTHER INFORMATION CONTACT:** Jayne M. McCausland, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 415-6219, e-mail [jmm2@nrc.gov](mailto:jmm2@nrc.gov).

**SUPPLEMENTARY INFORMATION:** On October 25, 2007 (72 FR 60543), the

NRC published a direct final rule amending its regulations at 10 CFR 72.214 to revise the HI-STORM 100 cask system listing within the "List of Approved Spent Fuel Storage Casks" to include Amendment No. 4 to CoC No. 1014. This amendment modifies the CoC by adding site-specific options to permit use of a modified HI-STORM 100 cask system at the Indian Point Unit 1 (IP1) Independent Spent Fuel Storage Installation. These options include the shortening of the HI-STORM 100S Version B, Multi-Purpose Canister (MPC)-32 and MPC-32F, and the HI-TRAC 100D Canister to accommodate site-specific restrictions. Additional changes address the Technical Specification (TS) definition of transport operations and associated language in the safety analysis report; the soluble boron requirements for Array/Class 14x14E IP1 fuel; the helium gas backfill requirements for Array/Class 14x14E IP1 fuel; the addition of a fifth damaged fuel container design under the TS definition for damaged fuel container; addition of separate burnup, cooling time, and decay heat limits for Array/Class 14x14 IP1 fuel for loading in an MPC-32 and MPC-32F; addition of antimony-beryllium secondary sources as approved contents; the loading of all IP1 fuel assemblies in damaged fuel containers; the preclusion of loading of IP1 fuel debris in the MPC-32 or MPC-32F; the reduction of the maximum enrichment for Array/Class 14x14E IP1 fuel from 5.0 to 4.5 weight percent uranium-235; changes to licensing drawings to differentiate the IP1 MPC-32 and MPC-32F from the previously approved MPC-32 and MPC-32F; and other editorial changes, including replacing all references to U.S. Tool and Die with Holtec Manufacturing Division. In the direct final rule, NRC stated that if no significant adverse comments were received, the direct final rule would become final on January 8, 2008. The NRC did not receive any comments on the direct final rule. Therefore, this rule will become effective as scheduled.

Dated at Rockville, Maryland, this 26th day of December, 2007.

For the Nuclear Regulatory Commission.

**Michael T. Lesar,**

*Chief, Rulemaking, Directives and Editing Branch, Division of Administrative Services, Office of Administration.*

[FR Doc. E7-25439 Filed 12-31-07; 8:45 am]

BILLING CODE 7590-01-P

## DEPARTMENT OF THE TREASURY

### Office of Thrift Supervision

12 CFR Parts 558, 563, 564, 567, and 574

[OTS No. 2007-0025]

#### Technical Amendments

**AGENCY:** Office of Thrift Supervision, Treasury.

**ACTION:** Final rule.

**SUMMARY:** The Office of Thrift Supervision (OTS) is amending its regulations to incorporate a number of technical and conforming amendments. They include clarifications and corrections of typographical errors.

**DATES: Effective Date:** January 2, 2008.

**FOR FURTHER INFORMATION CONTACT:** Sandra E. Evans, Legal Information Assistant (Regulations), (202) 906-6076, Regulations and Legislation Division, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

**SUPPLEMENTARY INFORMATION:** OTS is amending its regulations to incorporate a number of technical and conforming amendments. OTS is making the following miscellaneous changes:

- *Sections 558.1 and 558.2—Procedure upon taking possession; notice of appointment.* OTS's regulations at 12 CFR 558.1 provides that when OTS appoints a conservator or receiver, the conservator or receiver shall, upon taking possession of the institution: (1) Give notice of the appointment to any officer or employee of the institution who appears to be in charge at the institution's principal office, and (2) serve a copy of the order of appointment upon the savings association or an existing conservator or receiver by leaving a copy of the order at the principal office or by handing a copy of the order to specified persons. This final rule modifies §§ 558.1 and 558.2 to increase administrative flexibility by providing that the Director of OTS will designate those persons or entities that will give notice and make service. In addition, reference to service on prior receivers is eliminated because the OTS may appoint only the Federal Deposit Insurance Corporation as a receiver of a savings association.

- *Section 563.43—Loans by savings associations to their executive officers, directors and principal shareholders.* The final rule revises the introductory paragraph to remove the reference to subparts A and B of the Federal Reserve Board's Regulation O (12 CFR Part 215) as Regulation O is no longer divided