DEPARTMENT OF AGRICULTURE

Food and Consumer Service

7 CFR Parts 271, 272 and 273

[Amdt. No. 367]

RIN 0584–AB89

Food Stamp Program: Collecting Food Stamp Recipient Claims From Federal Income Tax Refunds and Federal Salaries

AGENCY: Food and Consumer Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rule proposes collecting two types of Food Stamp Program (FSP) recipient claims from Federal income tax refunds and from Federal salaries. The two types of recipient claims are inadvertent household error (IHE) and intentional Program violation (IPV) claims. These claims represent amounts of benefits which households received but to which they were not entitled. This rule proposes to collect these types of claims from individuals who are no longer participating in the FSP. This rule proposes operating procedures, due-process notices, and appeal rights and other rights and responsibilities of individuals. The Department has been testing the Federal income tax refund offset program (FTROP) since 1992 and is currently testing the Federal salary offset program (salary offset).

DATES: Comments must be received on or before July 28, 1995 to be assured of receiving consideration.

ADDRESSES: Comments should be addressed to James I. Porter, Supervisor, Issuance and Accountability Section, State Administration Branch, Program Accountability Division, Food Stamp Program, 3101 Park Center Drive, Room 907, Alexandria, Virginia 22302. Comments can be reviewed at that address during normal business hours.

FOR FURTHER INFORMATION CONTACT: Mr. Porter at the above address or by telephone at (703) 305–2385.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This proposed rule has been determined to be significant and was reviewed by the Office of Management and Budget under Executive Order 12866.

Executive Order 12372

The Food Stamp Program is listed in the Catalog of Federal Domestic Assistance under No. 10.551. For the reasons set forth in the final rule and related notice to 7 CFR 3015, Subpart V (48 FR 29115), this Program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Regulatory Flexibility Act

This proposed action has been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980 (Pub. L. 96–354, 94 Stat. 1164, September 19, 1980). William E. Ludwig, Administrator of the Food and Consumer Service, has certified that this rule does not have a significant economic impact on a substantial number of small entities. This rule will affect the State and local agencies which administer the Food Stamp Program and certain individuals who have received excess food stamp benefits. Half of substantially all State and local administrative costs for administering the Food Stamp Program are reimbursed by the Department.

Executive Order 12778

This rulemaking has been reviewed under Executive Order 12778, Civil Justice Reform. This rule is intended to have preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions or which would otherwise impede its full implementation. This rule is not intended to have retroactive effect. Prior to any judicial challenge to the provisions of this rule or the application of its provisions, all applicable administrative procedures must be exhausted.

Paperwork Reduction Act

This proposed rule contains information collection requirements subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980 (44 U.S.C. Section 3507).

This is a new public information collection burden. The reporting and recordkeeping requirements for it were described in a General Notice titled ''Food Stamp Program: Recipient Claims Collection: Test of Offsetting Federal Income Tax Refunds,'' published August 20, 1991 at 56 FR 41325. Because State agencies are continuing to join FTROP, with a resulting increase in the number of individuals subject to collection, average numbers were used to estimate the information collection burden. These were: 30 State agencies and 250,000 individuals. Of the total 58,555 hour estimated information collection burden, 50,330 hours is associated with due-process notices and appeals under FTROP. The burden is shared between State agencies and individuals, the two types of respondents. State agencies had 13,122 hours, of which more than 12,000 hours is associated with the production of due-process notices. Individuals had 37,208 hours, almost all of which is associated with responding to due process notices.

As mentioned above, collecting food stamp recipient claims from Federal salaries is currently being tested. If that test indicates that full implementation of salary offset would result in a measurable increase in the approved information collection burden, the Department will submit an adjustment to that estimate and provide the public due notice and opportunity to comment on that adjustment. An adjustment to reflect the decreased State agency FTROP reporting as proposed in this rule will be submitted if warranted.

On September 27, 1993 OMB approved the information collection requirements through September 30, 1996 (OMB No. 0584–0446). The title of the information collection is ''Expansion of Test of Offsetting Federal Income Tax Refunds.'' Comments regarding this estimated information collection burden, including suggestions for reducing the burden, should be sent to the Department of Agriculture Clearance Officer, Office of Information Resources Management, Room 404–W, Washington, D.C. 20250. Such comments should also be sent to the Office of Management and Budget, Paperwork Reduction Project (OMB No. 0584–0446), Washington, D.C. 20503.

Comment Period

The Department believes that a 30-day comment period for this rule is sufficient because while this is a proposed rule, it addresses comments the Department received about the General Notices under which FTROP has been tested. These comments were from a major public interest group and from several State agencies. The rule clarifies several matters and proposes changes in FTROP procedures based on those comments, on numerous State agency questions raised during annual training sessions and submitted to FCS regional offices during the test of FTROP.

Background

A. General

Individuals currently owe the Department about $800 million for IHE and IPV recipient claims. A substantial portion of the $800 million is not being repaid. The Department is concerned about this situation and is augmenting its policies and procedures to improve

collections of this debt. FTROP and salary offset are major initiatives in this effort.

Both collection methods would require that State agencies submit claims to FCS for referral to the Internal Revenue Service (IRS) for collection through FTROP. Automated data processing would be conducted under strict data security procedures and confidentiality restrictions to assure that information about individual debtors would be used only for the authorized purposes of the proposed collection methods. Under the proposed rule, prior to any adverse action (the collection efforts), notice about the intended collection efforts, including advice of appeal rights, must be provided individuals identified as owing FSP recipient claims. Both FTROP and salary offset would only be used when none of the household members liable for the recipient claims to be collected are participating in the State which would be initiating the collection action. FTROP and salary offset would be applied only to IHE and IPV claims meeting this condition because, under current food stamp regulations, both IHE and IPV claims owed by participating households must be collected either by a repayment method of the household's choice or by allotment reduction.

The IRS requires that Federal agencies participating in FTROP use all reasonable collection efforts before referring a debt for collection from Federal income tax refunds. The IRS views salary offset as such an effort and therefore requires participation in salary offset or at a minimum, deletion of claims which can be collected from Federal employees from lists of claims submitted under FTROP. (See 26 CFR 301.6402–6 (b)(1)(iii) and (c)(2) of IRS regulations.)

B. FTROP

1. Authorities for FTROP

The authority for FTROP is Section 2653 of the Deficit Reduction Act of 1984 (Pub. L. 98–369) as amended by Public Law 101–508 (1990) and Public Law 102–589 (1992) (DEFRA). The FTROP provisions are codified at 31 U.S.C. 3720A, 26 U.S.C. 6402 and 26 U.S.C. 6103. As originally enacted in Public Law 98–369, authority for FTROP had a sunset clause and would have expired on January 1, 1989. That date was extended twice, first by Public Law 100–203 and then by Public Law 100–485. The Emergency Unemployment Act of 1991 (Pub. L. 102–164) made the authority to conduct FTROP permanent. In addition, section 4(c) of the Food Stamp Act of 1977 provides broad authority to the Secretary of Agriculture to issue such regulations as the Secretary deems necessary or appropriate for effective and efficient administration of the Food Stamp Program (7 U.S.C. 2013(c)).

The Department began testing FTROP in 1992 pursuant to a General Notice published August 20, 1991 at 56 FR 41325. That General Notice described the procedures for operating FTROP, including associated due-process notices, appeal rights and related responsibilities of individuals with respect to recipient claims subject to collection under FTROP. The test of FTROP was conducted in conformance with applicable IRS regulations. The IRS initially implemented FTROP with temporary regulations at 26 CFR 301.6402–6T. Final IRS regulations (26 CFR 301.6402–6) were published April 15, 1992 at 57 FR 13035.

The test of FTROP for the FSP was continued and expanded during 1993 and 1994. (See General Notices published August 28, 1992 at 57 FR 39176 and August 12, 1993 at 58 FR 42937.) The policies and procedures contained in those Notices, modified as a result of the test of FTROP, are contained in this proposed rule.

The Department notes that a final rule published January 19, 1994 at 59 FR 2725 modified several aspects of FSP recipient claims policy and corrected two technical errors. Parties interested in this proposed rule may want to make sure that their version of FSP regulations incorporates the just cited rule.

2. Overview of FTROP

a. Operations. FTROP is an optional program for State agencies. The first step for participating State agencies is to develop automated lists of FSP recipient claims which meet the criteria for claims which are referable for collection under FTROP. The lists are developed annually, are discrete from lists for other years and are identified by offset year. The term ''offset year'' means a calendar year during which offsets may be made to collect a particular group of recipient claims from individuals' Federal income tax refunds. The rule proposes at section 272.2 adding this definition of ''offset year'' to the list of definitions of terms for the FSP. During the year preceding the offset year, State agencies submit automated files of recipient claims to FCS which tests them for compatibility with IRS record specifications and refers them to the IRS. Through FCS the IRS provides State agencies with addresses for individuals contained in the IRS master file of taxpayer addresses. These activities make up the ''pre-offset'' phase of FTROP. State agencies then use IRS-provided addresses to send due-process (60-day) notices to individuals. The 60-day notices advise individuals of the intended collection action and provide information on how to repay the claim voluntarily and how to appeal the intended action. State agencies then certify to FCS a final list of FSP recipient claims for offset from Federal income tax refunds. Once State agencies submit the certified list to the FCS, claims cannot be added to the list and amounts of claims on the list cannot be increased.

At this point the offset phase begins. During the offset phase IRS offsets the certified claims against any tax refunds otherwise payable to the individual, and notifies the individual and FCS of offsets which have been made. Also, each week of the offset year beginning in late January, State agencies must provide data deleting claims and reducing amounts of claims on the certified file to reflect changes in the status of the claims due to such actions as voluntary payments from individuals.

b. Reasons for the Present Rulemaking. Two factors make it appropriate to add FTROP as a permanent part of the FSP now. First, as mentioned above, Congress has provided permanent authority for FTROP. Second, the Department stated in the August 1991 General Notice that if the test indicated that FTROP was feasible and cost-effective, the procedures would be incorporated into FSP regulations. The Department believes that the test has proven FTROP feasible and cost-effective and a significantly effective method of collecting FSP recipient claims due to IHE's and IPV's. The number of State agencies participating has increased from two in 1992 to 21 for 1994. Eleven more State agencies will begin participating in 1995. With respect to costs, the Department estimates Federal operational costs for the 1994 calendar year, for example, will be less than $1 million. The Department concludes that FTROP has been cost effective for participating State agencies to operate. About 25 percent of the dollar value of claims which meet the criteria for collection under FTROP is being collected. For example, the 21 State agencies participating during offset year 1994 sent out 60-day notices to individuals owing more than $101 million in claims. Through September 1994 collections totaled more than $30 million, more than $27.7 million from Federal income tax refunds and an additional $2.8 million from individuals

who paid voluntarily. For calendar year 1993, based on information from the Department of the Treasury, 38.4 percent of recipient claims submitted to the IRS were offset, and 28.1 percent of the dollar value of claims submitted were collected. Both the percentage of debt collected in whole or in part, and percentage of dollars collected for the FSP were the highest among Federal agencies participating in FTROP.

c. Discussion of Comments on the General Notices. The August 1991 General Notice solicited comments from the public. The Department responded to those comments in the August 1992 General Notice. The August 1992 General Notice also solicited comments from the public. Two comment letters were received on the August 1992 General Notice.

One of those letters was from a State agency which suggested that there should be a priority for offsetting debts from tax refunds and that the first priority should be delinquent child support collections. The priorities for tax refund offsets are established by 26 U.S.C. 6402(d)(2), and IRS regulations state them at 26 CFR 301.6402–6(g). The first priority for FTROP is tax liabilities owed the IRS. The second priority is childsupport payments assigned to a State under certain specified provisions of the Social Security Act. The third priority, which includes FSP recipient claims, is past-due, legally enforceable debts owed Federal agencies. The fourth priority is for child-support payments not assigned to a State.

The second comment letter was from a research and action group concerned with nutrition and related issues. This action group made a series of comments on the August 1992 General Notice. The Department is responding to several of the action group's general comments just below and to comments addressing specific aspects of FTROP in pertinent sections of this preamble.

The action group stated that the Department should rescind the August 1991 Notice until the rulemaking process could resolve the numerous issues which the group raised, especially relating to apparent inconsistencies between FTROP as tested and the Food Stamp Act of 1977, as amended (7 U.S.C. 2011) (the Act). The group stated that Section 13(b)(2) of the Act (7 U.S.C 2022(b)(2)) authorizes collection of IHE claims through recoupment but not through alternative means such as FTROP, and that such alternative means apply only to IPV claims and claims due to State agency error. This is incorrect. Section 13 of the Act provides collection authorities as follows: First, subparagraph (b)(1)(A) requires that households pay IPV claims by agreeing to an allotment reduction (recoupment) or a cash repayment schedule, in lieu of which the claim is collected through allotment reduction. Second, subparagraph (b)(1)(B) provides, in principal part, that IPV claims not collected by recoupment or cash, may be collected through ''other means of collection.'' Third, subparagraph (b)(2)(A) requires that IHE claims be collected through recoupment. Fourth, subparagraph (b)(2)(B) provides that State agencies may use ''other means of collection'' for any claim not collected by the three preceding methods. Consequently, the Food Stamp Act authorizes ''other means of collection,'' for IPV and IHE claims.

The group also pointed out that Section 13(b)(2)(A) of the Act sets a ceiling on the rate of recoupment on IHE claims at 10 percent or $10 per month, whichever would result in a faster collection rate, but that with FTROP the Department has implemented a 100 percent recoupment rate. The statutory limitation applies to collecting overpayments by reducing the monthly allotments of participating households. Since FTROP is used to collect claims from individuals who are not participating in the FSP, the statutory limitation on the rate of recoupment does not apply to collections made under FTROP.

The action group stated that FTROP defeats Congressional intent because it collects recipient claims from the Earned Income Tax Credit (EITC). The group pointed out that Congress has repeatedly expressed its support for EITC by continuing to expand its scope. The Department does not disagree that Congress has expanded EITC. However, since Congress has not enacted legislation excluding EITC from such debt collection through FTROP, the Department does not believe that collecting food stamp recipient claims from EITC's is inconsistent with Congressional intent.

The action group also stated that it believed that FTROP is unduly punitive and causes severe hardship for poor families. The Department disagrees. First, recipient claims subject to FTROP were caused by the households themselves and are uncollected because households did not pay them in response to demand letters. Second, the 60-day notice (the due-process notice) offers individuals a second opportunity to pay in full or negotiate a payment schedule before claims are referred for tax offset. In addition, food stamp regulations at 7 CFR 273.18(g)(2)(i) provide that if a claim cannot be paid within three years, the State agency may reduce the claim to an amount that the household can pay within three years.

The action group asserted that FTROP would not be cost-effective. In this regard, the group referred to a comment at a public meeting in February 1991 by an FCS official who expressed concern that the priority order for collection from tax refunds might adversely affect the cost-effectiveness of FTROP. Since the IRS does not provide Federal agencies information about debts which are uncollected because of a higher priority debt, the effect of this factor on FSP recipient claims referred to the IRS under FTROP cannot be determined. The priorities for offset from tax refunds notwithstanding, as demonstrated above, the test of FTROP has demonstrated that FTROP is cost-effective.

The action group also commented that the Department lacked criteria for evaluating FTROP in terms of feasibility and cost-effectiveness. The Department disagrees. The test has fully demonstrated the feasibility and cost-effectiveness of the project based on increasing State agency participation, the large dollar volume of collections and the increased efficiency of FSP claims collection.

In another general comment, the action group asserted that instead of focusing on collecting overissued food stamp benefits, the Department should focus on preventing and correcting underissuances. Through the Quality Control System the Department has an ongoing program for identifying and correcting certification and benefit errors. These errors cause both over and underissuance of food stamp benefits. In this regard, it should be noted that a certain percentage of the errors causing such incorrect levels of benefits results from households failing to accurately report their circumstances. In addition to the Quality Control System's efforts to reduce certification and benefit errors, on April 1, 1993 FCS awarded grants to two State agencies for special error reduction initiatives. One grant focuses on client-caused error, the other on State agency-caused error.

3. FTROP—Requirements for State agencies

a. General Requirements. During the testing of FTROP, all participating State agencies were required to submit an annual commitment letter in which they stated they would comply with the requirements of the August 1991 General Notice. This rule proposes at section 273.18(g)(5)(i)(A) that State agencies which choose to implement FTROP must submit a one-time

amendment to their Plan of Operation stating that they will comply with the requirements for FTROP and salary offset. (Section D of this preamble explains why State agencies which implement FTROP must also implement salary offset.) Amendments would be due to FCS regional offices twelve months before the beginning of a State agency's first offset year. Amendments for State agencies currently participating would be due 90 days after publication of the final rule on FTROP. (See the last section of this preamble, ''Effective Date.'')

The August 1991 General Notice required State agencies to attend a training session on FTROP policy and procedures prior to beginning to test the program. The Department expects to continue to require new State agencies to attend such a training session but is not proposing to include the requirement in regulations.

The IRS specifies what information they need for the various tasks required to match FSP recipient claims to Federal income tax return information, to effect offsets, and for reporting and accounting functions. The IRS also sets schedules for submission of data to them and for the various reports which they produce and distribute. These instructions and schedules are contained in the annually revised IRS Revenue Procedure, ''Magnetic Media Reporting for Federal Income Tax Refund Offset Program (Debtor Master File).'' FCS conducts field edits to assure that data which State agencies submit conform to IRS formats, and FCS works with State agencies to correct problems which would result in data being rejected by the IRS. State agency data and format problems sometimes require that State agencies resubmit data. For example, magnetic tapes must be preceded by a specific Job Control Language (JCL). If the JCL is incorrect, the State agency may have to produce another tape. On the other hand, FCS is able to correct some problems without requiring a second submission. For example, if Social Security Numbers (SSN's) are not correctly justified in the data field, FCS may be able to shift them to their correct position. The problems which FCS can correct are limited, however, and State agencies have the primary responsibility for detecting and correcting data and format errors prior to submitting recipient claim files to FCS. Since data submitted to the IRS must be correctly formatted, FCS will not submit data from a State agency to the IRS until the State agency's data conforms to IRS format requirements. Consequently, this rule proposes at section 273.18(g)(5)(i)(B) that State agencies must submit data according to the record formats specified by FCS and/or the IRS.

This rule also proposes at section 273.18(g)(5)(i)(B) that State agencies submit data according to schedules provided by FCS. State agencies need to submit files early enough to allow sufficient time for transmittal to FCS, for FCS to conduct field edits and to consolidate State agency submissions, and for FCS to mail files to IRS to meet IRS deadlines. FCS will provide State agencies each year a schedule for State agency data submissions to FCS. This schedule will also include other FTROP due dates so that State agencies have one source as a reference for meeting the various FTROP deadlines.

IRS currently requires that FCS provide data to IRS on magnetic tape. During the early testing of FTROP, State agencies submitted their data to FCS on magnetic tape. Managing tape submissions for the number of State agencies currently participating has proven inefficient. Consequently, during January 1994 FCS began implementing electronic data transmission. To provide for this technology and for future improvements in this area, this rule proposes at section 273.18(g)(5)(i)(B) that State agencies must submit data by means of magnetic tape, electronic data transmission or other method specified by FCS.

b. Claims Referable for Offset. The provisions of DEFRA codified at 31 U.S.C. 3720A(b) and IRS regulations at 26 CFR 301.6402–6(c) specify criteria for debts which can be referred for offset from Federal income tax refunds. The August 1991 General Notice included those criteria as well as additional criteria required for the FSP. This rule proposes at section 273.18(g)(5)(ii) to include substantially the same criteria, the most general of which is specified by DEFRA: All claims submitted for tax offset must be past-due and legally enforceable. The rule then proposes a number of specific criteria for determining claims past-due and legally enforceable. Only recipient claims which meet those criteria may be referred for collection under FTROP.

General Criteria: For purposes of testing FTROP, the Department chose to limit FTROP to IHE and IPV claims. This rule proposes that same limitation at section 273.18(g)(5)(ii)(A). The August 1991 General Notice further specified in paragraph b(1) that these claims had to be ''properly established'' as required by FSP regulations. This rule expands the statement of that requirement by referencing at section 273.18(g)(5)(ii)(A)(*1*) current rules on recipient claims and disqualification hearings for IPV's. The Department also wants to make clear that State agencies must have documentation that the claims they submit for collection under FTROP are properly established. Consequently, this rule proposes at section 273.18(g)(5)(ii)(A)(*2*) that State agencies must have such documentation on claims which they refer under FTROP. Specifically such documentation would include such items as electronic records and/or paper copies of claim demand letters, results of fair hearings, advance notices of disqualification hearings, results of such hearings, and records of payments. In this context an electronic record would be such items as dates of demand letters and the formats of such letters.

The Three-Month Delinquency Period: Temporary IRS regulations at 26 CFR 301.6402–6T(b)(2) provided that referable debts must be delinquent at least three months at the time the offset is made. The August 1991 General Notice in paragraph b(3) provided that for purposes of FTROP recipient claims must be delinquent at least three months as of the date the State agency certified its final files to FCS. That date is usually in early December. Further in this regard, the August 1991 General Notice specified in paragraphs b(3)(i) and (ii) that a claim could not be considered delinquent for purposes of FTROP if either: (1) the State agency was responding to a request for a fair hearing which was made within the 90 days following the initial demand letter; or (2) the time allowed for responding to the initial demand letter had not elapsed. Final IRS regulations at 26 CFR 301.6402–6 do not include an explicit three-month minimum delinquency nor do those regulations use the term ''delinquency.'' The preamble to the final IRS rule states that a three month minimum delinquency is ensured because of the various notices and actions that must occur prior to referring debts under FTROP.

During the test of FTROP, State agencies raised questions about the criteria for ''delinquency'' of claims for FTROP purposes. These questions were answered with specific discussion of such considerations as whether payments were being regularly made. This rule incorporates policy developed in response to those questions and does not use the terms ''delinquent'' or ''delinquency'' with respect to determining whether a recipient claim may be referred for collection under FTROP. If a claim meets the criteria for being past due and legally enforceable as proposed in this rule, the claim would be subject to FTROP.

The Department wants to make clear that claims may not be considered past due and legally enforceable until individuals have been provided the opportunity to respond to demand letters as required in current food stamp rules. Current FSP regulations at 7 CFR 273.18(d)(4)(iii) state that if any nonparticipating household does not respond to the first demand letter for repayment of a recipient claim, additional demand letters must be sent at reasonable intervals, such as 30 days, until: (1) The household repays the claim or agrees to repay it; (2) collection action can be suspended; or (3) *the State agency initiates other collection actions* (emphasis added). Consequently, at section 273.18(g)(5)(ii)(A)(*1*) this rule would refer to that FSP regulation and the requirement to provide additional demand letters prior to initiating other collection actions. This criterion would replace the criteria stated in paragraphs b(3)(i) and (ii) of the 1991 General Notice.

The action group several times expressed concern that FTROP procedures specified in the August 1991 General Notice did not require that State agencies establish that all other collection had stopped before acting on a claim under FTROP. In the following paragraphs this preamble discusses the criteria for determining whether or not a claim is referable under FTROP and in later sections discusses the content of the 60-day notice. The Department believes that these discussions and the corresponding parts of this proposed rule should make clear both to State agencies and to individuals receiving those 60-day notices that claims are not referable under FTROP if they are being regularly repaid. The Department also addresses this concern by proposing policies on verifying that no liable individual is currently participating in the FSP in the State and on apportioning claims among individuals who are jointly and severally liable for the claims.

Section 13(a)(2) of the Act and FSP regulations at 7 CFR 273.18(a) specify that all adult members of the household are jointly and severally liable for any overissuance of benefits to the household. In addition, the regulations require that State agencies establish claims against any household which contains an adult member who was an adult member of another household which received an overissuance. The Department wants State agencies to take steps to collect FSP recipient claims from households to the maximum extent. On the other hand, as already discussed, both IHE and IPV claims must be recouped from monthly allotments of participating households with members who are liable for recipient claims. Consequently, this rule proposes at section 273.18(g)(5)(ii)(B) that claims are referable for collection through FTROP for which the State agency has verified that no individual participating in the FSP in the State is jointly and severally liable as specified in section 273.18(a).

The IRS regulations at 26 CFR 301.6402–6(c)(7) set a $25 minimum for claims which can be referred for tax offset. The August 1991 General Notice applied the $25 minimum during the test of FTROP, and this rule would apply the same minimum. To avoid the need to change FSP regulations should the IRS change the minimum dollar amount for claims which can be referred under FTROP, this rule proposes at section 273.18(g)(5)(ii)(C) that State agencies may submit only claims in dollar amounts which are at least the minimum dollar amount set by the IRS. FCS will advise State agencies if that amount changes from $25.

The 10-Year Limit: Temporary IRS regulations at 26 CFR 301.6402–6T(b)(2) provided, in part, that debts could only be referred if they were not delinquent for more than 10 years at the time the offset was made except for judgment debts, which were not subject to this 10-year limitation. The August 1991 General Notice in paragraph b(3) provided, in part, that except for claims reduced to final court judgments, recipient claims could be delinquent for no more than nine years, 11 months as of the date State agencies certified their final file of claims to FCS. Final IRS regulations at 26 CFR 301.6402–6(c)(1) specify that except for judgment debts or debts specifically exempt from the requirement (such as certain debts referred by the Department of Education), claims may be referred under FTROP if they are referred within 10 years after *the (Federal) agency's right of action accrues* (emphasis added).

In the preamble to their final regulation on FTROP, the IRS states that only the Federal agency referring the debt for offset is in a position to determine when its right of action to collect a particular debt accrues. The Department considers that its right of action to collect a recipient claim under FTROP accrues on the date of the initial demand letter. The IRS accepts certified FTROP files no later than about January 4 of each offset year. This date is the date claims are considered referred to the IRS and the date from which the 10-year period is measured in order to determine if the right of action on a particular recipient claim accrued within that period. To assure that recipient claims referred for tax offset fall within the IRS 10-year time frame and to provide State agencies a date which remains unchanged year to year, this rule proposes at section 273.18(g)(5)(ii)(D) that, except for claims reduced to final court judgments ordering individuals to pay the debt, FSP recipient claims may be submitted for tax offset only if the date of the initial demand letter is within 10 years of January 31 of the applicable offset year.

The August 1991 General Notice provided in paragraph b(3)(iii) that a claim was not delinquent if the household was making payments pursuant to an agreed upon schedule of payments as provided in 7 CFR 273.18(g)(2). This rule proposes at section 273.18(g)(5)(ii)(A)(*5*) that claims are past due and legally enforceable if the State agency is neither receiving voluntary payments pursuant to an agreed upon schedule of payments as provided in current FSP regulations at 7 CFR 273.18(g)(2) nor is receiving scheduled, involuntary payments such as wage garnishment. The Department proposes to add the second criterion because, as in the case of voluntary payment under an agreement with the State agency, the claim is being repaid regularly. Consequently, the claim should not be referred for collection under FTROP. The rule further proposes to specify that claims for which the State agency has received such payments are considered past-due and legally enforceable under FTROP 30 days after the due date for a regular payment which is not received.

Bankruptcy: As a condition of participating in FTROP, the IRS requires that Federal agencies annually sign a Memorandum of Understanding (MOU) which specifies the respective rights and responsibilities of the Department and the IRS. The MOU specifies that the (Federal) agency must certify to the IRS that collection on claims referred under FTROP is not limited by a bankruptcy filing. The August 1991 General Notice in paragraph b(5) applied this provision to State agencies. This rule proposes the same provision at section 273.18(g)(5)(ii)(A)(*6*). This subject matter is discussed in greater detail later in this preamble.

Notifications: The August 1991 General Notice specified in paragraph b(6), that State agencies could refer only those claims for which they had complied with all of the required FSP notification and review rights explained therein. This rule proposes the same requirement at section 273.18(g)(5)(ii)(A)(7).

In addition to these criteria, other criteria must be applied to determine if other recipient claims are past due and legally enforceable.

Other Collection Efforts: Many State agencies collect FSP recipient claims from refunds due individuals from overpayments of State income tax and other sources. The Department is concerned about over collections of claims referred for collection from State tax refunds for the same period they are subject to offset under FTROP. To avoid such over collections, the consequent temporary loss of funds to individuals and the need for State agencies to make refunds, this rule proposes at section 273.18(g)(5)(ii)(B)(*1*) that claims referred under FTROP must be reduced by any amounts referred for collection from State income tax refunds or from other sources which may result in collections during the offset year.

Combined Claims: During the test of FTROP, State agencies were allowed to combine two or more claims against an individual and to submit them as one claim. This rule at section (g)(5)(ii)(B)(*2*) would require that the date of the initial demand letter for each of the claims so combined be within the 10-year period specified in section 273.18(g)(5)(ii)(A)(*4*). The IRS requires that debts reduced to judgment be identified when they are submitted for offset. Consequently, judgment debts cannot be combined with claims which are not reduced to judgment. Accordingly, this rule would prohibit such combinations.

Split Claims: As discussed above, 7 CFR 273.18(a) provides that all adult household members are jointly and severally liable for recipient claims. In addition, 7 CFR 273.18(f), explicitly authorizes State agencies to attempt to collect claims from any household which contains an adult member of a household which received an overissuance. The 1991 General Notice in paragraph b(4) provided that claims could be submitted under FTROP for only one individual or in cases where more than one individual was jointly and severally liable for the claim pursuant to 7 CFR 273.18(a) and (f), the full amount of the claim could be apportioned between two or more liable individuals as long as the sum of the amounts submitted for all liable individuals did not exceed the total amount of the claim. The Department believes that it is unnecessary to state in the regulation that a claim for one individual is referable under FTROP. Consequently, this rule provides at section 273.18(g)(5)(ii)(B)(*3*) that claims may be referred under FTROP which are apportioned between two or more individuals who are jointly and severally liable for the claim pursuant to section 273.18(a) and section 273.18(f) on the condition that the total of the amounts submitted under FTROP for a particular claim do not exceed the amount of the claim.

Credit Bureau Reporting: Finally with regard to the criteria for determining claims referable under FTROP, the IRS at 26 CFR 301.6402–6(c)(6) specifies that, with certain exceptions, debts may not be referred unless they have been disclosed to a consumer reporting agency. In a letter to FCS dated March 25, 1991 the IRS waived this requirement for the FSP on the basis of the disclosure limitations in Section 11(e)(8) of the Act (7 U.S.C. 2020(e)(8)). Consequently, food stamp recipient claims are not referred to consumer reporting agencies as part of FTROP.

c. 60-Day Notice to Individuals. As codified at 31 U.S.C. 3720A(b), DEFRA requires that prior to referring a debt to the IRS for collection from Federal income tax refunds, a Federal agency must notify the person incurring such debt that the agency proposes to take such action and give the person at least 60 days to present evidence that all or part of the debt is not past-due or not legally enforceable. The August 1991 General Notice in paragraph c(1) required State agencies to provide this notice and required that it contain the information specified in paragraph d. of the General Notice. Accordingly, this rule proposes at section 273.18(g)(5)(iii)(A) that, prior to referring claims for collection under FTROP, the State agency provide individuals from whom it seeks to collect such claims with a notice, called a 60-day notice.

Required Information: Because of the importance of complying with the due process provisions of DEFRA, this rule proposes at section 273.18(g)(5)(iii)(B) that, with the exception of such State-specific information as names and positions and information required for contacts, a State agency's 60-day notice shall contain only the information specified in paragraph 273.18(g)(5)(iv) for the 60-day notice. Furthermore, the rule proposes that in the certification letters which must be submitted with final files of claims as stated in paragraph 273.18(g)(5)(vii), State agencies must include a statement that their 60-day notices conform to this requirement. State agencies which need to deviate from the required content of the 60-day notice would need to obtain FCS approval for a waiver to allow the deviation. FCS will provide State agencies with a format for the 60-day notice. The Department believes that this is consistent with Section 11(d) of the Act which prohibits the Secretary, as part of the approval process for a plan of operation, from requiring a State agency to submit for prior approval by the Secretary forms it will use to carry out the FSP.

The action group commented that the 60-day notice is likely to be confusing because several provisions are in technical language which many food stamp households may not possess sufficient reading skills to comprehend. The Department is aware that regulatory language can be technical, and this awareness was, in large part, why the August 1991 General Notice required State agencies to follow the format for the 60-day letter which FCS provided and why this rule proposes a similar requirement. In this regard, the action group also expressed concern about automated forms or forms printed in small type. The Department has received no complaints about such matters during the test but will monitor 60-day notices for legibility and will request State agency corrective action as necessary.

The August 1991 General Notice required in paragraph c(3) that State agencies mail 60-day notices no later than the date specified in operational guidelines issued by FCS for the particular offset year. October 1 was the specified deadline for mailing 60-day notices during the test of FTROP. This rule proposes at § 273.18(g)(5)(iii)(C) that, unless otherwise notified by FCS, the State agency must mail 60-day notices for claims to be referred for collection through FTROP no later than October 1 preceding the offset year during which the claims would be offset.

Addresses for 60-Day Notices: IRS regulations at 26 CFR 301.6402–6(c)(4) require that agencies participating in FTROP provide the debtor, or make a reasonable effort to provide the debtor with the required notice. IRS regulations at 26 CFR 301.6402–6(d)(1) state that use of the most recent address for the debtor provided by the IRS constitutes a reasonable effort to notify the individual about the intended referral for offset. The IRS provides such address information to State agencies during the annual pre-offset cycle. The last cited provision of the IRS regulations also states that the IRS-provided address must be used unless the State agency receives clear and concise notification from the taxpayer that notices from the agency are to be sent to an address different from the address obtained from the IRS. The IRS regulation provides that such clear and concise notification means that the

taxpayer has provided the [State] agency with written notification including the taxpayer's name and identifying number (which is generally an SSN), the taxpayer's new address, and the taxpayer's intent to have agency notices sent to the new address. This rule proposes at section 273.18(g)(5)(iii)(D) to include requirements on addresses for 60-day notices which are consistent with these IRS regulations.

During the test of FTROP several State agencies asked whether claims for which 60-day notices were returned as undeliverable for such reasons as ''forwarding address unknown,'' could be referred for collection. To clarify this matter, this rule proposes at § 273.18(g)(5)(iii)(D) that claims for which 60-day notices addressed as required in that paragraph are returned as undeliverable should be referred for collection.

Finally in regard to addresses for 60-day notices, the August 1991 General Notice provided in paragraph c(4) that the 60-day notice could also be mailed to addresses from State agency files if the State agency believed that such addresses in its files were better than ones provided by the IRS. This policy caused confusion during the test. Some State agencies thought that if the 60-day notice sent to the IRS-provided address was returned, the claim could not be submitted under FTROP unless a second 60-day notice was sent. In view of this problem and the fact that the final IRS regulation requires the use of the IRS address unless the debtor has specifically requested that another address be used, this provision is not included in this proposed rule.

d. Contents of the 60-Day Notice. This rule proposes several changes in the content of the 60-day notice from that used during the test of FTROP. Among other things, these changes would provide individuals with more information about their liability for the claim, clarify the scope of individuals' right to have the intended collection action reviewed, and advise individuals about documents for showing that a claim is not past-due or legally enforceable.

Facts of the Claim; Authority for FTROP: The August 1991 General Notice required in paragraph d(1) that the 60-day notice first inform individuals that State agency records document that the individual, identified with his or her SSN, is liable for a specified, unpaid balance of a claim for overissued food stamp benefits, that the State agency previously notified the individual about the claim, made the required collection efforts, and that the claim is past-due and legally enforceable. To make clear that the claim was properly established, the August 1991 Notice also required that the 60-day notice state that State agency records documented the claim. The individual's SSN was required to help assure that the 60-day notice was sent to the correct individual. The information on the amount of the claim was required to comply with the IRS requirement at 26 CFR 301.6402–6T(b)(5) that the 60-day notice inform the debtor of the amount of the debt and that it was determined past-due and legally enforceable. The statement about previous notification and collection efforts was required to comply with the DEFRA requirement at 31 U.S.C. 3720A(b)(4) that agencies participating in FTROP satisfy the Secretary of the Treasury that they have made reasonable efforts to obtain payment of the debt (prior to referring it for collection through tax offset).

The August 1991 General Notice required in paragraph d(2) that the 60-day notice inform the individual that DEFRA authorizes the IRS to deduct debts (such as claims for overissued food stamp benefits) from tax refunds and that the State agency intends to refer the claim for such deduction unless the individual pays the claim within 60 days or makes other repayment arrangements acceptable to the State agency. As noted in the preceding section of this preamble, DEFRA contains these requirements at 31 U.S.C. 3720A(b).

This rule at §§ sections 273.18(g)(5)(iv) (A) and (B) would reorganize these statements and make some minor modifications in language, in particular to accommodate the proposed requirement that 60-day notices conform to the language specified in this rule. As did the 60-day notice used during the test of FTROP, the 60-day notice proposed here would first state that the State agency has records documenting that the individual, identified by name and SSN, is liable for the unpaid balance of the recipient claim(s) resulting from overissued food stamp benefits the State agency intends to refer for offset.

The 60-day notice would then state that the State agency has previously mailed or otherwise delivered demand letters notifying the individual about the claim, including the right to a fair hearing on the claim, and has made any other required collection efforts. The clause ''previously mailed or otherwise delivered'' would be used in the 60-day notice in order to be consistent with the recent revision of 7 CFR 273.18(d)(4) cited at the end of section B(1) of this preamble. The reference to the notice of the right to a fair hearing on the claim would serve as a reminder to the individual that the opportunity for a fair hearing has already been provided. The Department wants to include that reminder to help individuals understand why, as discussed below, the 60-day notice offers an opportunity for a review of whether the claim is referable, not an opportunity for a fair hearing.

This proposed rule would require at section 273.18(g)(5)(iv)(B) that the 60-day notice state that the Deficit Reduction Act of 1984, as amended by the Emergency Unemployment Compensation Act of 1991, authorizes the IRS to deduct such debts from tax refunds if they are past due and legally enforceable. The 60-day notice would then state that: (1) The State agency has determined that the debt is past due and legally enforceable according to the criteria specified by the Deficit Reduction Act of 1984, the IRS regulations and the Food Stamp Program (FSP) regulations; and (2) the State agency intends to refer the claim for deduction from the individual's Federal income tax refund unless the individual pays the claim within 60 days of the date of the notice or makes other repayment arrangements acceptable to the State agency.

Offset Fee: During the test of FTROP, the Department of the Treasury (Treasury) charged Federal agencies participating in FTROP a fee for each offset to cover Treasury's administrative costs for FTROP operations. For example, the fee for offset year 1995 is $8.79. Treasury plans to continue this practice. Treasury assesses the offset fee whether the offset satisfies all or only part of the debt. During the test of FTROP (including 1995), these fees were treated as allowable costs for the State agency. This has meant that State agencies and FCS each paid for half of each fee. For example, assuming a $100 claim and an $8 fee, if the IRS offset $100 from a tax return either because that was the amount of the recipient claim referred or because that was all the refund available for offset, the IRS would keep $8 and send FCS $92. FCS would report a $100 offset to the State agency which would credit that amount against the balance of the recipient claim. FCS would also report the $8 offset fee to the State agency which would claim 50 percent of that fee, or $4, as a reimbursable cost from FCS. The fees are costs which can be avoided if individuals pay their claims voluntarily in response to 60-day notices. Consequently, at § 273.18(g)(5)(iv)(C) this rule proposes that the 60-day notice state that if a

claim is referred to the IRS, a charge for the administrative cost of collection will be added to the amount of the claim and any amount deducted from the tax refund will first be applied to pay the charge, with the balance applied to the claim, as explained further.

Under this proposal, in the case of a $100 claim and an $8 offset fee, a debt of $108 would be referred to the IRS. If that amount were available for offset, the IRS would keep $8 and send $100 to FCS who would transfer $100 to the State agency for credit against the claim. On the other hand, if only $50 were available for offset, the IRS would keep $8 and $42 would be credited against the claim. A balance of $58 would remain.

The 60-day notice would not cite the exact amount of the charge because during the test the IRS notified FCS of the amount of the offset fee during November, too late for the exact amount to be provided State agencies prior to the October 1 mailing of the 60-day notices. FCS plans to add the exact amount of the fee to each recipient claim submitted by State agencies in their certified files in early December. FCS would advise State agencies of the amount of the fee, but the fee must not be added to the amount of the claim as maintained in State agency food stamp case records. The State agency would ultimately advise the individual of the amount offset, including how much of the offset was applied to the fee and how much to the claim itself.

Joint and Several Liability: During the test of FTROP it was clear that the household composition of many individuals liable for claims subject to FTROP had changed and that some individuals did not understand that they were liable for the overissuances. Consequently, this rule proposes to require at § 273.18(g)(5)(iv)(D) that the 60-day notice advise individuals that all adults who are household members when excess food stamp benefits are issued to the household are jointly and severally liable for the value of those benefits, and that collection of claims for such benefits may be pursued against those individuals.

Action Group Comments: The action group made two comments which pertain to these initial statements in the 60-day notice. First, the group commented that the appeal process is defective because the individual is not given an opportunity to acknowledge that, while a debt is owed, it should not be collected through FTROP. The group cited the example of an individual who has entered into a repayment agreement with a State agency to repay a debt which the State agency in error refers under FTROP. The August 1991 Notice stated in paragraph b(3)(iii) that claims being repaid are not delinquent and so are not referable. This rule proposes that same information be given to individuals in the 60-day notice in two places. First, the rule would require at § 273.18(g)(5)(iv)(D) that the 60-day notice advise households that State agency records do not show that the debt is being repaid according to either a voluntary agreement with the State agency or through scheduled, involuntary payments. Second, as discussed below, the 60-day notice would state that evidence that a claim is being repaid is one type of evidence showing that a claim is not past due. The action group also commented that the individual is never informed that collection efforts concurrent with FTROP are not permissible and are grounds for appeal. The Department believes that the just discussed revisions to the language in the 60-day notice should make that point clear.

Also with regard to the initial statements in the 60-day notice, the action group commented that the 60-day notice as tested does not provide an opportunity for a hearing before the refund is seized because the notice does not state a definite intent to seize the refund. The action group went on to assert that this deficiency means that the FTROP procedures do not comply with due-process mandates and that the FTROP procedures should be withdrawn. The 60-day notice does state an intent to offset the debt against income tax refunds, and the notice fully complies with the requirements of DEFRA which provides, in part, that debts may not be referred to the Secretary of the Treasury for collection from income tax refunds until the Federal agency owed the debts notifies the debtors that the agency proposes to make such referral and provides the debtors 60 days to present evidence that all or part of the debt is not past-due or not legally enforceable (emphasis added). Of course, as the action group states, at the time of the 60-day notice it is not known whether or not there will be a tax refund available for collection. Based on experience during the test of FTROP, there is no confusion on the part of individuals about this matter. Immediately after 60-day notices are mailed, State agencies begin receiving telephone calls about the claims and the intended referral for offset, and individuals do file appeals.

State Agency Contact: The August 1991 General Notice required in paragraph d(3) that the 60-day notice include instructions about how to pay the claim, including the name, address and telephone number of a State agency contact able to discuss the claim and the intended offset with the individual. Such information is needed so that individuals will know how to contact the State agency and where to send payments. During the test of FTROP several State agencies raised concerns about personal safety because of the requirement to provide a name of an individual and/or the street address in the 60-day notice. In view of this concern, this rule proposes to require at § 273.18(g)(5)(iv)(E) that the 60-day notice provide the name of an office, administrative unit and/or individual, street address or post office box, and telephone number for the contact. The 1991 General Notice did not specify that the telephone number for the State agency contact must be toll-free or collect. In its publication ''Guidelines for the Federal Tax Refunds Offset Program'' (August 1992), Treasury requires such a telephone number on the 60-day notice. Accordingly, this rule would specify that requirement (at § 273.18(g)(5)(iv)(E)).

Requests for Review: The August 1991 General Notice required in paragraph d(4) that the 60-day notice inform the individual of six factors about appealing the intended collection action. Most of these factors are based on the requirements of DEFRA. This rule proposes to require that the 60-day notice address the same factors, modifying them based on experience during the test of FTROP.

The first such modification is the replacement of the term ''appeal'' with the phrase ''request a review'' or ''review request.'' The rule proposes this change for two reasons. First, State agencies observed that the use of the word ''appeal'' in the 60-day notice gave individuals the impression that they were being offered the right to a full-fledged review of all aspects of the claim. Second, during the test of FTROP, several State agencies requested approval of 60-day notices which would offer debtors an opportunity for a fair hearing on the claim itself even though such an opportunity was provided with the initial demand letter. A second opportunity for a fair hearing may be appropriate in certain circumstances, but the Department does not believe that collection of a recipient claim through FTROP is such a circumstance. FTROP is one of several types of ''other means of collection'' for which 7 CFR 273.18(d)(4)(iv) provides authority, and State agencies do not offer a second fair hearing opportunity before initiating other collection actions such as small claims court proceedings or referral to a collection agency. The proposed

rephrasing should help clarify that an individual's ''appeal'' right is limited. For additional clarity, the rule proposes using the word ''collection'' instead of ''offset.'' Accordingly, § 273.18(g)(5)(iv)(F) would require that the 60-day notice advise individuals that they have a right to request a review of the intended collection action.

The August 1991 General Notice required in paragraphs d(4)(iii) and (iv) that the 60-day notice state that claims that have been appealed (for which timely reviews have been requested) will not be referred for offset while under review, and that individuals must provide their SSN's with their appeals (review requests). The rule would make these same requirements at § 273.18(g)(5)(iv)(F). At that same place the rule would require that the review request be written because during the test of FTROP State agencies asked whether they had to review claims based on telephone inquiries. The Department wants to make clear to debtors and State agencies that an oral request, such as an inquiry made over the telephone, does not constitute a review request.

In this regard, the action group commented that the opportunity to appeal provided by the 60-day notice was not meaningful because, whereas recipients are accustomed to working with food stamp offices, the opposing party in this instance is the IRS. Requests for review are made to State agencies and FCS, not the IRS. Only requests to protect the tax refund of a non- liable spouse should be directed to the IRS, as discussed in detail below. During the test there were few reports from the IRS that individuals were contacting IRS offices instead of State agencies about appealing the intended collection from tax refunds. Nonetheless, to help make clear that appeals are directed to the State agency, this rule proposes at § 273.18(g)(5)(iv)(F) that the 60-day notice specify that requests for review be submitted to the State agency address provided in the notice. Requests for review will generally be submitted by mail, but the rule does not propose to require this. Individuals could provide the written requests in person.

DEFRA provides that individuals must be given 60 days to show a debt is not subject to FTROP. The August 1991 General Notice required in paragraph d(4)(ii) that the 60-day notice state that the State agency will not review appeals which it receives later than 60 days after the date of the 60-day notice. The provision was intended: (1) To make as clear as possible to individuals that the 60-day appeal period would be strictly adhered to; and (2) to relieve State agencies of the responsibility for reviewing appeals received after that period expires. This rule proposes at § 273.18(g)(5)(iv)(F) that the 60-day notice advise individuals that their request for review must be received with 60 days of the date of the 60-day notice. During the test of FTROP, after the 60-day period State agencies sometimes received documentation, for example, that the claim was paid. In such circumstances, as required by current food stamp regulations when an over collection is discovered, the State agencies were required to refund the over collection. Consistent with current food stamp regulations on refunding over collections of recipient claims, if after the 60-day notice an individual documents or otherwise demonstrates that the claim is not past due or legally enforceable, and the claim has already been collected from the individual's tax refund, the amount collected on the claim will be refunded.

Bankruptcy: The August 1991 General Notice required in paragraph d(5) that the 60-day notice advise individuals that they should inform the State agency if they believed that a bankruptcy prevents collection of the claim. During the test of FTROP several State agencies asked what documentation of bankruptcy was required. Bankruptcy law forbids requiring documentation of bankruptcy. This rule proposes at § 273.18(g)(5)(iv)(G) to restate the requirement that a claim is not legally enforceable if the individual indicates that a bankruptcy prevents collection of the claim.

Tax Refunds of Non-liable Spouses: The August 1991 General Notice required in paragraph d(6) that 60-day notices state that married individuals may want to contact the IRS in order to protect the refund in cases where spouses are not liable for the claim. This rule proposes this same requirement at § 273.18(g)(5)(iv)(H). That section would also inform the individual that his or her own liability for this claim, including any charge for administrative costs, may be collected from his or her share of a joint refund. The Department wants to make clear that the protection for a non-liable spouse's share of a tax refund against collection by tax refund offset does not extend to the liable spouse's share of the tax refund.

Documenting a Claim is ''Not Referable'': The August 1991 General Notice stated in paragraph d(4)(iv) that an appeal must provide evidence or documentation why the individual believes that the claim is not past-due or is not legally enforceable, and in paragraph d(4)(v) that an appeal is not considered received until the State agency receives such evidence or documentation. During the test of FTROP, State agencies asked whether they were required to review requests which did not contain any pertinent documentation. The Department believes that all timely, written review requests warrant consideration and a written response, as discussed later in connection with State agency action on review requests. The Department also wants to make clear to individuals that certain documentation is necessary to show that a claim is not subject to FTROP. Accordingly, this rule proposes at § 273.18(g)(5)(iv)(I) that 60-day notices inform individuals that if they request a review of the intent to collect the claim from their income tax refund, they should provide documentation showing at least one reason why the claim is not subject to FTROP and that if they cannot, for example, provide a cancelled check, they should explain in detail why they believe that the claim is not collectible under FTROP. This should allow individuals wide latitude to explain the particular circumstances of the claim and still require that they show some basis for why the claim is not past due and legally enforceable. The 60-day notice would be required at §§ 273.18(g)(5)(iv)(J) and (K) to list the reasons the claim is subject to collection under FTROP.

In the first two weeks after mailing out 60-day notices, State agencies typically receive a large number of telephone calls from individuals asking questions about the recipient claims and the intended collection action described in the notices. Many of these callers assert that they are not liable for the claim. The Department believes that providing individuals information in the 60-day notice about why their claims are subject to collection under FTROP will allow informal inquiries to be handled quickly and may reduce the number of such inquiries. This information should also help individuals decide what information they need to provide in order to substantiate that, for example, they have paid the claim or that the claim has been discharged in bankruptcy.

The action group made several comments concerning the requirements for documenting that a claim is not past due or is not legally enforceable. The group stated that the 10-year time limit for delinquent claims to be referable for tax offset results in an undue burden for documentation on low-income households and recommended that the Department shorten that period. On this matter the action group also commented that some households may have

difficulty documenting that no debt is owed. To the same effect, the action group commented that recipients may not have evidence to rebut the intended collection action or the claim itself. They cited the example of a household member alleged to have had unreported earnings (which would have resulted in an overissuance) who is unavailable when the 60-day notice is received. The Department recognizes that recordkeeping for low-income households may be relatively difficult, especially perhaps, as the action group remarks, because low-income households may move relatively often and may have relatively limited resources to devote to household recordkeeping. The Department does not believe that shortening the 10-year period would address this difficulty. The Department believes that it must require a minimum level of documentation that a claim is not past due or is not legally enforceable and that the proposed rule states that minimum level. With respect to rebutting the claim itself, since only IHE and IPV claims which are properly established are subject to FTROP, the household has already been offered an opportunity to rebut the claim itself in fair hearings or administrative disqualification hearings.

The action group also commented that in other contexts households present evidence and the State agency has the burden of defending its actions. The Department understands that by ''other contexts'' the action group is referring to fair hearing and disqualification hearing procedures. As just discussed, those procedures are part of the process of establishing a claim. Once a claim is established, due process requires permitting the individual an opportunity to establish that the claim is not past due or legally enforceable (is not subject to collection under FTROP). Due process does not require permitting a second opportunity to challenge the substantive basis for the claim.

e. State Agency Action on Requests for Review. DEFRA requires at 31 U.S.C. 3720A(b)(3) that any evidence presented by debtors must be considered and a determination made whether the debt is past-due and legally enforceable. The IRS requires at 26 CFR 301.6402–6(d)(2) that the participating agency notify the debtor of its decision. The August 1991 General Notice required in paragraph e(1) that when a State agency examines documents or evidence submitted with a review request, it determine whether the claim is past due and legally enforceable and notify the individual of its decision in writing. Consistent with the requirements concerning State agency action on review requests already discussed, this rule proposes at § 273.18(g)(5)(v)(A) that State agencies act on all written requests for reviews received within the 60-day period for timely review requests, determine whether or not such claims are past due and legally enforceable, and notify individuals in writing of the result of such determinations.

Section 273.18(g)(5)(v)(B) of this rule proposes that the State agency determine whether or not claims are past-due and legally enforceable based on a review of its records and of documentation, and evidence or other information the individual may submit. The provision in the August 1991 General Notice at paragraph e(2) which contained examples of types of documentation or evidence has been eliminated as unnecessary.

During the test of FTROP State agencies indicated confusion about whether they were required to respond to review requests which contained inadequate or no documentation. To address this concern, this rule proposes to add at § 273.18(g)(5)(v)(C)(*1*) the requirement that the decision letter advise the individual of the reason for the State agency's decision, including the failure to provide adequate evidence or documentation that the claim was not past due and legally enforceable.

The August 1991 General Notice required in paragraph (e)(3)(i) that if the State agency decides a claim is past-due and legally enforceable, the State agency must inform the individual in its written decision that it intends to refer the claim for offset. This rule would make the same requirement at § 273.18(g)(5)(v)(C)(*2*).

Information About FCS Reviews of State Agency Decisions: The IRS regulations at 7 CFR 301.6402–6(d)(2) provide that if the review is conducted by an agent of the Federal agency, in this case the State agency, the individual must be accorded at least 30 days from the agent's determination to request a review by the Federal agency. The August 1991 General Notice required in paragraph e(3)(ii) that the State agency's notice of decision inform the individual that he or she is entitled to ask FCS to review the State agency's decision but that FCS would not review such decisions if it received a request to do so later than 30 days after the date of the State agency decision notice.

Consistent with the August 1991 General Notice, this rule proposes to require at § 273.18(g)(5)(v)(C)(*3*) that the State agency decision advise that the individual has 30 days from the date of the State agency decision to request that FCS review the State agency's decision. If FCS review is timely requested, FCS will provide the individual a written response stating its decision and the reasons for its decision. Consistent with the IRS regulation cited just above, this rule also proposes at § 273.18(g)(5)(v)(C)(*3*) that individuals be advised that the claim will not be referred for offset pending FCS review of the State agency's decision.

The 1991 General Notice required in paragraph e(iii) that the State agency decision: (1) advise the individual that a request for an FCS review must include his or her SSN; (2) be sent to an FCS regional office; and (3) provide the address of that office including a line reading ''Tax Offset Review.'' The purpose of this requirement was to help FCS obtain the correct records from the State agency, to provide individuals the address to which to send their requests for FCS reviews and to identify those requests to regional offices so that action could be taken promptly. This rule would make that same requirement at § 273.18(g)(5)(v)(C)(*4*).

The August 1991 General Notice specified in paragraph e(4) that if the State agency determines that the claim is not past-due or is not legally enforceable, in addition to notifying the individual that the claim will not be referred for offset, the State agency must take any actions required by food stamp regulations with respect to establishing claims and/or holding appropriate hearings, or other required recipient claim actions. The purpose of this requirement was to make sure that State agencies: (1) Corrected any errors in their processing of claims in question; and (2) took actions to properly establish claims and to initiate collection action. Aside from some editorial changes, this rule proposes the same requirement at § 273.18(g)(5)(v)(D).

The August 1991 General Notice specified in paragraph e(5) three groupings for timely appealed claims which could not be referred for offset. Guidance on treatment of the first group, claims which a State agency determines are not past-due or are not legally enforceable, has just been discussed. The third group is claims which FCS either determines are not past due or not legally enforceable, or for which FCS does not complete its review before State agency final files were due. State agency action on these claims is discussed later in this preamble in connection with the certification letter to FCS.

State Agency Reviews not Complete by October 31: The second of the three groups is those claims for which the State agency does not complete its review and notification to the

individual at least 30 days prior to the deadline for the State agency to certify its final file of claims for offset to FCS. The deadline for this final file is in early December. During the test State agencies indicated that they did not understand that if, for example, a review request was received in mid-November, even if the State agency review determined that the claim was past due and legally enforceable, it could not be referred. These claims are not referable because there is not a 30-day opportunity for the individual to appeal to FCS before the deadline for the State agency to refer its final files to FCS. As explained above, IRS regulations at 26 CFR 301.6402–6(d)(2) state that if the review is conducted by an agent of the Federal agency (in this case, the State agency), the individual must be accorded at least 30 days from the agent's determination to request a review by the Federal agency.

To accommodate the schedule for State agency final files and the 30-day opportunity which must be provided individuals to request a Federal-level review, this rule proposes at § 273.18(g)(5)(v)(E) that State agencies cannot refer for offset any claim for which a review request is received unless, by October 31 preceding the offset year, the State agency has completed its review of the claim, determined that the claim is past due and legally enforceable, and provided the individual with its decision. The Department believes that this proposal will not have a major impact on the number of claims referred for FTROP. During the test of FTROP most review requests were received relatively early in the 60-day period provided for those requests.

Some review requests will be received too late for the October 31 deadline but within the 60 days provided for timely review requests. As during the test, such claims are not referable for offset in the immediately upcoming offset year. In such situations State agencies should review the request and provide individuals their decisions on whether the claim is past due and legally enforceable and subject to collection by tax refund offset. Such claims could then be included in the processing cycles for the succeeding offset year.

f. FCS action on Appeals of State Agency Reviews. The August 1991 General Notice provided in paragraph f(1) that FCS would not review State agency decisions on review requests when it received such requests later than 30 days after the date of the State agency decision on the original review. This rule proposes at § 273.18(g)(5)(vi)(A) that FCS act on all timely requests for FCS review of State agency review decisions, and that such a request is timely if it is received by FCS within 30 days of the date of the State agency review decision.

The August 1991 General Notice stated in paragraph f(2) that when FCS received timely requests for reviews of State agency decisions, FCS would either: (1) Complete the requested review and notify the State agency and individual of its determination; or (2) notify the State agency that FCS had not completed its review and that the State agency must delete the claim from its final files certified to FCS for referral for offset. This rule proposes the same actions at § 273.18(g)(5)(vi)(B). In addition, this rule proposes at § 273.18(g)(5)(vi)(B) that FCS provide funds to refund the charge for the offset fee if FCS is late in notifying the State agency to delete a claim, where FCS finds that the claim is not referable and the claim is offset because of the late notification. For timely requests for review received by FCS, where the State agency's decision is dated after October 31 prior to the offset year, FCS will complete its review and notification of the results of its review, but the claim shall not be referred for offset in the immediately upcoming offset year, as specified above. This proposal is found at § 273.18(g)(5)(v)(E) and § 273.18(g)(5)(vi)(C).

The August 1991 General Notice stated in paragraph f(3) the components of FCS reviews of State agency decisions on review requests. Those components were: (1) Requesting documentation from the State agency about the appeal; (2) determining the correctness of the State agency decision; and (3) notifying the individual and State agency of this determination. The August 1991 General Notice stated in paragraph f(3)(iii)(A) that if FCS determined that the State agency was correct (the claim was past due and legally enforceable), FCS would also notify the individual that any further appeals must be made through the courts. The August 1991 General Notice stated in paragraph f(3)(iii)(B) that if FCS determined that the State agency determination that the claim was past due and legally enforceable was incorrect, FCS would request that the State agency take appropriate corrective action. This rule would include these provisions, slightly modified, at § 273.18(g)(5)(vi)(D), (E) and (F). The rule proposes to specify the types of documentation FCS would request from State agencies. These items are consistent with the documentation State agencies would be required to have in order for a claim to be considered referable for collection through FTROP. The types of documentation are: printouts of electronic records and/or copies of claim demand letters, results of fair hearings, advance notices of disqualification hearings, results of such hearings, records of payments, 60-day notices, the review requests and documentation, decision letters, and pertinent records of such things as telephone conversations.

g. Referral of Claims for Offset. The August 1991 General Notice required in paragraph g(1) that State agencies comply with FCS operating guidelines when submitting certified files of claims for tax offset. As discussed earlier in this preamble, this rule proposes replacing the requirement for compliance with operating guidelines with the requirement that State agencies submit data in the format and schedules provided by FCS. Accordingly, this rule at § 273.18(g)(5)(vii)(A) would require that State agencies submit certified files by the date specified by FCS. The August 1991 General Notice required in paragraph g(2) that, by the date specified in the FCS guidelines, State agencies certify in writing to FCS that all claims in the final files of claims meet the requirements for referral under FTROP, including the issuance of all due-process notifications to individuals. This rule proposes at § 273.18(g)(5)(vii)(A) to require this certification letter and statement. The letter and statement are necessary because the IRS requires that Federal agencies provide the IRS such letters and statements with their certified files. In addition, this rule proposes at § 273.18(g)(5)(vii)(A) to require that the certification letter also state that the State agency has not included in the certified file of claims any claim which, as provided in paragraph (g)(5)(vi) of this section, FCS notified the State agency is not past due or is not legally enforceable, or any claim for which FCS notified the State agency that it has not completed its review.

As discussed earlier, the rule proposes to require that State agencies state in the certification letter that their 60-day notice complies with IRS and FCS requirements. State agencies must provide FCS copies of the formats for these letters as required by current food stamp regulations requiring submittal to FCS of State agency operating guidelines and forms. (See 7 CFR 272.3(b)(2).)

The August 1991 General Notice required in paragraph g(3) that State agencies provide the name, address and telephone number of State agency contacts to be included in the notices of offset which IRS sends taxpayers whose

refunds have been offset, and also required that State agencies update that information if and when it changed. This information is the ''Agency Address File.'' The IRS is especially concerned that this information be accurate and requires Federal agencies to specify how they determined that the information provided for contacts is accurate. This rule proposes at section 273.18(g)(5)(vii)(B) that State agencies provide the contact information, state in the certification letter how they determined that the contact information was accurate and update the information as necessary. The IRS also wants the contact telephone number to be toll-free or collect, and the rule would make this a requirement.

h. State Agency Actions on Offsets Made. The August 1991 General Notice required in paragraph h(1) that promptly after receiving notices of offset from the IRS, State agencies were required to notify individuals about offsets made and the resulting status of the claim. The Department required this so that individuals would know the status of the claim against them. State agencies were also required to promptly refund any erroneous offsets made and to do so as close in time as possible to the notice of offset. This rule proposes these same requirements at § 273.18(g)(5)(viii). In addition, that section would require that State agencies inform individuals of the amount of the offset collected to pay the offset fee.

The action group complained that the Department has not offered procedures to compel a State agency to return funds that have been wrongfully offset by the IRS. This is incorrect. Current food stamp regulations at 7 CFR 273.18(i)(4) require that State agencies return overpayments of claims as soon as possible after such overpayments become known. To help clarify that the refund procedure for claim overpayments under FTROP is the same as for other overpayments, the proposed rule would cite that provision at § 273.18(g)(5)(vii)(B). In this regard, the action group cited the example of a debtor who has successfully appealed the referral of a claim which is then erroneously referred and offset. Should this happen, since the debtor would have been notified about both the State agency decision and the offset, a telephone call should be sufficient to bring the error to the State agency's attention and to obtain a refund of the over collection.

Responsibility for Offset Fees for Erroneous Offsets: In the case discussed in the preceding paragraph, the claim was referred and offset because of a State agency error. In such cases, the Department believes that the offset fee should be refunded to the individual and that the cost of the fee should be considered an allowable administrative expense of the State agency. Accordingly, this rule proposes at § 273.18(g)(5)(viii)(C) that if an over collection from an individual's Federal income tax refund is due to the State agency including in the certified file of claims required by § 273.18(g)(5)(vii)(A) a claim which does not meet the criteria specified in § 273.18(g)(5)(ii), such refund shall include any amounts collected to pay for the offset fee charged by the IRS. The section would further specify that the State agency may claim any such amount as an allowable administrative cost under Part 277 of this chapter. As a consequence of this provision, State agencies and FCS would each pay fifty percent of the cost of these offset fees.

Further in regard to refunds of offset fees, under this proposed rule the 60-day notice would advise individuals that spouses who are not liable for recipient claims can prevent offsets against their share of a tax refund by filing the appropriate form with the IRS when they file their tax return. If they do so and the entire tax refund is theirs, no offset will occur, and no administrative charge will be incurred. If the appropriate IRS form is submitted after the tax return is filed, an offset may occur. If it does, the IRS will refund the collection to the non-liable spouse, including the administrative charge. The IRS may refund offsets, including offset fees, to taxpayers for reasons other than a non-liable spouse. In all cases of such IRS refunds, the Department will pay the administrative charge, and the amount of the claim will be charged to the State agency. Consequently, this rule also proposes at § 273.18(g)(5)(viii)(C) that State agencies will not be responsible for refunding the charges for offset fees incurred for IRS reversals of offsets when, for example, the IRS refunds amounts offset, including offset fees, to taxpayers who properly notified the IRS that they are not liable for claims which were collected in whole or part from their share of a joint Federal income tax refund. In cases where part of the tax refund due on a joint tax return is attributable to an individual who is liable for the food stamp claim, the liable individual's portion would be subject to offset and the offset fee could be collected from the individual.

i. Monitoring and Reporting Offset Activities. The August 1991 General Notice required in paragraph i. that State agencies monitor offset activities to accomplish the various requirements of the tax offset program. Particular emphasis was given to the need for State agencies to update IRS files by reducing the amounts of claims and deleting claims to reflect voluntary payments and other events so that IRS records would reflect the current status of the claim. This rule proposes to make this a requirement at § 273.18(g)(5)(ix)(A). This rule also proposes at § 273.18(g)(5)(ix)(B) that State agencies monitor FTROP activities to assure that refunds of over collections are made promptly.

During the test of FTROP State agencies were required to submit a ''management report'' with their certified files. The report provided data to FCS on such things as numbers of 60-day notices sent and the volume of informal inquiries. This rule proposes at § 273.18(g)(5)(ix)(C) to eliminate this report and instead require that by the tenth of October of the year prior to the offset year State agencies report in writing to the FCS regional office the number of 60-day notices mailed and the total dollar value of associated claims. The Department wants this information as a basis for measuring collections through both voluntary repayments and offsets.

The rule proposes at § 273.18(g)(5)(ix)(D) that State agencies report on two matters as required by the IRS. State agencies participating in the test of FTROP were required to make these reports, and the information collection burdens associated with both were included in the burden estimate discussed earlier in this preamble. One reporting requirement relates to data security as required by the IRS in its publication Tax Information Security Guidelines for Federal, State and Local Agencies. Currently two reports are required. One is the Safeguard Procedures Report, which State agencies are required to submit in the initial year of their participation. The second is the Safeguard Activity Report, which all State agencies are required to submit annually. FCS provides State agencies copies of the IRS publication just cited and guidance on annual due dates and related matters. The IRS also requires quarterly reports of voluntary collections. The rule would require that State agencies provide that information as required by FCS. FCS provides State agencies the format for this report.

During the test State agencies were required to report collections under FTROP, both voluntary and by actual offset from tax refunds, on the appropriate Form FCS–209, Status of Claims Against Households. This rule would include that requirement at § 273.18(g)(5)(ix)(E).

C. Federal Salary Offset

1. Authorities for Salary Offset

The Debt Collection Act of 1982 (Public Law 97–365), amended 5 U.S.C. 5514 to authorize Federal agencies to offset the salaries of Federal employees who are delinquent on debts owed to the Federal government. The Office of Personnel Management (OPM) implemented 5 U.S.C. 5514 by promulgating regulations at 5 CFR 550.1101–1108 (Collection by Offset from Indebted Government Employees). Pursuant to 5 U.S.C. 5514(b)(1), the Department promulgated regulations at 7 CFR 3.51 through 3.68 implementing salary offset. Departmental regulations at 7 CFR 3.68 delegate to individual USDA agencies the authority to act for the Secretary under those regulations and to issue regulations or policies not inconsistent with the Departmental regulations and with the OPM regulations. Section 13941 of the Omnibus Budget Reconciliation Act of 1993 (Public Law 103–66, signed August 10, 1993) authorizes disclosure of food stamp casefile information to Federal agencies for purposes of collecting recipient claims (except those caused by State agency errors) from Federal salaries.

A test of salary offset is currently being conducted under a General Notice published August 29, 1994 at 59 FR 44400. Section 17(b)(1) of the Act (7 U.S.C. 2026(b)(1)) authorizes the Secretary to conduct such projects to test program changes that might increase the efficiency of the FSP. The provisions of this proposed rule relative to salary offset are substantially the same as the provisions of the August 1994 General Notice on salary offset. The Department intends to use experience from the test of salary offset as well as comments on this proposed rule in developing the final salary offset regulations.

Pursuant to Section 13 of the Act (7 U.S.C. 2022), and subject to the standards of FSP regulations at 7 CFR 273.18, the authority to settle claims against households has been delegated to State agencies at 7 CFR 271.4(b). Food stamp coupons issued pursuant to the Act are deemed to be obligations of the United States (7 U.S.C. 2024(d)). Under these statutes and regulations, State agencies establish FSP recipient claims, and collect and maintain records of those claims. State agencies return amounts collected to the Federal government, less a statutory ''retention amount'' established to encourage collection of recipient claims (7 U.S.C. 2025(a)).

This rule proposes to incorporate the requirements of Departmental regulations on salary offset (7 U.S.C. 3.51 *et seq.*), and to supplement and modify these procedures to the extent necessary to accommodate the position of State agencies as primarily responsible for establishing, collecting and maintaining records on recipient claims. These additions and modifications are consistent with OPM regulations on salary offset.

2. Overview of Salary Offset Procedures for the FSP

Under this proposed rule, salary offset would have three phases and be operated on an annual cycle. In the first phase, FSP recipient claims would be matched against records of all active Federal civilian and military employees, including United States Postal Service (USPS) employees. The recipient claims so matched would be compiled from lists of recipient claims provided by State agencies as part of FTROP procedures. The Federal employee records are maintained by the Department of Defense (DoD) and the USPS. The match would identify Federal employees and their employing agencies, and would provide employee and employing agency addresses to FCS. This match would be conducted in accordance with the Privacy Act of 1974, as amended (5 U.S.C. 552a). As required by that statute, the public has been advised of this matching program by the publication of three General Notices. A General Notice was published September 17, 1993 at 58 FR 48633 advising the public of the systems of records involved. A second General Notice was published March 1, 1994 at 59 FR 9733 advising the public of the match with DoD. A third General Notice was published August 17, 1994 at 59 FR 42205 advising the public about the match with the USPS. Recipient claims which these matches identify as obligations of Federal employees will not be referred to the IRS for collection through FTROP.

During the second phase of food stamp salary offset procedures, recipient claims identified in the match would be referred to State agencies. After a review of their records to determine if those recipient claims are still owed and if so their correct amounts, State agencies would send the identified Federal employees advance notices of salary offset (advance notices). The advance notice would provide these individuals 30 days to voluntarily pay the claim or provide documentation that all or part of the claim is not legally collectible. Claims which are not paid, or for which replies are late or do not provide adequate documentation, would be referred to the FCS National Office for collection by salary offset.

In the third phase of salary offset, by means of a notice of intent, FCS would notify Federal employees owing recipient claims referred by State agencies that FCS intends to collect the debt from the employees' salaries. The notice of intent would include information about appeal rights, pertinent time frames and other information which is required for that notice by Departmental regulations on salary offset. Subject to the responses to notices of intent, FCS would proceed with action to collect the debts. FCS would follow the collection procedures in the Departmental rule on salary offset as those procedures would be modified by this rule.

3. Discussion of Proposed Regulatory Provisions for Salary Offset

a. Claims Subject to Salary Offset. This rule proposes at § 273.18(g)(6)(i) that all claims submitted by State agencies participating in FTROP would first be subject to the matching procedures proposed in this rule. Those procedures would identify which of those claims are owed by Federal employees. Individuals so identified would be subject to the salary offset procedures proposed in this rule in lieu of having their claims referred for collection under FTROP. Consequently, all State agencies participating in FTROP would also be required to participate in salary offset.

b. Identification of Recipient Claims Owed by Federal Employees. The rule at § 273.18(g)(6)(ii)(A) would specify the steps of phase one of salary offset.

The Department wants to ensure that State agencies protect information they receive from DoD and USPS from the time they receive it. Consequently, at § 273.18(g)(6)(ii)(B) this rule would provide that when FCS receives Federal employment information for a particular State agency, it would first notify the State agency in writing accompanied by a data security and confidentiality agreement for the State agency to sign and return. When that agreement is returned, FCS would then provide the information to the State agency. Concurrently with publication of this rule, FCS is providing State agencies a sample notification letter with the language of the data security and confidentiality agreement.

The matching of State agency recipient claims with DoD and USPS data files would be conducted under the terms of Memorandums of Agreement (Agreements) between USDA and DoD, and between USDA and the USPS. The

Agreements require that if the records obtained from DoD and the USPS are disclosed to a State or local agency, those entities must agree in writing to abide by the data security and confidentiality protection measures specified in the Agreements. This rule at § 273.18(g)(6)(ii)(C) would specify those protection measures and require that State agencies extend them to any contractors or other non-State agency entities to which the records may be disclosed. The requirements are typical data security and usage controls, and should require minimal State agency resources.

This rule would require at § 273.18(g)(6)(ii)(D) that, prior to taking additional action to collect claims from Federal employees, State agencies must review those claims to verify the amount of the recipient claim owed, and to remove any claims which have been paid, are being paid or which for other reasons are not collectible through salary offset. The rule would require this review to verify that the individual identified in the match owes an FSP recipient claim and that the amount of the claim is correct.

c. State Agency Advance Notice of Salary Offset. This rule proposes to require at § 273.18(g)(6)(iii)(A) that, following the review just described, State agencies provide each Federal employee verified as owing a recipient claim (debtor) with an advance notice of salary offset (advance notice). This advance notice would provide the debtor certain information about the recipient claim and would offer the debtor an opportunity to pay the claim voluntarily. Although the debtor would have been offered an opportunity to pay the claim voluntarily in the initial claim demand letter required by food stamp regulations at 7 CFR 272.18(d)(3), the Department is proposing to provide a second voluntary payment opportunity for several reasons. This opportunity would offer debtors a way to repay recipient claims without involving their employing agencies. It would provide State agencies a way to collect such claims without the delay which salary offset entails. Furthermore, recipient claims paid voluntarily to State agencies would save the Federal government the administrative cost of the actual salary offset.

The Department wants State agency collection efforts to proceed promptly. Consequently, this rule proposes at § 273.18(g)(6)(iii)(A) that advance notices must be mailed or otherwise provided to debtors at the addresses provided by FCS within 60 days of State agency receipt from FCS of the list of recipient claims owed by Federal employees. The addresses would be those which DoD and USPS would provide through the matching program. The 60-day period should allow State agencies sufficient time to integrate this task into related administrative processes with the addition of minimal resources.

The rule proposes that recipient claims owed by Federal employees who do not voluntarily pay them directly to the State agency in response to the advance notice would be collected through salary offset. Consequently, it proposes at § 273.18(g)(6)(iii)(B) that within 90 days of the date of the advance notice State agencies refer to FCS all claims for which the State agency does not receive timely and adequate response. The advance notice would allow debtors 30 days to respond to State agencies. The 90-day period would give State agencies 60 days beyond that time frame to refer claims to FCS. This rule proposes that the referral from State agencies would consist of a copy of the advance notice and copies of records relating to the claim. This rule would specify that copies of records relating to the claim would consist of copies of printouts of electronic records and/or copies of claim demand letters, results of fair hearings, advance notices of disqualification hearings, the results of such hearings, records of payments, review requests and documentation, decision letters, and pertinent records of such things as telephone conversations. (This is substantially the same requirement which is proposed for the documents State agencies must submit to FCS for requests for FCS reviews of State agency decisions on referrals of claims under FTROP.)

This rule specifies at § 273.18(g)(6)(iii)(C) the proposed content of the advance notice. (Concurrently with publication of this rule, FCS is providing State agencies a sample format for the advance notice.) First, at § 273.18(g)(6)(iii)(C)(*1*) this rule proposes to require that the advance notice state that, according to State agency records, the debtor is liable for a recipient claim for a specified dollar amount due to receiving excess food stamp benefits. State agencies would be encouraged to include as much other information about the claim as possible, including such things as whether the claim was caused by household error or intentional Program violation, the date of the initial demand letter, any hearings or court actions which related to the claim and what, if any, payments have reduced the amount of the original claim.

This rule proposes at § 273.18(g)(6)(iii)(C)(*2*) that the advance notice state that the debtor was found through a computer match to be employed by a Federal agency and state the name and address of the employing agency. The advance notice would also state that the computer match was conducted according to procedures required by the Privacy Act of 1974, as amended. This information would be required so that debtors know the source of the information about their employment and that it was obtained under authority of law.

This rule proposes at § 273.18(g)(6)(iii)(C)(*3*) that the advance notice further advise debtors that the authority to collect debts such as food stamp recipient claims from Federal salaries is the Debt Collection Act of 1982. The advance notice would also state that the subject claim will be referred to FCS for such collection action unless, within 30 days of the date of the advance notice, the State agency receives payment in full or an acceptable installment payment on the claim. With respect to payments, this rule proposes that the advance notice state several things. First, claims of $50 or less must be paid in full within 30 days or they will be referred to FCS for collection from the debtor's Federal salary. Second, claims of more than $50, if not paid in full within 30 days, must be paid in installments of at least $50 a month, and debtors may pay more than $50 in any installment payment. Third, the advance notice must state the monthly due date of installment payments for the claim and that if a monthly installment payment of at least $50 is not received by the monthly due date, the claim will be referred to FCS for salary offset with no further opportunity to enter a voluntary repayment agreement. (See sections 273.18(g)(6)(iii)(C)(*3*)(*i*), (*ii*) and (*iii*).)

This rule proposes at section 273.18(g)(6)(C)(*4*) that the advance notice must also provide the name, address and a toll-free or collect telephone number of a State agency contact (an individual or unit) for payment and/or discussion of the claim. The 1994 General Notice on salary offset did not require a toll-free or collect telephone number, but the Department believes that such a number is necessary because individuals owing recipient claims may live outside the State which established the claim. State agencies could use the same number provided individuals in the 60-day notice for FTROP.

The advance notice would also advise debtors that they may submit documentation to State agencies

showing such things as payment of all or part of the claim, or other circumstances which would prevent collection. Second, unless the State agency receives such documentation within 30 calendar days of the date of the advance notice and the documentation clearly shows that the claim has been paid or is not legally collectible, the State agency would refer the claim to FCS for collection from the debtor's salary. Third, State agencies would notify debtors in writing when claims will not be referred for collection from salaries. Fourth, the advance notice would state that debtors have the right to a formal appeal to FCS, and that notification about how to make such an appeal is required and will be provided to debtors before any collection action from salaries is taken. (See § 273.18(g)(6)(iii)(C)(*5*).)

d. State agency retention and reporting of collections. For purposes of calculating amounts of collections which State agencies retain, this rule proposes at § 273.18(g)(6)(iv)(A) that all claims collected under the salary offset provisions of this rule would be treated as if they were collected by the State agency. Specifically, this rule would provide that, for recipient claims paid voluntarily and through salary offsets, State agencies would retain collections at the rates specified at 7 CFR 273.18(h) for the appropriate reporting period for Form FCS–209, Status of Claims Against Households. The rule would also provide at § 273.18(g)(6)(iv)(A) that from time to time as volume warrants, FCS will provide reports and also transfer amounts collected from salaries to State agencies. State agencies would include the collections on the appropriate FCS–209 report. This rule would not require that collections on salary offset claims be identified separately on the FCS–209 from other collections of recipient claims. The Department can determine the levels of such collections based on the number and dollar values of claims which FCS refers to State agencies and the number and dollar values of claims which State agencies refer back to FCS because debtors do not respond or respond inadequately to advance notices.

In this regard, the rule proposes at § 273.18(g)(6)(iv)(B) that if a debtor fails to make an installment payment, within 60 days of the date the payment was due, State agencies would refer the claim to FCS, reporting the default, the dollar amount collected and the balance due. In the August 1994 General Notice initiating the test of salary offset, this period is 90 days. The Department believes that 60 days should be adequate for State agencies to refer claims to FCS when Federal employees default on payments of them.

e. FCS Actions on Claims Referred by State Agencies. This rule proposes at § 273.18(g)(6)(v) that, subject to certain modifications described below, Departmental procedures at 7 CFR 3.51–3.68 will apply to claims referred by State agencies to FCS for salary offset.

Three additions would be made to the definitions set forth at 7 CFR 3.52. The term ''debts'' would be further defined to include recipient claims established according to 7 CFR 273.18, and the terms ''State agency'' and ''FCS'' would be defined as set forth in 7 CFR 271.2. (See section 273.18(g)(6)(v)(A).)

The Departmental rules require that, using the Notice of Intent to Offset Salary (notice of intent) set forth at 7 CFR 3.55, the Department provide notice to the debtor 30 days prior to offsetting the debtor's salary. This rule proposes at § 273.18(g)(6)(v)(E) that this procedure and the notice of intent specified at 7 CFR 3.55 be used for FSP recipient claims as described below.

The provisions of the notice of intent are largely self- explanatory. The notice of intent sets forth the amount of the debt and the facts which gave rise to it, and describes how the actual offset will be conducted, including the frequency and amount of salary deductions. The notice of intent advises the debtor about the method and time period for requesting a hearing and that a timely hearing request will stay the collection proceedings. The notice of intent also advises how the hearing will be conducted and the time frame for issuance of decisions. It also advises the debtor of the penalties for making or submitting any knowingly false or frivolous statements, representations or evidence.

The rule proposes at § 273.18(g)(6)(v)(B), (C), and (D) to modify three sections of the notice of intent in order to apply that notice to FSP recipient claims. First, 7 CFR 3.55(d) requires that the notice of intent explain the Department's requirements regarding payments of interest, penalties and administrative costs, unless such payments are waived in accordance with 31 U.S.C. 3717 and 7 CFR 3.34. These charges would be waived as explained in detail below. Accordingly, the notice of intent for FSP recipient claims would not include an explanation of these charges. Second, 7 CFR 3.55(e) requires that the notice of intent explain the debtor's right to inspect and copy Department records relating to the debt. As explained below, for FSP recipient claims, the notice of intent would also include an explanation of the right to request and receive copies of the records from the Department, and a statement of the time for making such a request which is established under 7 CFR 3.60(a). Third, 7 CFR 3.55(f) requires that the Department's notice of intent advise the debtor of the procedures for proposing a repayment agreement in lieu of salary offset. As explained below, this explanation and procedure would not be included in the FSP notice of intent.

Departmental regulations at 7 CFR 3.65 and 3.55(d) set forth the procedures for charging interest, penalties, and administrative costs for salary offset. As discussed above, this rule proposes at § 273.18(g)(5)(iv)(C) that the offset fee assessed by the IRS for collections under FTROP be paid by the debtor out of funds collected through FTROP. Other than in this proposed regulation, FSP regulations do not authorize collection of interest, penalties or administrative costs for FSP recipient claims. Accordingly, there are no administrative mechanisms in place for the assessment and notice of such charges. The Department believes that it would not be administratively cost effective or feasible to establish such mechanisms at this time but may consider them at some future date. Therefore, pursuant to 7 CFR 3.34(c)(4), the Secretary has determined that collection of such charges is not in the best interests of the United States, and the rule proposes to waive collection of such charges. Accordingly, as noted above, the FSP notice of intent would not include an explanation of interest and related charges.

Departmental regulations at 7 CFR 3.60 set forth procedures for the review of Departmental records relating to debts to be collected by salary offset and provide that, upon a timely request, the Department will permit debtors to inspect and copy those records. This rule proposes at § 273.18(g)(6)(v)(E)(*1*) that, for purposes of FSP salary offset, the debtor may also request that the Department provide copies of the records. The Department believes that this offer is appropriate because these records will be located at the FCS National Office while debtors are located throughout the country. The rule proposes that, for their requests to be considered timely as provided in 7 CFR 3.60(a), FCS must receive a letter requesting copies of the records (or requesting an opportunity to inspect or copy the records) within 30 calendar days of the date of the FSP notice of intent. As stated above, the notice of intent would advise debtors of these procedures and deadlines.

Departmental salary offset regulations at 7 CFR 3.61 provide debtors the

opportunity to propose a written repayment agreement in lieu of salary offset, subject to approval by the Secretary. OPM regulations at 5 CFR 550.1104(d)(6) provide that this opportunity is not required if the debtor was previously provided such an opportunity. Current FSP regulations at 7 CFR 273.18(g)(2) provide that opportunity at the time of the initial demand letter on the recipient claim. The State agency advance notice of salary offset would offer a second such opportunity. Accordingly, this rule proposes at § 273.18(g)(6)(v)(E)(*2*) that the FSP notice of intent not offer debtors an opportunity to enter into a written agreement to repay the debt.

The remaining FSP salary offset procedures relate primarily to hearings which debtors may request and to the procedures for the actual offsets from salaries. These procedures would operate as set forth in the Departmental regulations, and they are briefly described below.

The Departmental regulation at 7 CFR 3.56 provides that debtors have 30 days to request a hearing on the existence or amount of the claim, or on the proposed offset schedule (rate and frequency of offset). The notice of intent advises the debtor what information should be included in the request for a hearing, and states the basis for accepting a late request. Section 3.57 provides that a hearing will not be granted if the employee fails to request one as prescribed or fails to appear at the hearing. Section 3.58 describes how hearings will be conducted, and Section 3.59 specifies the format of written hearing decisions.

The Departmental regulation at 7 CFR 3.62 provides that deductions will begin either: (1) As stated in the notice of intent; (2) if a hearing is requested, after a decision in favor of the Secretary; or (3) through administrative offset upon the employee's retirement or resignation as provided by 7 CFR 3.21 through 3.36. Section 3.63 provides that collections will be made in a lump sum or installments, and will be by installments if the debtor cannot repay the debt in one payment or the debt exceeds 15 percent of disposable pay for a pay period. Section 3.64 provides that installments will be at established pay intervals, bear a reasonable relationship to the size of the debt, up to a maximum of 15 percent of disposable pay, and specifies the types of pay (basic pay, incentive pay, etc.) which can be offset. Section 3.66 provides that payment by salary offset will not be interpreted as a waiver of any rights the debtor may have under 5 U.S.C. 5514. Section 3.67 provides for the refund of amounts erroneously offset from salaries under certain conditions such as an administrative or judicial order.

Effective Date

It is proposed that this rule would become effective 30 days after publication of the final rule except that State agencies currently participating in FTROP would be required to submit the amendment to the Plan of Operation required at 7 CFR 272.2(d)(1)(xii) no later than 90 days after publication of that rule.

List of Subjects

7 CFR Part 271

Administrative practice and procedures, Food stamps, Grant programs—social programs.

7 CFR Part 272

Alaska, Civil rights, Food stamps, Grant programs—social programs, Reporting and recordkeeping requirements.

7 CFR Part 273

Administrative practice and procedure, Aliens, Claims, Food stamps, Fraud, Grant programs—social programs, Penalties, Records, Reporting and recordkeeping requirements, Social Security, Students.

Accordingly, 7 CFR parts 271, 272 and 273 are proposed to be amended as follows:

PART 271—GENERAL INFORMATION AND DEFINITIONS

1. The authority citation for parts 271, 272 and 273 continues to read as follows:

Authority: 7 U.S.C. 2011–2032.

2. In § 271.2, the definition of *Offset year* is added in alphabetical order to read as follows:

§ 271.2 Definitions

* * * * *

Offset year means the calendar year during which offsets may be made to collect certain recipient claims from individuals' Federal income tax refunds.

* * * * *

PART 272—REQUIREMENTS FOR PARTICIPATING STATE AGENCIES

3. In § 272.2, a new sentence is added to the end of paragraph (a)(2) and a new paragraph (d)(1)(xii) is added to read as follows:

§ 272.2 Plan of operation.

(a) *General Purpose and Content*

* * *

(2) *Content.* * * * The Plan's amendments shall also include the commitment to conduct the optional Federal income tax refund offset program and Federal salary offset program.

* * * * *

(d) *Planning Documents.*

(1) * * *

(xii) If the State agency chooses to implement the Federal income tax refund offset program and the Federal salary offset program, the Plan's attachments shall include a statement in which the State agency states that it will comply with the provisions of § 273.18 (g)(5) and (g)(6) of this chapter.

* * * * *

PART 273—CERTIFICATION OF ELIGIBLE HOUSEHOLDS

4. In § 273.18 new paragraphs (g)(5) and (g)(6) are added to read as follows:

§ 273.18 Claims against households.

* * * * *

(g) *Method of collecting payments.*

* * *

(5) *Federal income tax refund offset program.*

(i) *General requirements.* State agencies which choose to implement the Federal income tax refund offset program (FTROP) shall:

(A) Submit an amendment to their Plan of Operation as specified in § 272.2(d)(1)(xii) of this chapter stating that they will comply with the requirements for FTROP and with the requirements for the Federal salary offset program (salary offset). Such amendments shall be submitted to the appropriate FCS regional office no later than twelve months before the beginning of a State agency's first offset year.

(B) Submit data for FTROP to FCS in the record formats specified by FCS and/or the Internal Revenue Service (IRS), and according to schedules and by means of magnetic tape, electronic data transmission or other method specified by FCS.

(ii) *Claims referable for offset.* State agencies may submit for collection from Federal income tax refunds recipient claims which are past due and legally enforceable.

(A) Such claims must be:

(*1*) Only inadvertent household error claims or intentional Program violation claims. These claims shall be properly established according to the requirements of this section (which pertains to claims against households), including the requirement that additional demand letters be provided prior to initiating other collection actions as required by paragraph (d)(4)(iii) of this section, and the

requirements of section 273.16 (which pertains to disqualification for intentional Program violations). In addition, these claims shall be properly established no later than the date the State transmits its final request for IRS addresses for the particular offset year. Furthermore, the State agency shall have electronic records and/or paper documents showing that the claim was properly established. These records and documents include such items as claim demand letters, results of fair hearings, advance notices of disqualification hearings, results of such hearings, and records of payments.

(*2*) Claims for which the State agency has verified that no individual who is jointly and severally liable as specified in paragraph (a) of this section is also currently participating in the FSP in the State.

(*3*) Claims which meet at least the minimum dollar amount established by the IRS.

(*4*) Claims for which the date of the initial demand letter is within 10 years of January 31 of the offset year, except that claims reduced to final court judgments ordering individuals to pay the debt are not subject to this 10-year limitation.

(*5*) Claims for which the State agency is neither receiving voluntary payments pursuant to an agreed upon schedule of payments as provided in paragraph (g)(2) of this section nor is receiving scheduled, involuntary payments such as wage garnishment. Claims for which the State agency has received such payments are considered past due and legally enforceable 30 days after the due date for a regular payment which is not received.

(*6*) Claims for which collection is not barred by a bankruptcy.

(*7*) Claims for which the State agency has provided the individual with all of the notification and opportunities for review as specified in paragraphs (g)(5)(iii), (g)(5)(iv), (g)(5)(v) and (g)(5)(vi) of this section.

(B) In addition:

(*1*) All claims to be submitted for collection under FTROP shall be reduced by any amounts subject to collection from State income tax refunds or from other sources which may result in collections during the offset year.

(*2*) If a claim to be submitted for collection under FTROP is a combination of two or more recipient claims, the date of the initial demand letter for each claim combined shall be within the 10-year range specified in paragraph (g)(5)(ii)(A)(*4*) of this section. Claims reduced to judgment shall not be combined with claims which are not reduced to judgment.

(*3*) If a claim to be submitted under FTROP is apportioned between two or more individuals who are jointly and severally liable for the claim pursuant to paragraphs (a) and (f) of this section, the sum of the amounts submitted shall not exceed the total amount of the claim.

(iii) *60–Day notice to individuals.* (A) Prior to referring claims for collection under FTROP, the State agency shall provide individuals from whom it seeks to collect such claims with a notice, called a 60-day notice.

(B) With the exception of such State-specific information as names and job titles and information required for State agency contacts, a State agency's 60-day notice shall contain only the information specified in paragraph (g)(5)(iv) of this section. In the certification letter required in paragraph (g)(5)(vii) of this section, the State agency shall include a statement that its 60-day notice conforms to this requirement.

(C) Unless otherwise notified by FCS, the State agency shall mail 60-day notices for claims to be referred for collection through FTROP no later than October 1 preceding the offset year during which the claims would be offset.

(D) The State agency shall mail 60-day notices using the address information provided by the IRS unless the State agency receives clear and concise notification from the taxpayer that notices from the State agency are to be sent to an address different from the address obtained from the IRS. Such clear and concise notification shall mean that the taxpayer has provided the State agency with written notification including the taxpayer's name and identifying number (which is generally the taxpayer's SSN), the taxpayer's new address, and the taxpayer's intent to have notices from the State agency sent to the new address. Claims for which 60-day notices addressed as required in this paragraph are returned as undeliverable may be referred for collection under FTROP.

(iv) *Contents of the 60-day notice.* The State agency's 60-day notice shall state that:

(A) [Name of the State agency or an equivalent phrase] has records documenting that you, [the name of the individual], Social Security Number: [the individual's Social Security Number] are liable for [the unpaid balance of the recipient claim(s) the State agency intends to refer] resulting from overissued food stamp benefits. [The name of the State agency or equivalent phrase] has previously mailed or otherwise delivered demand letters notifying you about the claim, including the right to a fair hearing on the claim, and has made any other required collection efforts.

(B) The Deficit Reduction Act of 1984, as amended, authorizes the Internal Revenue Service (IRS) to deduct such debts from tax refunds if they are past due and legally enforceable. [Name of the State agency or an equivalent phrase] has determined that your debt is past due and legally enforceable as specified by the Deficit Reduction Act of 1984, the IRS regulations, and Food Stamp Program (FSP) regulations. We intend to refer the claim for deduction from your Federal income tax refund unless you pay the claim within 60 days of the date of the notice or make other repayment arrangements acceptable to us.

(C) If we refer your claim to the IRS, a charge for the administrative cost of collection will be added to your claim and that amount will also be deducted if the claim, or any portion of the claim, is deducted from your tax refund.

(D) All adults who were household members when excess food stamp benefits were issued to the household are jointly and severally liable for the value of those benefits, and collection of claims for such benefits may be pursued against all such individuals. Our records do not show that the claim is being paid according to either a voluntary agreement with us or through scheduled, involuntary payments.

(E) To pay the claim voluntarily or to discuss it, you should contact: [an office, administrative unit and/or individual, the contact's street address or post office box, and a toll-free or collect telephone number].

(F) You are entitled to request a review of the intended collection action. We must receive your request for review within 60 days of the date of this notice. Such a request must be written, must be submitted to the address provided in this notice and must contain your Social Security Number. We will not refer your claim for offset while our review is pending.

(G) The claim is not legally enforceable if a bankruptcy prevents collection of the claim.

(H) You may want to contact your local office of the IRS before filing your Federal income tax return. This is true where you are filing a joint return, and your spouse is not liable for the food stamp claim and has income and withholding and/or estimated Federal income tax payments. In such circumstances your spouse may be entitled to receive his or her portion of any joint refund. Your own liability for this claim, including any charge for administrative costs, may still be

collected from your share of such a joint refund.

(I) If you request a review of our intent to collect the claim from your income tax refund, you should provide documentation showing that at least one of the items listed below is incorrect for the claim cited in this notice. If you do not have such documentation, for example a cancelled check, you should explain in detail why you believe that the claim is not collectible under FTROP.

(J) The claim cited in this notice is subject to collection from your tax refund for the following reasons:

(*1*) The claim was properly established according to Food Stamp Program regulations and was caused by an inadvertent household error or an intentional Program violation;

(*2*) No individual who is jointly and severally liable for the claim is also currently participating in the Food Stamp Program in [the name of State initiating the collection action];

(*3*) The claim is for at least [the minimum dollar amount required by the IRS];

(*4*) The date of the initial demand letter for the claim is within 10 years of January 31, [the offset year]. If the claim was reduced to a final court judgment ordering you to pay the debt, this 10-year period does not apply, and the date of the initial demand letter may be older than 10 years; and

(*5*) We are neither receiving voluntary payments pursuant to an agreed upon schedule of payments as provided in current Food Stamp Program regulations nor are we receiving scheduled, involuntary payments such as wage garnishment. Claims are considered past due and legally enforceable for collection from Federal income tax refunds 30 days after the due date for such a regular payment which is not received.

(K) In addition, collection of the claim is not barred by bankruptcy.

(v) *State agency action on requests for review.* (A) For all written requests for review received within 60 days of the date of the 60-day notice, the State agency shall determine whether or not the subject claims are past due and legally enforceable, and shall notify individuals in writing of the result of such determinations.

(B) The State agency shall determine whether or not claims are past due and legally enforceable based on a review of its records, and of documentation, evidence or other information the individual may submit.

(C) If the State agency decides that a claim for which a review request is received is past due and legally enforceable, it shall notify the individual that:

(*1*) The claim was determined past due and legally enforceable, and the reason for that determination. Acceptable reasons for such a determination include the individual's failure to provide adequate documentation that the claim is not past due or legally enforceable;

(*2*) The State agency intends to refer the claim to the IRS for offset;

(*3*) The individual may ask FCS to review the State agency decision. FCS must receive the request for review within 30 days of the date of the State agency decision. FCS will provide the individual a written response to such a request stating its decision and the reasons for its decision. The claim will not be referred to the IRS for offset pending the FCS decision; and

(*4*) A request for an FCS review must include the individual's SSN and must be sent to the appropriate FCS regional office. The State agency decision shall provide the address of that regional office, including in that address the phrase ''Tax Offset Review.''

(D) If the State agency determines that the claim is not past due or legally enforceable, in addition to notifying the individual that the claim will not be referred for offset, the State agency shall take any actions required by food stamp regulations with respect to establishing the claim, including holding appropriate hearings and initiating collection action.

(E) The State agency shall not refer for offset a claim for which a timely State agency review request is received unless by October 31 preceding the offset year the State agency determines the claim past due and legally enforceable, and notifies the individual of that decision as specified in paragraphs (g)(5)(v)(C)(*1*), (g)(5)(v)(C)(*2*) and (g)(5)(v)(C)(*3*) of this section.

(vi) *FCS action on appeals of State agency reviews.*

(A) FCS shall act on all timely requests for FCS reviews of State agency review decisions as specified in paragraph (g)(5)(v)(C) of this section. A request for FCS review is timely if it is received by FCS within 30 days of the date of the State agency's review decision.

(B) If a timely request for FCS review is received, and the State agency's decision is dated on or before October 31 of the year prior to the offset year, FCS shall:

(*1*) Complete a review and notification as specified in paragraphs (g)(5)(vi)(D), (g)(5)(vi)(E), and (g)(5)(vi)(F) of this section, including providing State agencies and individuals the required notification of its decision; or

(*2*) Notify the State agency that it has not completed its review and that the State agency must delete the claims in question from files to be certified to FCS according to paragraph (g)(5)(vii) of this section. If FCS fails to timely notify the State agency and because of that failure a claim is offset which FCS later finds does not meet the criteria specified in paragraph (g)(5)(ii) of this section, FCS will provide funds to the State agency for refunding the charge for the offset fee.

(C) If a timely request for FCS review is received, and the State agency's decision is dated after October 1 of the year prior to the offset year, FCS shall complete a review as specified in paragraphs (g)(5)(vi)(D), (g)(5)(vi)(E) and (g)(5)(vi)(F) of this section, but the claim shall not be referred for offset as specified in paragraph (g)(5)(v)(E) of this section.

(D) When FCS receives an individual's request to review a State agency decision, FCS shall:

(*1*) Request pertinent documentation from the State agency about the claim. Such documentation shall include such things as printouts of electronic records and/or copies of claim demand letters, results of fair hearings, advance notices of disqualification hearings, the results of such hearings, records of payments, 60-day notices, review requests and documentation, decision letters, and pertinent records of such things as telephone conversations; and

(*2*) Decide whether the State agency correctly determined the claim in question is past due and legally enforceable.

(E) If FCS finds that the State agency correctly determined that the claim is past due and legally enforceable, FCS will notify the State agency and individual of its decision, and the reason(s) for that decision, including notice to the individual that any further appeal must be made through the courts.

(F) If FCS finds that the State agency incorrectly determined that the claim is past due and legally enforceable, FCS will notify the State agency and individual of its decision, and the reason(s) for that decision. FCS will also notify the State agency about any corrective action the State agency must take with respect to the claim and related procedures.

(vii) *Referral of claims for offset.* (A) State agencies shall submit to FCS a certified file of claims for collection through FTROP by the date specified by FCS in schedules which FCS will provide as stated in paragraph (g)(5)(i)

of this section. At the same time State agencies shall also provide to their FCS regional office a letter which specifically certifies that all claims contained in that certified file meet the criteria for claims referable for FTROP as specified in paragraph (g)(5)(ii) of this section, and that for all such claims a notice and opportunity to request a review as required in paragraphs (g)(5)(iii), (g)(5)(iv), (g)(5)(v) and (g)(5)(vi) of this section have been provided. The certification letter shall also state that the State agency has not included in the certified file of claims any claim which, as provided in paragraph (g)(5)(vi) of this section, FCS notified the State agency is not past due or is not legally enforceable, or any claim for which FCS notified the State agency that it has not completed a timely requested review, or for which the State agency has not completed a timely requested review. Finally, the certification letter shall also state that with the exception of State-specific information such as names and positions and State-specific information required for State agency contacts, the State agency's 60-day notice contains only the information specified in paragraph (g)(5)(iv) of this section.

(B) The State agency shall provide to FCS the name, address and toll-free or collect telephone numbers of State agency contacts to be included in IRS notices of offset. State agencies shall state in the letter required in paragraph (g)(5)(vii)(A) of this section how they determined that such information is accurate and shall provide FCS updates of that information if and when that information changes.

(viii) *State agency actions on offsets made.* (A) Promptly after receiving notice from FCS that offsets have been made, the State agency shall notify affected individuals of offsets made, including the amount charged for offset fees, and the status of the claims in question.

(B) As close in time as possible to the notice of offset required in paragraph (g)(5)(viii)(A) of this section, the State agency shall refund to the individual (as required by paragraph (i)(4) of this section) any over collection which resulted from the offset of the individual's Federal income tax refund.

(C) If an offset results from a State agency including in the certified file of claims required by paragraph (g)(5)(vii)(A) of this section a claim which does not meet the criteria specified in paragraph (g)(5)(ii) of this section, the State agency shall refund the amount offset to the individual, including any amounts collected to pay for the offset fee charged by the IRS. The State agency may claim any such latter amount as an allowable administrative cost under Part 277 of this chapter. The State agency shall not be responsible for refunding any portion of the charges for offset fees incurred for IRS reversals of offsets when, for example, the IRS refunds amounts offset, including offset fees, to taxpayers who properly notified the IRS that they are not liable for claims which were collected in whole or part from their share of a joint Federal income tax refund.

(ix) *Monitoring and reporting offset activities.* State agencies shall monitor FTROP activities and shall take all necessary steps to:

(A) Update IRS files, reducing the amounts of or deleting claims from those files to reflect payments made after referral to FCS, or deleting claims which for other reasons no longer meet the criteria for being collectible under FTROP.

(B) Promptly refund to the individual any over collection of claims as required in paragraph (g)(5)(viii)(B) of this section.

(C) Annually and no later than the tenth of October of the year prior to the offset year report in writing to the FCS regional office the number of 60-day notices mailed and the total dollar value of the claims associated with those notices.

(D) Submit data security and voluntary payment reports as required by FCS and the IRS.

(E) Report collections of all recipient claims collected under the procedures of paragraph (g)(5) of this section on the appropriate Form FCS–209, Status of Claims Against Households, as required by paragraph (i)(2) of this section.

(6) *Federal salary offset program.*

(i) *Claims subject to salary offset.* All recipient claims submitted by State agencies participating in the Federal income tax refund offset program (FTROP) shall be subject to the matching procedures specified in this paragraph. Individuals identified by the match shall be subject to the salary offset procedures specified in this paragraph.

(ii) *Identification of recipient claims owed by Federal employees.* (A) FCS will match all recipient claims submitted by State agencies participating in FTROP against Federal employment records maintained by the Department of Defense (DoD) and the United States Postal Service (USPS). FCS will remove recipient claims matched during this procedure from the list of recipient claims to be referred to the Internal Revenue Service (IRS) for collection through FTROP.

(B) When FCS receives a list of Federal employees matched against recipient claims for a particular State agency, it will notify the State agency in writing accompanied by a data security and confidentiality agreement containing the requirements specified in paragraph (g)(6)(ii)(C) of this section for the State agency to sign and return. When that agreement is returned, signed by an appropriate official of the State agency, FCS will provide the list of matched Federal employees to the State agency.

(C) State agencies which receive lists of matched employees shall take the actions specified in this paragraph to ensure the security and confidentiality of information about those employees and their apparent debts, and shall ensure that any contractors or other non-State agency entities to which the records may be disclosed also take these actions:

(*1*) By such means as card keys, identification badges and security personnel, limit access to computer facilities handling the data to persons who need to perform official duties related to the salary offset procedures. By means of a security package, limit access to the computer system itself to such persons;

(*2*) During off-duty hours, keep magnetic tapes and other hard copy records of data in locked cabinets in locked rooms. During on-duty hours, maintain those records under conditions that restrict access to persons who need them in connection with official duties related to salary offset procedures;

(*3*) Use the data solely for salary offset purposes as specified in paragraph (g)(6) of this section, including not extracting, duplicating or disseminating the data except for salary offset purposes;

(*4*) Retain the data only as long as needed for salary offset purposes as specified in paragraph (g)(6) of this section, or as otherwise required by FCS;

(*5*) Destroy the data by shredding, burning or electronic erasure; and

(*6*) Advise all personnel having access to the data about the confidential nature of the data and their responsibility to abide by the security and confidentiality provisions stated in paragraph (g)(6)(ii)(C) of this section.

(D) Prior to taking any action to collect recipient claims as specified in paragraph (g)(6)(iii) of this section, State agencies shall review the claims records of matched Federal employees to verify the amount of the recipient claim owed, and to remove from the list of claims any recipient claims which have been paid, which are being paid according to

an agreed to schedule, or which for other reasons are not collectible.

(iii) *State agency advance notice of salary offset.* (A) Following the review specified in paragraph (g)(6)(ii)(D) of this section, State agencies shall provide each Federal employee verified as owing a recipient claim (debtor) with an advance notice of salary offset (advance notice). This advance notice shall be mailed to the debtor at the address provided by FCS, or shall be otherwise provided, within 60 days of State agency receipt of the list specified in paragraph (g)(6)(ii)(B) of this section.

(B) Within 90 days of the date of the advance notice, the State agency shall refer to FCS all claims for which the State agency does not receive timely and adequate response as specified in the advance notice. Such referrals shall consist of a copy of the advance notice sent to the debtor and copies of records relating to the recipient claim. Records relating to the recipient claims include such things as copies of printouts of electronic records and/or copies of claim demand letters, results of fair hearings, advance notices of disqualification hearings, the results of such hearings, records of payments, review requests and documentation, decision letters, and pertinent records of such things as telephone conversations.

(C) The advance notice shall state that:

(*1*) According to State agency records the debtor is liable for a claim for a specified dollar amount due to receiving excess food stamp benefits. State agencies are encouraged to include as much other information about the claim as possible, including such things as whether it was caused by household error or intentional Program violation, the date of the initial demand letter, any hearings or court actions which relate to the claim, and what, if any, payments have reduced the amount of the original claim;

(*2*) Through a computer match the debtor was found to be employed by [the name and address of the employing agency of the debtor]. The computer match was conducted under the authority of and according to procedures required by the Privacy Act of 1974, as amended;

(*3*) Collection from the wages of Federal and USPS employees for debts such as food stamp recipient claims is authorized by the Debt Collection Act of 1982. The claim will be referred to FCS for such collection action unless within 30 days of the date of the advance notice the State agency receives either:

(*i*) Payment of the claim in full. Claims of $50 or less shall be paid in full within 30 days or they will be referred to FCS for collection from the individual's Federal salary; or

(*ii*) The first installment payment for the claim. Claims of more than $50, if not paid in full within 30 days, must be paid in installments of at least $50 a month. Debtors may pay more than $50 on any installment payment. The advance notice shall state the monthly due date of installment payments and that if a monthly installment payment of at least $50 is not received by the due date, the claim will be referred to FCS for offset from the individual's Federal salary with no further opportunity to enter a voluntary repayment agreement;

(*4*) The name, address and a toll-free or collect telephone number of a State agency contact (an individual or unit) for repayment and/or discussion of the claim; and

(*5*) Debtors may submit documentation to State agencies showing such things as payments of claims or other circumstances which would prevent collection of claims. Unless the State agency receives such documentation within 30 calendar days of the date of the advance notice and the documentation clearly shows that the claim has been paid or is not legally collectible, the State agency shall refer the claim to FCS for collection from the debtor's salary. The State agency shall notify debtors in writing when claims for which an advance notice was issued will not be referred for collection from salaries. Debtors have the right to a formal appeal to FCS. Notification about how to make such appeals is required and will be provided to debtors before any collection action from salaries is taken.

(iv) *State agency retention and reporting of collections.* (A) State agencies shall retain collections of recipient claims paid voluntarily to State agencies and to FCS through salary offsets at the rates specified in paragraph (h) of this section for the appropriate reporting period for Form FCS–209, Status of Claims Against Households. From time to time as volume warrants, FCS will report and transfer amounts collected from salaries to State agencies. Collections by State agencies and by FCS on all such claims shall be included on the appropriate FCS–209.

(B) If a debtor fails to make an installment payment, within 60 days of the date the payment was due, State agencies shall refer the claim to FCS, reporting the default, the dollar amount collected and the balance due.

(v) *FCS actions on claims referred by State agencies.* Departmental procedures at 7 CFR 3.51–3.68 shall apply to claims referred by State agencies to FCS as required by paragraphs (g)(6)(iii)(B) and (g)(6)(iv)(B) of this section subject to the following modifications:

(A) In addition to the definitions set forth at 7 CFR 3.52, the term ''debts'' shall further be defined to include recipient claims established according to this section; and the terms ''State agency'' and ''FCS'' shall be defined as set forth in section 271.2 of this chapter.

(B) Pursuant to 7 CFR 3.34(c)(4) and 7 CFR 3.55(d), the Secretary has determined that collection of interest, penalties and administrative costs provided at 7 CFR 3.65 is not in the best interests of the United States and hereby waives collection of such charges.

(C) In addition to providing the right to inspect and copy Departmental records as specified at 7 CFR 3.60(a), the Secretary shall provide copies of records relating to the debt in response to timely requests. For a request to be timely, FCS must receive it within 30 calendar days of the date of the notice of intent.

(D) Pursuant to 5 CFR 550.1104(d)(6), an opportunity to establish a written repayment agreement provided at 7 CFR 3.61 shall not be provided.

(E) The notice of intent for FSP salary offset shall comply with the requirements of the Departmental notice of intent which are set forth at 7 CFR 3.55, subject to the following modifications:

(*1*) In addition to the statement that the debtor has the right to inspect and copy Departmental records relating to the debt, the notice of intent shall state that if timely requested by the debtor, the Secretary shall provide the debtor copies of such records. It shall further advise, as required by 7 CFR 3.60(a), that to be timely such requests must be received within 30 days of the date of the notice of intent; and

(*2*) The statement of the right to enter a written repayment agreement provided by 7 CFR 3.55(f) shall not be included.

* * * * *

Dated: June 23, 1995.

Ellen Haas,

Under Secretary for Food, Nutrition and Consumer Services.

[FR Doc. 95–15887 Filed 6–27–95; 8:45 am]

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