DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 272 and 273

[Amdt. No. 377]

RIN 0584–AB88

Food Stamp Program: Food Stamp Recipient Claim Establishment and Collection Standards

AGENCY: Food and Consumer Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Food and Nutrition Service (FNS) is proposing to revise Food Stamp Program (FSP) regulations that cover the establishment and collection of food stamp recipient claims, including collections at the Federal level. This rule aims to improve claims management in the FSP while providing State agencies with increased flexibility in their efforts to increase claims collections. The provisions of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) affecting recipient claims are incorporated into this rulemaking and this action is consistent with the President's regulatory reform effort. This proposed rule also strives to achieve a balance between State agency flexibility and fiscal accountability.

Food stamp recipient claims are established against households that receive more benefits than they are entitled to receive. The last major revision to these regulations was in 1983. Recent legislation, technological advances and changes in Federal debt management regulations have rendered many portions of the current regulations obsolete. In addition, the current regulations place unnecessary burdens on State agencies. The proposed changes are intended to: incorporate changes mandated by PRWORA; simplify presentation of policy; incorporate Federal debt management regulations and statutory revisions into food stamp recipient claim management; and provide State agencies with additional tools to facilitate the establishment, collection and disposition of food stamp recipient claims.

DATES: Comments on this proposed rulemaking must be received by August 26, 1998 to be assured of consideration.

ADDRESSES: Comments should be submitted to James I. Porter, Recipient Claims Coordinator, Program Accountability Division, Food Stamp Program, Food and Nutrition Service, USDA, 3101 Park Center Drive, Alexandria, Virginia 22302. Only written comments will be accepted. All written comments will be open for public inspection during regular business hours (8:30am to 5:00pm, Monday through Friday) at 3101 Park Center Drive, Alexandria, Virginia, Room 905.

FOR FURTHER INFORMATION CONTACT: Questions regarding this proposed rulemaking should be directed to 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 FSP is listed in the Catalog of Federal Domestic Assistance under No. 10.551. For the reasons set forth in the final rule at 7 CFR Part 3015, Subpart V and related Notice (48 FR 29115, June 24, 1983), the FSP is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Regulatory Flexibility Act

This rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980 (5 U.S.C. 601–612). Shirley R. Watkins, Under Secretary for Food, Nutrition and Consumer Services, has certified that this rule will not have a significant impact on a substantial number of small entities.

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, 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 unless so specified in the ''Implementation'' section of this preamble. Prior to any judicial challenge to the provisions of this proposed rule or the application of its provisions, all applicable administrative procedures must be exhausted.

Public Law 104–4

This proposed rule contains no Federal mandates under the regulatory provisions of title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104–4, for State, local and tribal governments or the private sector of $100 million or more in any one year. Therefore, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Paperwork Reduction Act: Recipient Claims and Reporting Format Redesign

The following constitutes a 60 day notice being issued by FNS, USDA.

In accordance with the Paperwork Reduction Act of 1995, this notice invites the general public and other public agencies to comment on this proposal to consolidate several existing collection burdens by requesting a new burden.

Written comments must be submitted on or before July 27, 1998.

Send comments and requests for copies of this information collection to James I. Porter, Recipient Claims Coordinator, Program Accountability Division, Food Stamp Program, Food and Nutrition Service, USDA, 3101 Park Center Drive, Alexandria, Virginia 22302 and to Wendy Taylor, FNS Desk Officer, Office of Information and Regulatory Affairs, OMB, Room 10235, New Executive Office Building, Washington, DC 20503. For further information regarding this notice, Mr. Porter may be contacted at (703) 305–2385.

Comments regarding these burden estimates are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All responses to this notice will be summarized and included in the request for Office of Management and Budget (OMB) approval. All comments will also become a matter of public record.

Title: Food Stamp Data Collection.

OMB Number: A new burden number is being requested This burden will consolidate burden associated with 0584–0069, 0584–0080, 0584–0009, 0584–0015, 0584–0081 and 0584–0025. The existing burden under 0584–0064 is not being changed.

Form Number: New request for FNS–695 which will consolidate the FNS–

209, FNS–46, FNS–250, FNS–259, FNS–388, FNS–388a and FNS–101 reports.

Type of Request: Consolidation of several collection and record keeping burdens into one burden.

Abstract: In accordance with the Paperwork Reduction Act of 1995, the reporting and recordkeeping burden associated with the Notice of Adverse Action, the demand letter for recipient claims and general case/claim recordkeeping has been approved by OMB under OMB number 0584–0064. The Department recognizes that, under this proposed rule, State agencies would be required to track claim referrals. The Department does not consider this to be an additional recordkeeping burden because tracking referrals is part of efficient and effective general case recordkeeping and management that has already been approved under OMB 0584–0064.

The burden associated with the reporting of claims under OMB number 0584–0069 consists of the submission of the *Status of Claims Against Households* (FNS–209) report. In an effort to reduce the number of reports and/or data elements to be reported, the Department is proposing to request OMB to combine and consolidate this reporting function with a number of other FNS reports with the result being one electronic reporting format. The reports with which the FNS–209 would be consolidated include the *Issuance Reconciliation Report* (FNS–46), *Food Stamp Accountability Report* (FNS–250), *Food Stamp Mail Issuance Report* (FNS–259), *State Issuance and Participation Estimates* (FNS–388), *Project Area Issuance and Participation Estimates* (FNS–388a) and *Participation in Food Programs—by Race* (FNS–101) as it pertains to the FSP. All of these reports, including the FNS–209, currently have assigned to them a unique OMB burden approval number: 0584–0069 for the FNS–209; 0584–0080 for the FNS–46; 0584–0009 for the FNS–250; 0584–0015 for the FNS–259; 0584–0081 for the FNS–388 and FNS–388a; and 0584–0025 for the FNS–101. To facilitate the report consolidation effort, the Department is requesting that OMB cancel all of the above approval numbers (with the exception of OMB number 0584–0025) and assign a single burden approval number for the new electronic reporting format. Since the burden associated with OMB number 0584–0025 also pertains to activity in the Food Distribution Program, the Department is not requesting that this number be canceled. However, the portion of this burden relating to the FSP would be removed and transferred to the newly assigned number.

The number of annual data reporting elements associated with this reporting burden will change dramatically. Currently, the forms proposed to be replaced have a cumulative total of 3,121,124 annual data reporting elements resulting in a reporting and recordkeeping burden of 110,122 hours. The proposed reporting format, on the other hand, would only have 15,300 annual data reporting elements.

Even though the number of data elements would be reduced significantly, the reporting and recordkeeping burden hours would increase by an average one hour per State agency per report submission. This is because much of the data proposed to be reported in the new reporting format is summational. Under the proposed reporting format, State agencies would need to retrieve and record the detailed data, compute the summational amounts and maintain the records necessary for audit purposes. Many States are already performing this consolidation function as part of their existing reporting procedures and therefore would experience no increase in burden. The one-hour increase in burden is to accommodate the remaining states who would need to perform some consolidation work to carry out this function.

Affected Public: State and local governments.

Estimated Number of Respondents: 37,973.

Estimated Time per Response: 2.90 hours.

Estimated Total Annual Burden: 110,758 hours.

Paperwork Reduction Act: Federal Collection Methods for Food Stamp Program Recipient Claims

The following constitutes a 60-day notice being issued by FNS, USDA.

In accordance with the Paperwork Reduction Act of 1995, this notice invites the general public and other public agencies to comment on this proposal to change an information collection burden related to Federal claims collection methods (FCCM's).

Written comments must be submitted on or before July 27, 1998.

Send comments and requests for copies of this information collection to James I. Porter, Recipient Claims Coordinator, Program Accountability Division, Food Stamp Program, Food and Nutrition Service, USDA, 3101 Park Center Drive, Alexandria, Virginia 22302 and to Wendy Taylor, FNS Desk Officer, Office of Information and Regulatory Affairs, OMB, Room 10235, New Executive Office Building, Washington, DC 20503. For further information regarding this notice, Mr. Porter may be contacted at (703) 305–2385.

Comments regarding these burden estimates are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All responses to this notice will be summarized and included in the request for Office of Management and Budget (OMB) approval. All comments will also become a matter of public record.

Title: Federal Collection Methods for Food Stamp Program Recipient Claims.

OMB Number: 5084–0446.

Expiration date: September 30, 1999.

Type of request: Revision to a currently approved collection.

Abstract: Changes to the collection burden would result from two changes proposed in this rule. One proposed change is the consolidation of the 60-day notice for Federal Income Tax Refund Offset Program (FTROP)(See 7 U.S.C. § 2022(b)(1)(C); 7 CFR 273.18(g)(5)) into an all inclusive 60-day notice for all types of Federal offsets. The other is the increased number of 60-day notices due to the proposed inclusion of agency error (AE) claims as a type of claim subject to collection under Federal offset.

Estimate of Burden: The proposed rule would increase the annual burden on State agencies from an average of 450 to 500 hours and for debtors would decrease from an average of 8 to 6 minutes.

Respondents: The collection would continue to impact two groups, State agencies that administer the FSP and certain individuals who are liable for overissued food stamp benefits.

Estimated Number of Respondents: The number of State agency respondents increase from 52 to 53. The number of debtor respondents would increase from 370,000 to 425,000.

Estimated Number of Responses per respondent: As under current rules, for State agencies the number of responses would vary from once for such activities

as certifying files to FNS to 380,000 for mailing out due process notices. For debtors the number of responses would continue to vary from once for such things as due process notices to three or four in the case of debtors making informal inquiries and requesting reviews.

Estimated Total Annual Burden on Respondents: Under this proposed rule the annual reporting and recordkeeping burden would decrease from 72,862 to 71,803 hours (1,059 hours).

Background

The tolerance of abuse, or even the perception of such, undermines the fundamental mission of the FSP. The efficient and effective establishment and collection of recipient claims is essential to program integrity. This rule aims to improve and increase claims establishment and also to increase the collection rate of established claims, while providing State agencies with increased flexibility in their efforts to increase claims collections.

The PRWORA (Pub. L. 104–193) amended the Food Stamp Act of 1977 (7 U.S.C. 2011–2032) (the FSA) in a number of ways. This rule proposes to implement the provisions of the PRWORA relating to recipient claims. This rule also proposes to incorporate certain provisions of the Federal Debt Collection Improvement Act of 1996 (DCIA)(Pub. L. 104–134, Chapter 10, signed April 26, 1996) as discussed later in this preamble in connection with Federal claim collection methods. The DCIA amended the Debt Collection Act of 1982 (31 U.S.C. 3701)(DCA).

In addition to the revisions mandated by the enactment of the PRWORA, the Department is proposing a number of significant changes in discretionary FSP policy regarding recipient claims. This rule also proposes certain changes in FTROP and the Federal Salary Offset Program, 7 U.S.C. 2022(b)(1)(C)(FSOP), in response to the amended DCA. Furthermore, this proposed rule would extensively reorganize the current regulations at 7 CFR 273.18. To assist in the regulatory reorganization and in the development of the discretionary policy changes being proposed, the Department, in an effort to maintain consistency with the treatment of other Federal debts, utilized the Federal Claims Collection Standards (FCCS) issued by the Department of Treasury (Treasury) (See 4 CFR Parts 101–105). The Department also drew upon a number of other sources including the policies and regulations of other social programs, private and public sector accounting standards, technological advances, recommendations by the Department's Office of the Inspector General (OIG) and Office of General Counsel, and suggestions from State agencies.

Responsibility for Recovering Overpayments

Current regulations at 7 CFR 273.18(a) discuss the State agency's responsibility for establishing claims as well as the household's liability for the amount of the claim. It also defines the three types of claims. The Department is proposing to revise the structure of this paragraph. The first structural revision would change the title of the paragraph from *Establishing claims against households* to *Responsibility for recovering overpayments.* This is being proposed because the new title more accurately portrays the purpose of the paragraph. In addition, the Department feels that keeping the current title would lead to confusion because other paragraphs of the proposed rule discuss ''establishing'' claims in much greater detail.

The second structural revision would involve the breakout of the single introductory paragraph into two paragraphs. The first paragraph of the proposed rule, § 273.18(a)(1), would establish household liability for overissuances. Section 273.18(a)(2) would establish State agency responsibility for establishing and recovering overissuances.

Even though the responsibility for establishment and collection of overpayments has been delegated to State agencies, food stamp recipient claims remain debts to the Federal government. Section 273.18(a)(2) of the proposed rule would specify this in detail. This proposal is not intended to change policy but simply to clarify existing policy. As Federal debts, unless superseded by this or other Departmental regulation, food stamp recipient claims are subject to the same debt collection processes and procedures as are all other Federal debts.

Claim Types and Definitions

In the current regulations, there are three claim types: intentional Program violation (IPV), inadvertent household error (IHE) and administrative error. The proposed rule would keep the same designations for IPV and IHE claims. Administrative error claims, on the other hand, would be renamed and referred to as agency error (AE) claims. This is being proposed to be consistent with the term most commonly used for this type of claim.

Paragraphs 7 CFR 273.18(a)(1), (a)(2) and (a)(3) of the current regulations provide the specific definitions for IPV, IHE and AE claims. As part of the regulatory reorganization, this rule proposes to split out these paragraphs from 7 CFR 273.18(a) into their own respective paragraphs: § 273.18(b) for IPV claims; § 273.18(c) for IHE claims; and § 273.18(d) for AE claims.

IPV Claims

Current regulations at 7 CFR 273.18(a)(3) provide the definition for an IPV claim. The paragraph contains specific instructions as to what must have occurred for an overissuance to be handled as an IPV claim. Since the basis for IPV claims is set by statute, this rule proposes no change in current policy about the basis for such claims. However, as part of the regulatory reorganization, the Department is proposing to list the criteria for defining an IPV claim in separate paragraphs, § § 273.18(b)(1) through 273.18(b)(4).

The proposed rule contains one change regarding IPV claims in an area in which the Department has discretion. Current regulations at 7 CFR 273.18(a)(3) mandate that prior to the determination of IPV the claim shall be handled as an IHE claim. The Department is proposing to delete this mandate thereby making this practice a State agency option on a case-by-case basis as long as the claim is established within the required timeframe (See the *Claim Referral and Backlog* section of this preamble for details on timeframe).

IHE Claims

Current regulations at 7 CFR 273.18(a)(1) provide the definition for an IHE claim. Under these regulations, an IHE claim generally results from an overissuance that was caused by a misunderstanding or unintended error on the part of the household. As part of the regulatory reorganization and in an effort to enhance FSP simplification, the Department is proposing to eliminate much of the definitional language in the current regulations and simply use the specific language at § 273.18(c) in the proposed rule.

AE Claims

Current regulations at 7 CFR 273.18(a)(2) define an AE claim. Under these current regulations, an AE claim results from an overissuance that was caused by a State agency action or failure to take action. As with the proposal regarding the definition of an IHE claim, the Department is proposing to eliminate unnecessary definitional language in this paragraph and simply use the specific language at § 273.18(d) in this proposed rule.

Section 844 of the PRWORA eliminated all legislative limitations on

the collection options available for AE claims. This ends a previous inconsistency wherein State agencies were required to collect AE claims but were precluded from using the most effective and efficient collection tool, involuntary allotment reduction.

Some groups maintain that, since the reason for the overissuance resulting in the AE claim was an error by the State agency, the household should not be responsible for the overissuance under laws in a number of States under the legal concept of equitable estoppel. The Department disagrees with this position. The FSP is administered under Federal law and the Department provides 100 percent of the value of the benefits. Section 13(a)(2) of the FSA (7 U.S.C. 2022(a)(2)), which was unchanged by the PRWORA, clearly and unconditionally provides that adult members of a household that receive any overissuance shall be jointly and severally liable for the value of the overissuance. Thus, Federal law permits no exception for equitable estoppel in the case of an overissuance caused by State agency error.

Claims for Recipient Trafficking

In a significant policy change, the Department is proposing, in § 273.18(a) of this rule, to provide for establishing a claim against a household for the value of benefits that are trafficked rather than redeemed for authorized food purchases.

Trafficking has long been an IPV subject to disqualification from FSP participation. However, the advent of electronic benefits transfer (EBT) has provided a source of data that makes it easier to identify both parties to trafficking transactions. The availability of EBT data has already increased the number of disqualifications for trafficking. In addition to disqualification penalties, the Department believes that trafficking can also be deterred by the development and use of additional enforcement tools. Assessing a claim for the amount of trafficked benefits offers such a tool.

The authority for this determination is found in section 13(a)(1) of the FSA (7 U.S.C. 2022(a)(1)) which states that the Department ''* * * shall have the power to determine the amount of and settle and adjust any claim * * * arising under the provisions of this Act or the regulations issued pursuant to this Act, including, *but not limited to,* claims arising from fraudulent and nonfraudulent overissuances to recipients * * * (emphasis added)'' Generally, a recipient claim is established when a household receives more coupons than the household is entitled to receive. However, as indicated above, section 13 of the FSA (7 U.S.C. 2022) does not limit the Department to establishing claims against individuals solely because of overissuances. Clearly, recipient misuse, such as trafficking, falls within the definition of an IPV as specified in 7 CFR 273.16(c)(2). The Department is thus proposing in this rule that claims would be established for all IPV's, including those caused by trafficking offenses.

The Department would like to clarify that this change in policy would have no effect on the current policy regarding the establishment and collection of fines and penalties from authorized retailers and unauthorized third parties who are found to have illegally obtained coupons via trafficking. (See 7 CFR 278.6). Retailer fines and claims act as a deterrent and punish retailers and unauthorized third parties for engaging in prohibited activity. The current regulations on retailer fines and claims at 7 CFR 278.6 provide for monetary penalties significantly larger than the amount trafficked. The proposed policy change providing for recipient trafficking claims, on the other hand, would directly correlate with the benefit amount that was trafficked. The procedure for calculating a recipient trafficking claim is discussed elsewhere in this preamble.

The Department also proposes to establish a second category of claims for trafficking that is analogous to the inadvertent household error claim established for household-caused overpayments that do not warrant IPV determinations. A State agency can assert an ''inadvertent'' misuse claim in situations where the State agency chooses not to obtain or cannot obtain a formal designation of trafficking through an administrative or court determination but can document the transaction sufficiently to sustain the claim. The Department is therefore proposing that instances of inadvertent recipient misuse be appropriately treated as IHE's as described in 7 CFR 273.18(a)(1)(i) of the current regulations and § 273.18(c) in the proposed rule. This rule would provide the authority for State agencies to specifically include trafficking and recipient misuse in benefit transactions as a basis for establishing a claim against a household.

Claim Calculation

Current regulations at 7 CFR 273.18(c)(1) and 7 CFR 273.18(c)(2) discuss the procedures for calculating the amount of a claim due to an overissuance. Under the proposed reorganization of 7 CFR 273.18, the paragraphs on calculating claims would be combined under § 273.18(e)(1). In addition, some policy revisions are being proposed in this area and are outlined below. The current paragraph also does not include a provision for calculating claims for trafficking. The proposed rule at § 273.18(e)(2) addresses this issue.

Calculating Recipient Trafficking Claims

The Department is proposing, in § 273.18(e)(2), to include a procedure for determining the value of a misused benefit caused by trafficking. The amount of the misused benefit would be the value of the trafficked benefit as determined by: the individual's admission; adjudication; or the documentation, such as detailed electronic benefits transfer (EBT) transaction listings, which forms the basis for the benefit misuse determination. Trafficking claims could be either an IPV or IHE claim depending on the nature of the procedure under which trafficking was established.

Calculating Overissuance Claims

For an IPV claim due to an overissuance, current regulations at 7 CFR 273.18(c)(2) provide the parameters for claim calculation. Current regulations at 7 CFR 273.18(c)(1) establish the procedures for calculating claims for IHE and AE overissuances. In an effort to provide a better structure, the Department is proposing to combine these paragraphs into a single procedure in § 273.18(e)(1)(i) through (vi) in this rule. As part of this reorganization and general streamlining effort, some unnecessary prescriptive language would also be removed. In addition to these structural and streamlining revisions, several policy changes are also being proposed in this rule.

The PRWORA included a change in the calculation of claims caused by unreported earned income. Section 809 of the PRWORA amended section 5 of the FSA (7 U.S.C. 2014) by specifying that the earned income deduction ''* * * shall not be allowed with respect to determining an overissuance due to the failure of a household to report earned income in a timely manner.'' This changed current policy by removing the stipulation that the failure to properly report income must be willful or fraudulent. As a result, the Department is proposing, in § 273.18(e)(1)(iii) of this rule, that, in calculating an IHE claim, the State agency would not apply the earned income deduction to that part of any earned income that the household failed

to report in a timely manner. This would be the same policy that the Department currently has for calculating IPV claims with unreported earned income.

In addition to the earned income revision necessitated by the PRWORA, the Department is proposing two additional policy changes related to claim calculation: (1) Under the proposed rule, a State agency would be able to waive up to 20 percent of any claim if the household cooperates with the establishment of the claim; and (2) the amount of the claim would be offset by the amount of any expunged EBT benefits. These two policy revisions are discussed in greater detail in other sections of this preamble.

Current regulations at 7 CFR 273.18(c)(1)(iii) and (c)(2)(iii) discuss offsetting the claim amount against any amount of lost benefits that have not yet been restored to the household. This proposed rule does not change this policy. However, as part of the regulatory reorganization and since this area applies more to collecting rather than calculating claims, the Department proposes to move this paragraph to the claims collection section of this rule.

Pre-Establishment Cost Effectiveness Determination Methodologies

Section 844 of the PRWORA amended section 13 of the FSA (7 U.S.C. 2022(b)) by stating that the collection of any overissuance does not apply ''* * * if the State agency demonstrates to the satisfaction of the Secretary * * *'' that it is not cost effective to collect that claim. This establishes that interest in program integrity must be tempered by administrative costs considerations. This provision implies that some test must be established to assess or demonstrate the degree of cost effectiveness for a claim. However, the Department strongly believes that this provision (as well as the implementing language in this rule) by no means implies that a household has an automatic ''right'' to an overpayment without fear of collection, even if the overpayment is not cost effective for the State agency to pursue collection. This rule addresses standards for determining which claims must be pursued. For smaller claims State agencies should continue to maintain some probability of collection. Knowledge that even small overpayments may be collected increases payment accuracy by holding households responsible for accurate reporting of their circumstances.

The Department believes that a cost effectiveness test can be applied both prior to and after establishing a claim. This section of the preamble discusses assessing cost effectiveness prior to establishment and the initiation of collection action. Assessing cost effectiveness subsequent to the initiation of collection action as a means to determine whether a claim should be terminated and written off is discussed elsewhere in this preamble.

In Federal fiscal year 1995 alone, over 775,000 recipient claims were established nationwide. The Department recognizes that this sheer volume negates any notion of a State agency demonstrating to FNS the degree of cost effectiveness for claims on an individual basis. Therefore, the Department is proposing in this rule that, in lieu of demonstrating cost-effectiveness to FNS on an individual claim basis, State agencies would use standards approved by FNS to assess the cost effectiveness of collecting claims.

In determining these standards, the Department is proposing to present State agencies with a choice. The first would be for a State agency to design its own standard (subject to FNS approval). The second option would be for a State agency to use an updated version of the existing FNS recipient claim threshold. Both options are discussed below.

State Agency-Developed Methodology for Cost Effectiveness Determination

The Department is proposing, in § 273.18(h)(2) of this rule, how a State agency could adopt its own procedure, threshold, and/or methodology for use in determining whether to pursue the establishment of any claim and subsequent collection of the overissuance. A State agency would need to submit a detailed analysis of costs over time and obtain prior approval from FNS for use of this procedure, threshold and/or methodology. Cost effectiveness should reflect total returns to the Federal and State government and the total cost of the State claims collection effort.

The concept of having a State agency develop its own methodology is an expansion of current policy. The reason for this policy expansion is twofold. First, this option would be consistent with the spirit of section 844 of the PRWORA which increases State agency control over its claims. The stipulation requiring prior FNS approval of the methodology to be utilized would be needed because the provision in the PRWORA requires that cost effectiveness be demonstrated to the satisfaction of FNS, thus reinforcing the Federal government's interest in State stewardship of FSP resources.

The second reason for this policy expansion is that cost effectiveness varies significantly from one State agency to another depending on factors such as the degree of automated processing, the amount of historical case record information, the degree of centralization, features of administrative structures, salaries, and the number and size of claims established. This observation is supported by a contracted study released by FNS in June 1996 entitled, ''Optimal Thresholds in the Collection of Food Stamp Program Claims.'' While State agencies have a responsibility to adopt cost-effective claims management systems, this proposal would allow a State agency to establish a cost-effectiveness methodology (subject to FNS approval) to reflect the State agency's own situation and expenses.

FNS Threshold for Establishing and Collecting Overissuances

Current regulations at 7 CFR 273.18(d)(1)(i)(A) require that, except for those IHE and AE claims which (1) are collected through offset of restored benefits or (2) are less than $35 and cannot be collected through allotment reduction, State agencies shall initiate collection action on all IHE and AE claims. This $35 exception represents the current FNS threshold for recipient claim collection.

Since 1982, 12 State agencies participating in the FSP have received waivers increasing the $35 FNS threshold. State agencies have maintained that the current threshold is too low because the cost of establishing and collecting claims exceeded the thresholds.

Administrative costs relating to claims actions are the cost of establishing a claim; calculating the claim; posting the claim into the State agency accounting and reporting system; initiating the various demand letters and notices; and managing collections. Economic factors, such as inflation, in addition to fluctuations in salary and staffing levels and automation start-up and maintenance costs cause changes (usually increases) in the amount of administrative funding expended for food stamp claim activity within each respective State agency over a given time period. In addition, the aforementioned contractor study on recipient claim collection thresholds found that the optimal thresholds in the State agencies surveyed were higher than the current collection threshold. The study also found that it was more appropriate to apply the threshold to the costs of the combined process of establishing and collecting claims. Including only the cost of collection led

to setting too low a threshold from an economic perspective.

As a result, the Department is proposing to increase the FNS threshold for collecting food stamp recipient IHE and AE claims. In addition, the Department is proposing to extend this threshold to IPV claims. The Department is also proposing utilizing the same threshold for both establishing and collecting claims. Current regulatory language refers only to the collection of claims and implies there is no threshold below which claims need not be established.

In its reorganization of 7 CFR 273.18, the Department is proposing to break out and expand the paragraph in the current regulations dealing with the threshold, 7 CFR 273.18(d)(1)(i)(A), into § 273.18(g)(2)(ii) of the proposed rule. In § 273.18(g)(2)(ii), the threshold would be defined as the maximum dollar amount of a claim or a claim referral that a State agency may decide not to pursue establishment and/or collection solely based on the amount of the referral. The purpose of the threshold is to maximize cost effectiveness in the establishment, pursuit and recovery of overissuances in the FSP. The Department originally considered proposing to raise this threshold from $35 to $100. Then the Department considered establishing a threshold that would change periodically depending on the rate of inflation or some similar economic factor. The Department decided to strike a balance between increased State costs and the uncertainty of a fluctuating threshold by proposing a fixed threshold of $125. This proposed threshold is reflected in § 273.18(g)(2)(ii) of this rule.

In addition, as noted earlier and reflected in § 273.18(g)(2)(ii) of the proposed rule, this threshold would also apply to IPV claims. The authority to include IPV's under the threshold is found in section 13(a)(1) of the FSA (7 U.S.C. 2022(a)(1)) which provides the Department with the authority to delegate to State agencies the power to ''* * * settle and adjust any [recipient] claim * * * if the [Department] determines that to do so would serve the purposes of this Act.'' The proposed inclusion of IPV claims under the threshold would increase the waiver authority delegated to State agencies.

Currently, procedures for establishing and pursuing IPV claims vary significantly from jurisdiction to jurisdiction. By including IPV claims under the threshold, the Department would like to reduce this degree of variability. However, the Department would like to emphasize that no jurisdiction would be prevented from establishing and/or pursuing the collection of any claim that falls under this threshold. State agencies are encouraged to pursue claims on selected bases which would act as a deterrent or be in the best interest of the FSP or agency to establish or collect.

Finally, the current regulations at 7 CFR 273.18(d)(1)(i)(A) do not allow the FNS threshold to be applied to claims that can be recovered by reducing the household's allotment. Since the utilization of this claim collection method incurs relatively little post-establishment costs, the Department is not proposing any changes to this policy.

The Department is interested in receiving comments on these proposals concerning the determination of cost effectiveness for the establishment and collection of recipient claims. In addition, the Department is particularly interested is receiving actual cost data from State agencies.

Claim Establishment

Claim Referral and Backlog

Under current regulations, no time frame exists for State agencies to follow for initiating collection action by establishing claims. This has resulted in a number of State agencies either not establishing or not enforcing internal time frames for addressing potential claims, thereby causing a backlog of claim referrals. These claim referral backlogs have been cited as deficiencies and problem areas in Federal and State-level management evaluations and audits conducted by the Department's OIG. Potential debts that are not timely developed into claims become less collectible the longer they remain undeveloped.

In an effort to reduce the number of claims which are not established in a timely manner, the Department believes that it is necessary to develop a minimum timeliness standard for establishing claims which incorporates a standardized methodology for measuring the length of time it takes to establish a claim after the potential overissuance is discovered. To accomplish this, the Department must initially set the parameters by defining the starting and ending points of the process.

The Department is proposing that the *starting point* for calculating the length of time that it takes to establish a claim would be the date the potential claim is initially detected. This would be known as the *date of discovery* and is being defined as such in § 273.18(f) of this proposed rule.

The Department considered and rejected one other alternative in its determination of the appropriate starting point. This alternative was to use the date of occurrence of the change that caused the overissuance. For example, if a household was overissued benefits because of a decrease in household size, the starting point would be the date that the individual(s) left the household. The Department decided not to propose this alternative because the State agency may not become aware of the change that caused the overissuance for some time.

In addition to proposing a starting point to gauge the length of time it takes to establish a claim after the potential overissuance is discovered, the Department is also proposing to define an ending point for tracking and reporting purposes. This would be the *date of establishment.* The Department is proposing, in § 273.18(f)(3) of this rule, to have the date of establishment be the date that the initial written claim notification or demand letter is issued to the household. This is being proposed because the Department feels that this is the final step in establishing a claim.

The Department considered one other alternative as the ending point. This alternative would define the date of establishment as the date that the claim is posted as a receivable in the State agency's claim collection and tracking system. However, while it is integral to the establishment of a receivable, this is not being proposed because the Department believes that a claim is not truly established until the demand letter is sent to the household.

The Department is proposing that the length of time it takes to establish the claim would simply be the number of days between the date of discovery (starting point) and the date of establishment (ending point).

Now that the mechanism for measuring the length of time it takes to establish a claim has been proposed, the Department is proposing a standard for the timely establishment of claims.

Originally, the Department considered a 90-day standard for establishing claims with an allowance for up to 180 days if the State agency needs to secure additional documentation from uncooperative sources. However, this was not considered feasible because it would be difficult to track and gauge its effectiveness given the additional time allowance that would be allotted for certain claim referrals. Instead, the Department is proposing in § 273.18(f) of this rule to conform with time frames used in other assistance programs. The proposed rule would have the same standard as one that was in place for

initiating collection action in the Aid to Families with Dependent Children (AFDC) Program in July of 1996. Specifically, claims would need to be established before the end of the quarter following the quarter of the discovery of the claim. As an example, if the date of discovery is in October, November or December, the last day for sending the demand letter in a timely manner would be March 31.

The Department is aware that a number of State agencies are either not establishing or not consistently enforcing internal time frames for addressing potential claims. This has resulted in what many State and Departmental officials perceive as a ''backlog'' of claim referrals. However, the measure of what actually constitutes a claim referral backlog has never been defined by the Department and State agencies have no clear regulatory guidance on this issue. With its proposed time frame for establishing claims, the Department feels that it now has the mechanism to propose clear guidance as to what would constitute a claim backlog.

The Department is proposing in § 273.18(f) of this rule to define a claim backlog as existing when more than 10 percent of the claim referrals are not established in a timely manner. The Department chose 10 percent because it feels that an absolute zero tolerance in this area would not account for the claims which would not be able to be timely established based on circumstances (such as uncooperative employers, etc.) which would be out of the State agency's control. The Department did not choose a percentage greater than 10 percent because it felt it would be too tolerant and condone inefficient and ineffective claim management.

The Department would like to emphasize that the purpose of establishing a standard for what is considered an acceptable as opposed to an excessive backlog is not to penalize a State agency with an excessive backlog but to provide a management tool for gauging the State agency's claim establishment efforts.

The Department is proposing in § 273.18(f) that State agencies, in order to assess the age of referrals, be required to record the date of discovery and the establishment date in the claim case file and/or referral tracking system. The Department feels that this is not placing an additional or unnecessary burden on a State agency as prudent claim management would dictate that the State agency would have a system to internally track referrals already in place.

Even though the Department is proposing a new standard for determining the existence of a claim backlog, the Department would not require State agencies to report this information to FNS. Monitoring would be achieved in the same manner that other areas of the FSP are reviewed and evaluated. The Department feels that the most effective way for State agencies to address a deficiency in this area would be to initially concentrate on preventing future backlogs by adhering to the standards proposed in this rule. Once this is accomplished, corrective action for the elimination of existing backlogs could be addressed.

The Department is interested in receiving comments on the proposed standard for establishing claims and measuring a claims backlog.

Initiating Collection Action When the Household Cannot Initially Be Located

The current regulations at 7 CFR 273.18(d)(1) contain the criteria for initiating collection action on IHE and AE claims. This criteria includes applying the dollar threshold for collecting claims, not taking action on households that cannot be located and postponing collection action on suspected IPV's. Proposed changes to the dollar threshold and the treatment of suspected IPV's are discussed in detail elsewhere in this preamble. In addition to these changes, the Department is also proposing a change in policy on initiating collection action if the household cannot be located.

The current regulations at 7 CFR 273.18(d)(1)(i)(B) provide that the State agency shall initiate collection action for IHE and AE claims unless the household cannot be located. The Department is proposing to delete this paragraph and have the State agency initiate collection action on these claims. The reason for this is that, with the advent of innovative collection methods such as Federal and State tax refund offset, it is much easier for State agencies to eventually locate the household and collect the claim. In addition, the household would be subject to allotment reduction if it returns to the FSP prior to the claim being terminated and written off. Terminating and writing off claims is discussed elsewhere in this preamble.

The current regulations at 7 CFR 273.18(d)(2) discuss the criteria for initiating collection action on IPV claims. This criteria includes making personal contact with the household. The Department is proposing to delete this clause. This is being proposed to increase the flexibility afforded State agencies in their collection efforts.

As with IHE and AE claims, the Department is also proposing to delete the clause in 7 CFR 273.18(d)(2) that allows State agencies not to pursue collection action against IPV claims if the household cannot be located. The reason for this being proposed is the same as with IHE and AE claims: the increased possibility of collection via Federal and State tax refund offset and the possibility of allotment reduction if the household returns to the FSP before the claim is terminated.

Household Notification

Requirements at Certification

In the Department's efforts to afford State agencies maximum flexibility, the Department is taking steps to ensure that household notification requirements (as required by the Privacy Act of 1964 at 5 U.S.C. 552a and the Debt Collection Act of 1982 (DCA), as amended by the DCIA at 31 U.S.C. 3716(a)) are not compromised. Proper notification involves informing the household of its rights regarding the claim and informing the household at the time of FSP application of the potential uses of information provided by the household to collect the claim.

Households initially provide identifying information (such as names, addresses and social security numbers) as well as other information regarding household circumstances at the time of application. This information is used by State agencies for program purposes including verification and eligibility and to refer delinquent claims to other agencies for various collection tools and methodologies such as tax refund, salary and administrative offset. The Department is proposing in this rule to require that State agencies inform households of this potential use of provided information at the time of application in a new paragraph, § 273.2(b)(4).

Demand Letter Requirements

Under the proposed rule at § 273.18(g)(3), a State agency would simply develop and use its own demand letter for claim notification and repayment solicitation. The Department is proposing several requirements to ensure that proper notification and due process conditions are met when the household is informed of the existence of the claim via the demand letter.

The first requirement being proposed by the Department in this rule is that the claim notification or initial demand letter would continue to contain a notice of adverse action (see § 273.18(g)(3)(v)). This notice of adverse action can either be an attachment or

contained in the body of the initial demand letter itself. This notice would also provide the household with the opportunity for a fair hearing on the validity and amount of the claim. At a fair hearing (or at an administrative disqualification hearing for some IPVs), the household currently is provided the opportunity to inspect and copy agency records and review with the agency the circumstances relating to the claim. This conforms with the information availability requirements in the DCA at 31 U.S.C. 3716(a)(2) and (a)(3). The current regulations regarding fair hearings (7 CFR 273.15) and administrative disqualification hearings (7 CFR 273.16) are not affected by this proposed rule.

In addition, to ensure proper notification per 31 U.S.C. 3716(a)(1) and (a)(4), the demand letter or accompanying notice of adverse action would contain information to provide the household with written notice of: (1) The type and amount of the claim, the intent to collect the claim, if not paid, by referral to other agencies, including private collection agencies, for various claims collection actions including, but not limited to, administrative offset, tax refund offset and salary offset; (2) the opportunity to inspect and copy the records related to the claim; (3) the opportunity for an administrative review (fair hearing) of the decision related to the claim; and (4) the opportunity to make a written agreement to repay the amount of the claim prior to the claim being referred for Federal collection methods. The Department is also proposing that the demand letter contain language specifying that, if the claim becomes delinquent, the household may be subject to additional delinquent and/or processing charges. Finally, the Department is proposing that the demand letter provide notification that all adult household members are equally liable for the claim and that the claim, if not otherwise collected, may be referred to the Department of Justice for litigation. These proposals are reflected in § 273.18(g)(3)(iii) and (g)(3)(iv) of this rule.

Elimination of Repayment Option Choice in the Demand Letter

Prior to the enactment of the PRWORA, section 13(b) of the FSA (7 U.S.C. 2022(a)(1)) contained the stipulation that the household had the option of selecting the method of payment. This resulted in the formulation of detailed regulations at 7 CFR 273.18(d)(3) implementing this legislative requirement. In section 844 of the PRWORA, Congress removed all references in section 13 of the FSA (7 U.S.C. 2022) which pertained to allowing the household to select the method of payment. In their place, Congress provided the State agency (and not the household) with the prerogative to select the appropriate payment method. In addition, section 844 of the PRWORA gave the State agency the authority to establish its own requirements for providing notice to a household with an overissuance. Although State agencies will have greater flexibility in providing notice, the Department is proposing the minimum due process notice requirements specified in the DCA, as discussed above, in order to assure that collection through Federal administrative offset and other methods are available to State agencies. These changes are reflected in § 273.18(g)(3) of this proposed rule.

In addition, other prescriptive language in 7 CFR 273.18(d)(3) regarding demand letter content unrelated to household notification rights discussed above would also be removed to conform to allow for greater State agency flexibility in this area.

Claim Management

Delinquency and Due Date

In most accounts receivable systems, certain actions beyond the original demand letter or claim notification generally occur when a receivable is not paid timely and becomes *delinquent.* These actions usually facilitate further collection action and/or disposition of the receivable. The Department believes that the processing of food stamp recipient claims should be no different from other receivables in this regard.

The Department is proposing in this rule to clearly define what constitutes *delinquency* in food stamp recipient claims. This is being proposed in an effort to increase consistency among State agencies in the treatment of food stamp claims with outstanding balances. This lack of consistency undermines the integrity of the aggregate receivable data compiled by the Department as part of its financial statement. The Department also feels that standardization is necessary in this instance because recipient claims are ultimately Federal debts and the individualized approach by State agencies results in inconsistent treatment. In addition, the proper aging of claims (which is a Treasury requirement for all Federal debts) facilitates optimal claim management from establishment through collection and final disposition. Therefore, the first step in effective and consistent post-establishment claims management requires a definition of delinquency that then triggers subsequent steps in the claims collection process.

The current regulations governing food stamp recipient claims at 7 CFR 273.18 do not define or even utilize the terms *delinquent* or *delinquency.* Delinquency, however, is defined at 4 CFR 101.2(b) in Treasury's FCCS as occurring when a claim ''* * * has not been paid by the date specified in the agency's initial written notification* * * unless other satisfactory payment arrangements have been made by that date, or if, at any time thereafter, the debtor fails to satisfy obligations under a payment agreement with the creditor agency.'' The Department is planning to use this definition as a basis for defining delinquency for food stamp recipient claims.

Delinquency, in the FCCS's definition, is determined contingent upon the non-receipt of payment by the ''date specified'' in the notification unless other arrangements have been made. The ''date specified'' is commonly known as the *due date.* To have a delinquent claim based on the initial demand letter, according to the FCCS, the agency should have a due date specified in its initial demand letter. Therefore, in an effort to establish delinquency in conformance with the FCCS on this issue, the Department is proposing in § 273.18(g)(3)(v) to require that all initial demand letters contain a due date in their text. The due date would be up to 30 days after the date of the initial demand letter. This conforms with the response time frame established by the FCCS at 4 CFR 102.2(b).

The paragraph at 7 CFR 273.18(g)(2) in the current regulations governing recipient claims discusses the procedures when a household fails to make an installment payment in accordance with the established repayment schedule. This is the same situation as specified in the second part of the FCCS's definition of delinquency which states that a claim is considered delinquent when ''* * * the debtor fails to satisfy obligations under a payment agreement* * * '' In this instance, the due date would be the date that payment was to have been received in accordance with the installment agreement. The Department is therefore proposing, in § 273.18(g)(4) of this rule, that all repayment agreements specify when payments are to be due and that the claim will be considered delinquent and may be subject to involuntary collection actions if payment is not received by the due date.

The proposals in this rule to require a due date in both initial demand letters and installment agreements would give the Department the ability to define *delinquency* in a manner that is consistent with the FCCS's definition. While the Department recognizes that it has the authority to define terms and establish policy that differ from the FCCS, it feels that it would be in the best interest of the FSP to be consistent with the FCCS on this issue. Therefore, the Department, in § 273.18(g)(5) of this rule, is proposing to define a delinquent food stamp recipient claim as a claim: (1) Which has not been paid by the due date specified in the State agency's initial written demand letter and a satisfactory payment arrangement has not been made; or (2) if a satisfactory payment arrangement has been made, a claim for which a payment has not been paid by a date required payment in accordance with an established repayment schedule. A claim would remain delinquent under either of these criteria until payment is received in full, a satisfactory payment agreement is negotiated (or renegotiated), or allotment reduction is invoked.

The Department is proposing to have two exceptions to its definition of delinquency. The first exception involves multiple claims. The Department is proposing in § 273.18(g)(5)(iv) that a claim would not be considered delinquent if another claim or claims for the same household exists and the other claim(s) is currently being paid either through an installment agreement or allotment reduction. In addition, the State agency would have to expect to begin collection on the claim once the other claim(s) is settled. This is being proposed to ensure that claims that are collectible and simply ''waiting their turn'' would not be subjected to activities such as involuntary collection actions and termination.

The second exception to the definition of delinquency involves IPV claims where the collection is coordinated through the court system. The Department is proposing this exception in § 273.18(g)(5)(iv) because it recognizes that the State agency which is responsible for overall food stamp recipient claim collecting and reporting may be limited in its control over this type of claim. This exception to the definition would be optional depending upon the collection system and coordination between the court and State agency.

The Department is interested in receiving comments on this proposal to define delinquency.

Delinquency and Fair Hearing Requests

Current regulations governing fair hearing requests at 7 CFR 273.15(g) state that the ''* * * household shall be allowed to request a (fair) hearing on any action * * * which occurred in the prior 90 days.'' For food stamp recipient claims, the 90-day fair hearing standard is applicable to the initial demand letter. Therefore, the Department is proposing in § 273.18(g)(6) of this rule to specify that, once a household timely requests a fair hearing, all attempts to collect the claim would cease. This would be done to protect the rights of the household. If, when the hearing decision is rendered, it is determined that a claim does, in fact, exist against the household, the household would be sent another demand letter. This demand letter may be combined with the notice of the hearing decision. The determination of delinquency would then be based on whether payment is received or an agreement to pay is reached by the due date on this subsequent demand letter.

If, when the hearing decision is rendered, it is determined that a claim does not exist, the Department is proposing in § 273.18(g)(8) that the claim be terminated and written-off. This is discussed in greater detail in another section of this preamble.

Claim Termination and Write-off

Section 13(a)(1) of the FSA (7 U.S.C. 2022(a)(1)) authorizes the Department to settle and adjust all or part of any food stamp recipient claim if it serves the purposes of the FSP. Current regulations at 7 CFR 273.18(e) specify the conditions by which collection action on claims may be suspended and terminated. Suspended claims are claims in which no more collection action will be actively taken. A suspended claim may be terminated after it has been held in suspense for three years.

In many State agencies, claims that are currently under ''suspension'' are being or soon will be subjected to a variety of collection methods. These methods include such collection alternatives as salary offset and State and Federal tax refund offset. The Department feels that, with the introduction of these innovative collection methods, it would be unlikely in an effective claims collection environment for a claim to fall under the definition of a suspended claim as per 7 CFR 273.18(e) in the current regulations. Therefore, the Department is proposing in this rule to eliminate all references to the concept of *suspending* food stamp recipient claims. Having a designation for claims that will be inactive for three years without any subsequent collection action being planned serves no purpose, especially with the advent of the additional collection methods.

In the current regulations, there is no *requirement* to terminate claims and there is no clear definition of this term. The regulations at 7 CFR 273.18(e)(ii)(3) simply state that a ''* * * claim *may* be determined uncollectible after it is held in suspense for 3 years (emphasis added).'' The lack of a requirement or clear definition has resulted in a large number of uncollectible claims being included in reports submitted to FNS and sizable account receivables being unnecessarily maintained in State agencies' ledgers. In addition, efficient and effective claims management advocates timely and aggressive action on a debt but with a quick disposition through termination when the probability of collection proves low.

A study released by a Departmental contractor in August 1994 entitled, ''Standard Operating Principles and Detailed Standard Operating Procedures for Food Stamp Recipient Claims,'' recommended that terminating and writing-off claims be made a requirement if the claims meet certain criteria. The study compared the current approach to food stamp recipient claim accounting with generally accepted accounting principles. These generally accepted accounting principles included statements from the Federal Accounting Standards Advisory Board, Acts of Congress, Treasury regulations (including the FCCS), and other authoritative documents. Page 15 of the Departmental contractor study specified that an organization's termination and write-off policy should ''* * * include the collection agent's definition of an uncollectible claim specifying which circumstances *require* a claim to be written-off and under which circumstances a claim may be deemed uncollectible by the decision of management. The write-off policy * * * should be strictly applied.''

The Department, in § 273.18(g)(9) of this rule, is therefore proposing to define a *terminated* claim as one in which all collection action has ceased. Under the proposed rule, a terminated claim would be immediately *written-off*, that is, it would be no longer considered a receivable subject to continued Federal and State agency collection and reporting requirements. A claim would have to fit one of the five criteria listed below to be terminated and written-off.

In determining which criteria should be used to terminate a claim, the Department considered the

requirements found in 4 CFR 104.3 in the current FCCS published by Treasury. This paragraph of the FCCS contains five specific standards for terminating and writing-off claims: (a) The inability to collect any substantial amount; (b) the inability to locate the debtor; (c) the cost will exceed recovery; (d) the claim is legally without merit; or (e) the claim cannot be substantiated by evidence.

In determining the Department's termination and write-off policy, FCCS standard (a), *the inability to collect any substantial amount,* was considered as it is of fundamental concern when the debtors primarily consist of households which are currently participating or were recently eligible to participate in a means tested program such as the FSP.

FCCS standard (b), *the inability to locate the debtor,* was also considered in the development of the Department's proposed termination and write-off policy. The Department's termination and write-off policy being proposed in this rule takes into account the capabilities of the tax refund and other automated offset programs that are very effective in collecting from difficult-to-locate household members.

FCCS standard (c), *cost will exceed recovery,* is certainly a factor in the Department's proposal. Food stamp claims, by nature, are usually relatively small with the average claim established in Federal fiscal year 1995 being $464. This is also a predominant factor in a proposal discussed in another section of this preamble regarding cost effectiveness determination prior to claim establishment.

Food stamp recipient claim terminations and write-offs that may be applicable under FCCS standards (d), *claim legally without merit,* and (e), *claim cannot be substantiated by evidence,* are usually handled under the fair hearing process in the FSP. Administrative disqualification hearing and court determinations that specifically find that no overissuance occurred are also pertinent to these standards.

Taking into account FCCS standards (a) through (e), the Department is proposing in § 273.18(g)(9) to require State agencies to terminate and write-off a food stamp recipient claim if it meets any *one* of the following *five* criteria: (1) Any claim which is found to be invalid in a fair hearing, administrative disqualification hearing or court determination; (2) Any claim in which all adult household members are deceased and the State agency is not planning to pursue collection from the estate; (3) Any claim which has an outstanding balance of $25 or less and has been delinquent for 90 days or more; (4) Any claim that the State agency has determined is not cost effective to collect; or (5) Any claim that has been delinquent for three years.

The fourth Departmental criterion states that any claim that the State agency has determined not to be cost effective to collect shall be terminated and written off. To determine cost effectiveness, the Department believes that a State agency should use the standards already in use for food stamp recipient claims. If no standards currently exist, the State agency shall develop standards subject to FNS approval.

In the fifth Departmental criterion, a State agency would be required to terminate and write-off any claim that has been delinquent for three years. The decision to require termination and write-off after three years of delinquency is based on a recommendation in the aforementioned contractor study (August 1994). Page 16 of the study specifies that ''* * * three years of *delinquency* is a reasonable amount of time to collect on outstanding debts, and that debts exceeding this time limit will likely not be collected with additional effort or time and should be written-off.''

In addition, for the fifth criterion, the Department is proposing to add a qualifier that the State agency may opt not to terminate a claim which has been delinquent for three years or more if prior collections have been realized through Federal or state tax refund offset, salary offset or any other similar collection mechanism. This proposed qualifier was added because, even though these claims technically remain delinquent, the probability of collection via offset in the future may be relatively high because a portion of the claim has already been collected via this collection method.

An issue has been raised concerning the possible reinstatement of terminated claims if an additional collection methodology is introduced or an event (such as lottery winnings) occurs to substantially increase the likelihood of future collections. In such cases State agencies may reinstate the claim.

Compromising Claims

The areas in the current regulations at 7 CFR 273.18(g)(2) and (g)(4) concerning compromising claims would be consolidated into its own section, § 273.18(g)(7) in the proposed rule. The Department is proposing two revisions in this area to increase consistency with the FCCS at 4 CFR Part 103. The first proposed revision would limit the authority to compromise to claims under $20,000. The second proposed revision would provide that, if a claim becomes delinquent, any compromised portion of that claim would be reinstated to the claim balance.

Acceptable Forms of Payment

Current regulations at 7 CFR 273.18(g) indicate that payments for claims shall be accepted in various forms of cash, food coupons, offsets, intercepts and reductions to the household's allotment. The Department is proposing some policy clarifications and changes in this area.

''Cash'' Payments

The Department would like to clarify in § 273.18(h)(2)(i) of this rule that acceptable ''cash'' payments for food stamp claims actually take several forms. In addition to traditional forms of cash payments such as cash, check or money order, the Department also considers payments made via credit and/or debit cards as acceptable methods of payment if the State agency has the capability to accept such payments. Payment in these and other generally accepted formats are acceptable for both lump sum and installment payments. Offering alternative forms of payment increases the possibility of collection and State agencies are encouraged to explore these alternative payment methods.

Currently, no policy exists regarding the issue of crediting cash collections received as general lump sum or installment payments for joint food stamp/other social service program recipient claims. In an effort to ensure that each program receives its fair share in joint collections, the Department is proposing, in § 273.18(h)(2)(ii) of this rule, to require that each program receive its appropriate pro rata share of any installment collection. For example, under the proposed rule, if a $700 public assistance and $300 food stamp claim were combined into a $1,000 claim, 30 percent of an undesignated payment would be credited to the food stamp portion of the claim while 70 percent would be credited to the public assistance portion. This proposal would not pertain to any designated payment or agreement that includes the specific withholding of public assistance or food stamp benefits to satisfy a claim.

Coupon and EBT Payments

The Department is not proposing any changes to the current regulations regarding payments made using paper food coupons. The Department is also not proposing any changes regarding the handling of coupons or coupon books collected as payments. However, EBT

benefits are also included under the definition of coupon in the current regulations at 7 CFR 271.2. The Department believes that the distinctive characteristics of EBT, as opposed to those of the traditional paper food coupon system, warrant special attention in the area of recipient claims collection.

An active EBT benefit account is one in which benefits have been accessed within the last three months. The Department is proposing, in § 273.18(h)(4)(iii) of this rule, to make the policy concerning active EBT benefit accounts and claims collection consistent with the current policy regarding claim repayment via paper coupons. This would allow a household to voluntarily pay all or part of its outstanding claim with funds taken from its EBT benefit account. This would differ from allotment reduction in that the payment is being made subsequent to the allotment being issued and credited to the household's EBT benefit account.

The actual methodology and procedure to enact this transaction regarding the use of Point-of-Sale devices, administrative terminals or any other acceptable method to conduct these transactions would be determined by the State agency and included in its EBT system design.

In addition to the above, the Department is proposing an additional requirement to safeguard the rights of households by ensuring that involuntary payments would not be made from EBT benefit accounts. The proposed rule, in § 273.18(h)(4)(iii), would require that the State agency secure and retain a statement or document signed by a household member or representative authorizing the transaction. A signed document for each transaction would not be necessary, however, if each transaction was completed in accordance with a signed repayment agreement or similar document. The signed agreement would serve as adequate documentation.

The same policy that applies to active EBT benefit accounts also applies to inactive or stale EBT benefit accounts. Inactive or stale EBT benefit accounts are those accounts that have not been accessed for three months or longer and have yet to be expunged. The Department, in § 273.18(h)(4) of this rule, is proposing that voluntary payments from inactive or stale accounts be accepted once the account is reactivated at the request of the household in accordance with 7 CFR 274.12(f)(7).

The Department recognizes that some State agencies may have difficulty assimilating this change into already existing EBT environments. However, State agencies, by complying with the current requirements in 7 CFR 274.12(e)(1), should already have a system in place to administratively adjust amounts in EBT benefit accounts. Adapting this system for paying off claims may not be a major undertaking. The Department believes that, in addition to maintaining consistency with the current policy regarding paper coupons, cooperating households should be afforded maximum flexibility in their efforts to voluntarily repay a claim.

The Department would also like to take this opportunity to stress that the collection of claims using EBT benefits is considered a non-cash collection and corresponding funds should not be drawn from the Federal EBT benefit account by the State agency when this type of collection is made.

EBT benefit accounts that have not been accessed by the household for one year are expunged and households lose all entitlement to these benefits. These benefits are then returned to FNS in accordance with 7 CFR 274.12(f)(7) of the current regulations. The Department considered allowing State agencies to treat already expunged EBT benefits as a ''collection'' and therefore allow State agencies to retain their appropriate share of the collection. However, since the accounts were already expunged and returned to FNS, a complex system and reporting mechanism would need to be designed and implemented to ensure that these ''collected'' but expunged (and therefore essentially nonexistent) funds are properly accounted for in FNS and State agency reporting. The Department feels that this would be inefficient and not cost effective from both a Federal and State agency perspective.

However, the Department does recognize that these are benefits that the household never used. This presents the possibility that a household may have consciously not used its benefits because it was aware of the existence of an overissuance and, essentially placed these funds ''in escrow'' to make good on the error. The Department believes that including this amount in a claim to repay the overissuance is inappropriate. Therefore, the Department is proposing, in § 273.18(e), to allow a State agency to subtract the value of expunged EBT benefits from overissuances prior to the establishment of the claim. This would be the final step in the claim calculation process and would not be considered a ''collection'' for Federal reporting purposes. In instances where the claim is already established and benefits become expunged, the State would subtract the amount of the expunged benefits from the claim balance. This is reflected in § 273.18(h)(4)(v) of this proposed rule. Again, this adjustment would not be considered a ''collection'' for Federal reporting purposes.

The Department is interested in receiving comments on the use of funds from EBT benefit accounts to repay outstanding recipient claims.

Collection and Payment Methods

Section 844 of the PRWORA made significant changes to the FSA (7 U.S.C. 2011–2032) in the areas of collections and payments. One revision to section 13 of the FSA (7 U.S.C. 2022) states that a State agency shall collect a claim ''* * * in accordance with requirements established by the State agency for * * * electing a means of payment, and establishing a time schedule for payment.'' This change is significant in two areas. First, the State agency, and not the household, now determines the appropriate collection method, including whether to provide options to the household, when the claim is initially established. Second, this revision also provides the State agency with the ability to involuntarily subject all claims to all collection methods—including those such as allotment reduction for AE claims that, until the enactment of the PRWORA, could only be collected on a voluntary basis. These changes are reflected in each applicable paragraph in § 273.18(i) in this proposed rule.

The PRWORA addresses specific collection methodologies by stating that a claim shall be collected by ''* * * (A) reducing the allotment of the household; (B) withholding amounts from unemployment compensation * * *; (C) recovering from Federal pay or Federal income tax refund * * *; or (D) any other means.'' The PRWORA further states that these methods shall not be applicable if the State agency can demonstrate ''* * * that all of the means are not cost effective.'' This proposed rule includes a paragraph in § 273.18(i) for each of the collection methods (allotment reduction, unemployment compensation, and Federal salary and Federal income tax refund offsets) specified in the PRWORA. Federal salary and Federal income tax refund offsets are also discussed in much greater detail elsewhere in this preamble and in § 273.18(p). In addition, other means of payment, notably lump sum and via installments, are included in § 273.18(i). Cost effectiveness is addressed in the detailed discussion for each payment method as well as in the discussions in

this preamble regarding pre-establishment cost effectiveness determination and claim termination and write-off.

Allotment Reduction

A major change in section 13 of the FSA (7 U.S.C. 2022) brought about by section 844 of the PRWORA involves the use of allotment reduction to collect claims. Prior to the enactment of the PRWORA, a participating household with any type of claim could opt to pay its claim using a method other than allotment reduction. In addition, a State agency was statutorily prohibited from invoking involuntary allotment reduction against a household with an AE claim. Section 844 of the PRWORA removed the household's right to choose the payment option for any type of claim. As a result, this places allotment reduction, which is widely recognized by State and local agencies as the most cost effective and efficient food stamp recipient claim collection method, in the forefront as the primary collection method.

This is being reflected in this rule. The Department is proposing, in § 273.18(i)(1), to require that a State agency automatically collect payment from a participating household for any established claim, including an AE claim, through allotment reduction. There would only be two stipulations to this proposal. The first would be that the household would need to be initially notified of the existence of the claim. This is discussed in greater detail elsewhere in this preamble. The second stipulation would be that a household's initial allotment shall not be reduced to collect the claim. This stipulation is included because the initial allotment is usually pro rated and therefore has already been reduced. This is not a change from current policy.

Some may argue that it is unfair to a household to collect an AE claim through involuntary allotment reduction since the reason for the overissuance was not the fault of the household. The Department believes that, since Congress specifically removed the prohibition from the FSA, that it is clearly the intent of Congress to allow this type of collection.

In addition to the above, the Department is proposing to make three additional policy and several structural revisions to the paragraph governing allotment reduction at 7 CFR 273.18(g)(4) in the current regulations. The structural revisions are being proposed to avoid repetition by eliminating much of the language in the introductory paragraph that may be found elsewhere in the rule. This includes the notification procedures and the acceptance of lump sum payments.

Two of the three additional policy changes in allotment reduction being proposed concern the current benefit reduction procedures and IPV claims. The current regulations at 7 CFR 273.18(g)(4)(i) provide that benefit reduction for an IHE claim is to be computed from the monthly *allotment.* The allotment is the benefit level that the household is scheduled to receive. Benefit reduction (in current 7 CFR 273.18(g)(4)(iii)) for an IPV claim, on the other hand, is to be computed from the monthly *entitlement.* The entitlement is the benefit amount that the household would have received if the household member was not disqualified for committing the IPV. Several State agencies have obtained waivers to use the allotment rather than the entitlement as the basis for reducing the household's benefits. For the purposes of administrative efficiency, which was the basis for the Department approving the waivers, this rule, in § 273.18(i)(1)(ii), would allow all State agencies to determine the benefit reduction amount for IPV claims based on either the allotment or entitlement as long as all areas within the State handles the calculation of benefit reductions in the same manner.

Current regulations at 7 CFR 273.18(g)(4)(iii) limit the reduction amount for an IPV claim to the greater of 20 percent of a household's monthly entitlement or $10 per month. In the second policy change, the Department is proposing, in § 273.18(i)(1)(ii), to increase the maximum recoupment amount for an IPV claim to the greater of $20 per month or 20 percent of a household's monthly entitlement or allotment. This is being proposed as an effort to expedite the collection of claims stemming from intentional violations. The rule also proposes in § 273.18(i)(1)(i) to provide that individuals in households subject to allotment reduction are not subject to involuntary collection by any other methods.

The final policy change being proposed in this rule is to specifically include a paragraph (§ 273.18(i)(1)(v)) which would provide a State agency with the prerogative to pursue additional collection methods against individuals who are past household members and who are severally responsible for repayment of this claim. This is being proposed because of the dynamic nature of households in regard to make-up and participation in the FSP.

Intercept of Unemployment Compensation Benefits

Current regulations at 7 CFR 273.18(d)(3)(vi) state that a State agency may implement the intercept of unemployment compensation benefits as a voluntary payment option for IPV claims. In addition, the current regulations at 7 CFR 272.12 also discuss collecting claims via this method. In an effort to streamline this area of the regulations, the Department is proposing, in this rule, to remove the paragraph currently at 7 CFR 272.12.

In addition to the above streamlining effort, a change in policy, brought about by section 844 of the PRWORA, is being proposed regarding collection via an intercept of unemployment compensation benefits.

Currently, the intercept of unemployment benefits is allowed only for IPV claims. Section 273.18(i)(5) of the proposed rule would extend this collection method to any claim. This is being proposed to conform with the requirement in section 840 of the PRWORA that provides for a State agency to use any collection method to collect any type of claim.

Currently, unemployment compensation intercept is optional and State agencies are not mandated to use this collection method. The Department is not proposing to change this policy in this rule. The reason for the Department not proposing to mandate this collection method is that the intercept of unemployment compensation benefits is State-specific and therefore it may not be cost effective to implement in some State agencies. Even though this would remain an option under this proposed rule, the Department strongly urges State agencies to pursue this avenue of claims collection.

Coordination with Federal Claim Collection Methods

Current rules specify requirements for FTROP and FSOP at 7 CFR 273.18(g)(5) and (g)(6). This rule would include proposed requirements for these as well as other Federal collection programs such as the Treasury Offset Program (TOP) at § 273.18(p). To the extent that it is feasible, the Department wants State agencies to use these and other Federal collection methods concurrently with State agency methods. Accordingly, this rule proposes at § 273.18(i)(7) to authorize such concurrent collection.

Lump Sum Payments

Current regulations at 7 CFR 273.18(g)(1)(i) through (iii) allow for the full or partial collection of claims via a

lump sum cash or coupon payment. As part of the regulatory reorganization, these three paragraphs would be consolidated into one paragraph (§ 273.18(i)(3)) in the proposed rule. The proposed rule would also include using funds in an EBT benefit account as a lump sum payment. This is discussed in greater detail elsewhere in this preamble.

Installment Payments

Current regulations at 7 CFR 273.18(g)(2) provide the procedures for installment payments. The Department is not proposing to make any substantial change to the procedure found in the first paragraph (7 CFR 273.18(g)(2)(i)) of this section. Paragraphs (ii) through (iv) of 7 CFR 273.18(g)(2) in the current regulations provide detailed procedures for when the household fails to make a scheduled payment. These procedures currently call for providing a household with another notice and an opportunity to renegotiate its payment schedule if it fails to make a payment. The Department, in an effort to streamline this area of the regulations, is proposing to increase State agency flexibility by eliminating much of the language contained in these paragraphs.

The Department believes that installment payments should be made available but also should be at least as efficient and effective as allotment reduction and other collection methods. Consequently, the proposed rule at § 273.18(i) would permit a State agency to take whatever action it feels is appropriate if a household fails to make an installment payment provided the household was previously notified of a potential adverse action if payments are not made in accordance with the terms of the original repayment agreement.

Additional Collection Actions

The Department is proposing in § 273.18(i)(6) to add a paragraph stating that State agencies may employ any additional collection methods to collect claims. These actions would include, but would not be limited to, referral to a collection agency, state tax refund and lottery offsets, wage garnishments, property liens and small claims court. This is being proposed to clarify that State agencies are able to employ any other means of collection for all types of claims.

Retention Rates

The applicable retention rates in the current regulations at 7 CFR 273.18(h) for collections by a State agency are 50 percent for IPV claims and 25 percent for IHE claims. Section 844 of the PRWORA changes these rates by amending section 16(a) of the FSA (7 U.S.C. 2025(a)) to replace the current rates with 35 percent retention for IPV claims and 20 percent retention for IHE claims. In addition, as indicated in section 13 of the newly amended FSA (7 U.S.C. 2025), if an IHE claim is collected via unemployment compensation, that collection would also have a 35 percent retention rate. The Department is proposing, in § 273.18(m) of this rule to make the adjustments in the rates accordingly.

Submission of Payments

Current regulations at 7 CFR 273.18(i) discuss the procedures for the submission of State agency payments for claims collections to FNS and payments from FNS to the State agency. The only change that the Department is proposing in this area is to eliminate the State agency option of receiving a Federal check for payment of claims collection retention and replace it with electronic funds transfer. The Department is proposing this change to comply with the DCIA. The DCIA requires Federal agencies to convert from checks to electronic funds transfer. In addition, as part of the regulatory reorganization, much of the prescriptive language would be removed and this paragraph would be moved to § 273.18(n) in this proposed rule.

The current regulations at 7 CFR 273.18(i)(4) discuss providing refunds for overpaid claims. As part of the regulatory reorganization, this is broken out into its own paragraph, § 273.18(j), in the proposed rule.

Bankruptcy

Current regulations at 7 CFR 273.18(k) discuss the procedures for proceeding against households with claims which file for bankruptcy. The current policy authorizes State agencies to act on FNS's behalf to recover claims when households file for bankruptcy. The Department is not proposing to make any changes in policy regarding this area of the regulations. However, as part of the regulatory reorganization, this paragraph would be moved to § 273.18(l) in this rule.

Accounting Procedures

Current regulations at 7 CFR 273.18(l) discuss the accounting requirements and procedures to be maintained by State agencies. Further procedural clarification is being provided on this issue and this paragraph is being moved to in § 273.18(o) in this rule.

Interstate Claim Collection

Current regulations at 7 CFR 273.18(m) discuss the continuation of collection action against households that have an outstanding claim and move from one State agency's jurisdiction to another. The regulations state that a receiving State agency should initiate or continue collection action when it ascertains that the originating State agency does not intend to pursue collection. Feedback received from State agencies indicates that this policy has not been successful in recovering interstate claims and needs to be strengthened to assure cooperation among State agencies. A number of State agencies have entered into claim-transferring agreements among themselves on their own initiative but it has not been a nationwide effort. This has resulted in a household being able to avoid paying its claim simply by relocating to another State. Federal tax refund offset does address this issue to some extent by conducting a nationwide search and subsequently collecting claims against household members regardless of where they currently reside. However, Federal tax refund offset is limited to those households with members who file a Federal income tax return and are due a refund.

The Department believes that food stamp recipient claims, as Federal debts, should be more vigorously pursued by State agencies when households move across State borders. Therefore, the Department is proposing to amend 7 CFR 273.18(m) by breaking it out into separate paragraphs to specifically outline the responsibilities of the originating and receiving State agencies. This amendment is intended to maximize collection potential while maintaining State agency flexibility.

The Department is proposing that, unless an actual interstate transfer takes place, the originating State agency will continue to have the responsibility for collection action on any recipient claim regardless of whether the household remains in its jurisdiction. State agencies, however, would be able to formally transfer this responsibility for individual claims to receiving State agencies under certain circumstances. The types of interstate transfers being proposed are discussed in the succeeding paragraphs of this preamble.

To strengthen the interstate claim collection process for participating households, the Department is proposing to further amend 7 CFR 273.18(m) to require that a State agency must accept the transfer of the remaining balance of any claim from another State agency if it is discovered that the household is participating in the FSP in the receiving State. This ensures efficient claims collection since allotment reduction, a highly effective

collection tool, is available to the receiving State agency. Once the transfer takes place, the claim would then no longer be the responsibility of the originating State agency and the receiving State agency would be able to retain any applicable retention amounts for subsequent collections. The amended regulatory text being proposed is being designated as its own paragraph, § 273.18(k)(3) in the proposed rule.

In addition, to facilitate this process, the Department is proposing, in a new paragraph, § 273.18(k)(2), to require that State agencies timely respond to inquiries concerning household participation received from State agencies who have reason to believe that a household or adult members of a household with an outstanding claim have relocated to that State. A response would be considered timely if a determination is made within 30 days. If an examination of the receiving State agency's caseload does reveal that the household (or any of its adult members) are, in fact, receiving benefits in that State, the State agency would then accept the transfer of the claim balance from the originating State agency and continue collection action efforts including allotment reduction. The receiving State would keep any retention amounts for transferred claims.

The Department is also proposing to add another new paragraph, § 273.18(k)(4), to allow, but not require, receiving State agencies to accept the transfer of any claim if the household is not participating. This policy is being maintained to maximize flexibility as well as facilitate the new claim termination process being proposed in another section of this rule.

Federal Claim Collection Methods (FCCM's)

This rule proposes changes to current regulations on FTROP and FSOP. These changes are proposed to incorporate certain legislative changes and to implement certain other changes based on experience operating these programs. The Department believes that these changes will enhance the collection of recipient claims and will make that collection more efficient, especially for State agencies. In summary, these changes would:

—Require all State agencies to use FCCM's (unless the methods are shown to be not cost beneficial).
—Require that all claims that meet the criteria, including AE claims, be submitted for collection under FCCM.
—Provide that claims may be collected by FTROP and/or administrative offset (ADOP), or by FSOP and/or ADOP.
—Provide that FTROP 60-day notices and FSOP advance notices advise debtors that their claims are subject to ADOP.
—Comply with the hearing requirements for ADOP with the hearing opportunities currently provided under FTROP and FSOP.

Federal Claim Collection Methods (FCCM's)

This rule would introduce the phrase ''Federal claim collection methods'' and its acronym ''FCCM's'' at § 273.18(p)(1). Currently there are two such collection methods, FTROP and FSOP. As discussed later in this preamble, this rule is proposing an additional collection method that would be operated at the Federal level. The new method is ADOP. There are several policies and procedures that would become common to these three collection methods. As discussed in this preamble several paragraphs below, FNS plans to develop a single manual which for all three programs would contain such things as computer system record layout and production schedules and guidance on procedures for handling special cases and for fiscal and accounting matters. The rule would also specify that under FCCM's State agencies would retain their recipient claims responsibilities, that would provide certain information on claims subject to FCCM's and would receive amounts collected based on the currently authorized retention rates.

Mandated Participation

Section 844 of PRWORA amended section 13(b) of the FSA (7 U.S.C. 2022(b)) to require that, unless State agencies can demonstrate that the methods are not cost effective, they must collect overissued food coupons (recipient claims) from Federal pay or Federal income tax refunds.

Currently, these two collection methods, FTROP and FSOP are optional for State agencies. Regulations at 7 CFR 273.18(g)(5)(i) provide that State agencies which choose to implement FTROP must submit an amendment to their Plan of Operation stating that they will comply with FTROP regulations. Choosing to implement FTROP entails implementing FSOP because current regulations at 7 CFR 273.18(g)(6)(i) provide that all claims submitted for FTROP are also subject to FSOP. This rule proposes to delete the language on State agency option to implement FTROP. At § 273.18(p)(2)(i), the rule would require that all State agencies submit all claims which meet certain criteria for collection by FCCM's.

Mandatory implementation of FCCM's will affect few State agencies. In calendar year 1998, of the 52 State agencies who could use FCCM's, 47 are doing so. As discussed under the paragraph on Implementation at the end of this preamble, this rule would be required to be implemented 180 days after its publication is final. The Department expects that this implementation period would be sufficient for State agencies to implement FCCM's during calendar year 1999.

Consistent with mandatory implementation of FCCM's, this rule proposes deleting the requirement (in current rules at 7 CFR 272.2(a)(2) and (d)(1)(xii) and 7 CFR 273.18(g)(5)(i)(A)) that State agencies choosing to implement FTROP and FSOP submit an amendment to their Plan of Operations.

Administrative Offset

Prior to the DCIA, under administrative offset, debts owed by persons to the Federal government are collected from payments due those persons from the Federal government. The DCA at 31 U.S.C. 3716 as amended by the DCIA greatly expanded the Federal government's authority to collect Federal debts through ADOP.

The Department believes that implementing the DCIA's provisions relating to ADOP would significantly enhance collection of FSP recipient claims. First, the amended DCA at 31 U.S.C. 3716(c)(1)(A) requires that, with certain exceptions, disbursing officials of Federal government agencies must at least annually offset from Federal payments claims submitted by creditor agencies. Heretofore, while there has been general authority for administrative offset, there has not been a general requirement that Federal payments due to individuals be offset against debts those individuals owe the Federal Government. Second, the amended DCA at 31 U.S.C. 3716(c)(3)(A)(ii) provides that, except for a $9,000 annual exemption, all payments due a debtor under the Social Security Act are subject to ADOP. Third, the amended DCA at 31 U.S.C. 3716(c) centralized the ADOP procedures in a single Federal agency, the Department of the Treasury.

Accordingly, as discussed in detail later in this preamble, this rule proposes to add ADOP to FTROP and FSOP by modifying the required due process and privacy notices to notify the debtor that, in addition to being subject to collection from tax refunds and Federal wages, the claim in question is also subject to

collection from other payments due the debtor from the Federal government. The Department expects that there will be little work impact on State agencies related to referring claims for ADOP. FNS will refer for collection by ADOP claims submitted by State agencies. FSOP claims referred to FNS for notices of intent which are referred for collection from Federal salaries will also be referred for collection by ADOP. Funds collected through ADOP will be transferred to State agencies and reported with FTROP and FSOP collections. Current regulations on FTROP specify update requirements for State agencies, and FNS has provided State agencies update procedures for FSOP. This rule proposes a general requirement for updating records of claims submitted for collection through FCCM's.

Cross Servicing

The amended DCA at 31 U.S.C. 3711(g) requires that debt delinquent over 180 days be transferred to the Secretary of the Treasury for ''cross servicing.'' Under cross servicing, the Department of the Treasury (Treasury) would pursue a variety of claims collection actions such as referring the claim under FTROP and FSOP. Treasury would refer debts to debt collection centers (selected Federal agencies) which would pursue these actions.

The Department is currently working with Treasury to determine the best way to implement this collection strategy. As such, this rule does not propose adding procedures for cross servicing at this time.

Claims Subject to FCCM's

As part of administrative offset provisions, the amended DCA now requires at 31 U.S.C. 3716(c)(6) that any Federal agency that is owed a past due, legally enforceable nontax debt that is over 180 days delinquent, including nontax debt administered by a third party acting as an agent for the Federal Government, must notify the Secretary of the Treasury of *all* such debt for purposes of administrative offset (emphasis added). Currently, rules for FTROP and Salary Offset set criteria for claims which *may be* submitted for collection under these procedures. This rule proposes that, subject to two conditions discussed just below, all delinquent recipient claims be submitted for collection under FCCM's. The Department is proposing this requirement because FCCM's are extremely effective. For example, net dollar collections under FTROP (voluntary payments and collections from Federal tax refunds less offset fees and Treasury reversals) exceed 20 percent of the dollar value of claims submitted. FSOP offers the only way to locate and pursue collection against the salaries of Federal employees who are liable for overissued food stamp benefits. (The Internal Revenue Service (IRS) currently prohibits referral of debts for FTROP which can be collected from Federal employees' salaries.) Finally, and especially with the addition of ADOP, FCCM's provide State agencies access to sources of significant collections not otherwise available to them.

In addition, this rule proposes that, unless no liable individual can be located, State agencies must pursue one or more State agency claim collection method before submitting a claim for collection under FCCM's. The rule proposes to specify that demand letters sent to liable individuals at the most current address known to the State agency and returned as undeliverable would be sufficient to show that no liable individual could be located. The requirement for State agency collection initiative as a condition to the use of FCCM's is being proposed to make the procedures for the other components of FCCM consistent with the FTROP requirement that the (Federal) agency satisfy the Secretary of the Treasury that the agency has made reasonable efforts to obtain payment of the debt. (See 31 U.S.C. 3720A(b)(4).) In addition, the Department believes that it is most efficient for State agencies to attempt collection action with methods available to them and that if those methods are not successful relatively soon after initiation, debts should be referred for collection through FCCM's.

As stated above, the amended DCA at 31 U.S.C. 3711(c)(6) requires that claims 180 days delinquent be submitted for ADOP. State agencies are establishing claims at a rate of over 775,000 per year. To have a State agency submit each claim for FCCM's as soon as that claim is 180 days delinquent is not administratively or logistically possible at this time. Therefore, the Department is proposing that State agencies be required to submit claims for FCCM's at intervals to be determined by the Department. The Department will continue to work with Treasury to fine tune this process to implement this aspect of the DCIA.

Accordingly, this rule proposes at § 273.18(p)(1)(i) that all claims would be subject to collection by FCCM's only after the State agency has initiated one or more State agency collection methods. The rule also proposes that the requirement for a State agency collection effort will not apply when no liable individual can be located as indicated by such evidence as demand letters returned as undeliverable. Finally, in this regard, the rule proposes that State agencies must submit all delinquent claims for collection by FCCM's.

Procedures and Schedules

Current rules at 7 CFR 273.18(g)(5)(i)(B) specify that State agencies submit data for FTROP to FNS in the record formats specified by FNS and/or Treasury, and according to schedules and by means of magnetic tape, electronic data transmission or other method specified by FNS. This rule proposes to apply these procedures to FCCM's in general.

This rule would require that, in addition to following computer data-related guidance, State agencies follow other technical and procedural guidelines as specified by FNS. During the testing of FTROP and FSOP, FNS conducted several national training sessions during which FNS provided substantial guidance on computer system operations, policy requirements and the financial reporting and funds processing for FTROP and FSOP. Following the training sessions, FNS provided packages of written responses to questions raised during the sessions. On an ongoing basis, FNS responds to numerous questions from State agencies concerning how to handle particular cases with respect to computer systems, collection policies and financial and accounting procedures. FNS sees a need to continue to provide this material so that all staff, Federal and State agency, involved with different aspects of FCCM's, have a single, consolidated operations manual.

This manual will be called the ''Manual for Federal Claims Collection Methods for the Food Stamp Program'' (the FCCM manual). The basis of the FCCM manual would be the current manual used for FTROP and FSOP data management (the Federal Debt Collection Program Revenue Procedure Manual 1997). As is the case with the current manual, the FCCM manual would be a vehicle for providing technical guidance for complying with established regulatory requirements. (See § 273.18(p)(1)(ii).)

Identification of Type of Claims

Currently State agencies are not required to identify the type of claim submitted for FTROP and FSOP. This rule proposes to require that claims submitted for collection under an FCCM be identified as an IPV, IHE or AE claim. Instructions on how to make such identification will be provided in the

FCCM Manual. The new information would be included in currently required data submissions and record formats. The rule proposes this new requirement because, effective with implementation of this rule, for collection made under FCCM's, FNS intends to transfer to State agencies the dollar amount of each collection to which the State agency is entitled based on current retention rates for each type of claim. Currently, FNS transfers gross collections net of IRS fees from FTROP and FSOP to State agencies. State agencies then report these collections to FNS on the FNS–209, Status of Claims Against Households, retain the percentage of the collections to which they are entitled under section 16(a) of the FSA (7 U.S.C. 2025(a)) and transfer appropriate amounts back to FNS. With annual FTROP collections of about $40 million, this process results in significant amounts of Federal funds not being as promptly transferred to Treasury as they could be.

Current rules allow State agencies to combine claims for an individual into one claim in order to try to collect on all of the claims through FTROP or FSOP. This rule would require that for any claim submitted for collection under FCCM's which is a combination of more than one type of claim, the State agency must specify the dollar amounts due to each type of claim.

File Updates

Current rules at 7 CFR 273.18(5)(ix)(A) require that for FTROP purposes State agencies update Treasury files. As discussed above, this rule proposes to make that requirement apply to FCCM's in general. Accordingly, this rule at § 273.18(p)(1)(iv) proposes to require that, as instructed in the FCCM manual, State agencies must update files by reducing the amounts of and deleting claims to reflect payments received, and by deleting claims which for other reasons are no longer subject to collection.

Hierarchy of Collection Methods

The mechanisms for ADOP are currently being developed. Consequently, the Department expects that until those mechanisms are in place, claims submitted for collection under FTROP and FSOP will be collected through those methods before any remaining debt is collected through ADOP from other Federal payments. Once ADOP is operational, a debt submitted under FTROP, for example, might be collected from another Federal payment if that payment was identified and available before the tax refund was offset. Accordingly, this rule proposes to state at § 273.18(p)(2)(v) that claims submitted under FCCM's would be offset from Federal payments due to debtors as such payments are identified and are available for offset.

Federal Income Tax Refund Offset Program (FTROP)

Among other things, this rule proposes to simplify the statement of criteria for claims subject to collection under FTROP, shorten and restructure the 60-day notice to eliminate unnecessary material, and to clarify that the 60-day notice is a demand for payment of a debt.

Limitation to IPV and IHE Claims

Current rules at 7 CFR 273.18(g)(5)(ii)(A)(*1*) limit the types of claims subject to FTROP to IPV and IHE claims. As discussed earlier in this preamble, section 844(a) of the PRWORA amended the FSA to provide that, subject to a State agency's demonstration that the collection method is not cost effective, all claims collection methods must be applied to all types of claims. Accordingly, this rule proposes to remove the limitation of FTROP to IPV and IHE claims.

Properly Established Claims

The regulatory paragraph cited just above also specifies that claims submitted under FTROP must be properly established no later than the date the State agency transmits its final request for Treasury addresses for the particular offset year. This requirement was made to assure that claims are not referred for collection under FTROP unless and until an individual has had an opportunity for a fair hearing and any fair hearing decision is reached. As discussed above, this rule proposes at § 273.18(g)(6) to require that State agencies cease any collection action upon timely receipt of a fair hearing request. Accordingly, this rule proposes not to reiterate the proposed requirement with respect to FTROP.

Required Documentation

The same regulatory paragraph cited above also elaborates on the records required for properly established claims. The Department believes that this language is unnecessary. State agencies will develop and retain appropriate records of their claims activities as a result of the various requirements for those activities proposed in this rule. In addition, the current regulations at 7 CFR 272.1(f) already require state agencies to retain fiscal records and accountable documents for 3 years from the date of fiscal or administrative closure. This rule does not propose any changes to this policy. Accordingly, this rule proposes not to state a records requirement specifically for FTROP or any other FCCM.

Collection From All Liable Parties

Current rules at 7 CFR 273.18(g)(5)(ii)(A)(*2*) specify that for a claim to be subject to FTROP the State agency must have verified that no individual who is jointly and severally liable for the claim is also currently participating in the FSP in the State. Since claims owed by participating households must be recouped from the monthly allotment, this requirement prohibited the simultaneous collection of a claim from a participating household through recoupment and from nonparticipating household members through FTROP.

State agencies objected to this restriction. They argued that with the restriction the entire burden of paying the claim fell on participants. State agencies also objected to the restriction because collection solely by recoupment meant that claims were often paid more slowly than they could be when there were liable, nonparticipating individuals with Federal tax refunds. This rule proposes at § 273.18(i)(1)(v) to allow simultaneous collection through recoupment from liable, participating households and through other means from liable, nonparticipating individuals. In addition, this rule proposes at § 273.18(i)(1)(i) to prohibit additional involuntary collection from individuals who are in households subject to allotment reduction. Accordingly, the rule proposes to delete from current rules the requirement that for a claim to be subject to FTROP the State agency must have verified that no individual who is jointly and severally liable for the claim is also currently participating in the FSP in the State.

Concurrent Collection Efforts

Current rules at 7 CFR 273.18(g)(5)(ii)(A)(*5*) state that claims are not subject to FTROP if the State agency is receiving either regular voluntary payments or involuntary payments such as wage garnishment. In addition, the rule specifies that claims for which a State agency has been receiving regular payments (either voluntary or involuntary) are considered past due and legally enforceable (and so are subject to FTROP) if the individual does not respond to a notice of default.

As discussed earlier in this preamble, this rule proposes at 7 CFR 273.18(i)(7) that State agencies may continue (State-based) collection efforts on claims after submitting them for collection under

FCCM's. Accordingly, this rule proposes to eliminate the requirement that claims cannot be submitted for FTROP if the State agency is receiving voluntary or involuntary payments such as wage garnishment.

Under provisions related to voluntary payments which this rule proposes at 7 CFR 273.18(i)(4), there would no longer be a requirement that State agencies send households which fail to make scheduled payments a notice and an opportunity to renegotiate the payment agreement.

No Reduction in the Dollar Amounts Submitted

Current rules at 7 CFR 273.18(g)(5)(ii)(B)(*1*) require that all claims submitted for collection under FTROP must 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. This rule proposes to eliminate this provision because, as discussed above, this rule proposes to allow State agencies to continue to pursue State agency collection efforts on claims submitted for collection under FCCM's. State agencies will have an increased responsibility to maintain adequate records of collections in order to minimize over collections and to promptly refund any which might occur.

Claims Apportioned Among Two or More Individuals

Current rules at 7 CFR 273.18(g)(5)(ii)(B)(*3*) provide that if a claim submitted under FTROP is apportioned between two or more individuals who are jointly and severally liable for the claim, the sum of the amounts submitted cannot exceed the total amount of the claim. This rule proposes to eliminate this provision. The apportioning of a claim as prescribed in this provision was required to conform to an informal IRS policy. The Department believes that the provision for joint and several liability established by section 13(a)(2) of the FSA (7 U.S.C. 2022(a)(2)) establishes the Department's authority to pursue a claim's full amount from all liable adults until the claim is paid. Debtors are protected by the requirement for State agencies to promptly post records and provide refunds of any over collections as this rule proposes at § 273.18(j).

All Delinquent Claims

Current rules at 7 CFR 273.18(g)(5)(ii) provide that State agencies *may* submit claims for collection under FTROP recipient claims which are past due and legally enforceable. As discussed above, this rule would require that *all* claims which are delinquent and have been subject to one or more State agency collection methods are subject to collection under FCCM's. Accordingly, this rule proposes to state at § 273.18(p)(2)(i) that State agencies must submit for collection all recipient claims which are delinquent, which are legally enforceable and which meet the criteria specified in the subsequent subparagraphs.

Minimum Dollar Value

Current rules at 7 CFR 273.18(g)(5)(ii)(A)(*3*) require that claims submitted under FTROP must meet at least the minimum dollar amount established by Treasury. This minimum continues to be $25. This rule would make no change in this requirement. FNS would advise State agencies if the Treasury minimum changes. The requirement is stated at § 273.18(p)(2)(i)(A) in this proposed rule.

10-year Limit

Current rules at 7 CFR 273.18(g)(5)(ii)(A)(*4*) require that claims submitted under FTROP must be 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. This rule proposes no changes in this requirement, which is stated at § 273.18(p)(2)(i)(B).

Voluntary Payments

As discussed above, this rule proposes to state at 7 CFR 273.18(i)(1)(i) that individuals in households subject to allotment reduction are not subject to involuntary collection by any other means. As also discussed above, this rule proposes at § 273.18(i)(1)(v) that collection via allotment reduction does not preclude additional collection methods being pursued against other liable individuals not currently members of a participating household. The Department wants to make clear how these policies apply to collection under FTROP. Accordingly, this rule proposes at § 273.18(p)(2)(i)(C) that claims submitted under FTROP cannot include any claim which is submitted for collection from an individual in a household which is subject to allotment reduction.

Bankruptcy

The current rule at 7 CFR 273.18(g)(5)(ii)(A)(*6*) specifies that claims for which collection is barred by a bankruptcy are not subject to FTROP. With the exception of redesignating this paragraph as § 273.18(p)(2)(i)(D), this rule proposes no change to this provision.

All Required Notices

The current rule at 7 CFR 273.18(g)(5)(ii)(A)(*7*) requires that for a claim to be subject to FTROP the State agency must have provided the individual all the notices required. FNS, not the State agency, provides one of those notices after the FNS decision on a request for a hearing. Accordingly, this rule would remove the reference to the State agency in the current criteria. Further this rule proposes that the criterion for referral under FTROP and FCCM would be that claims are subject to referral for which individuals have been provided the opportunities for review and the notifications specified in paragraphs (p)(2)(iii), (p)(2)(iv), and (p)(2)(v). (See § 273.18(p)(2)(i)(E).)

Combined Claims

Current rules at 7 CFR 273.18(g)(5)(ii)(B)(*2*) provide that 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 must be within the 10-year range and that claims reduced to judgment shall not be combined with claims which are not reduced to judgment. This rule proposes to retain this provision. (See § 273.18(p)(2)(ii).)

Proposed Changes in the General Requirements and Contents of the 60-day Notice

The proposed rule would combine the general requirements for 60-day notices and the requirements for contents of the notices (currently in paragraphs 7 CFR 273.18(g)(5) (iii) and (iv)) into a single paragraph, § 273.18(p)(2)(iii). The overall goal in this proposed rule is to enable a single 60-day notice to serve as notification for FTROP, FSOP, ADOP and any other FCCM. In addition, the rule proposes to delete several provisions which are obsolete or extraneous, and proposes to change certain provisions. These proposed deletions and changes are discussed in the following paragraphs. The Department believes that the 60-day notice will be most effective if State agency notices present the proposed required contents in the order they appear in the regulation.

Implementing Guidelines for 60-day Notices

Current rules at 7 CFR 273.18(g)(5)(iii)(A) specify requirements for 60-day notices related to implementing the current rule. That material is obsolete, and this rule proposes to delete it. For the same reason, this rule proposes to delete the last sentence of 7 CFR 273.18(g)(5)(iii)(B), and the introductory clause of 7 CFR 273.18(g)(5)(iv).

State Agency Records

Current rules at 7 CFR 273.18(g)(5)(iv)(A) require that the 60-day notice state that the State agency has records documenting that the individual, identified by name (and Social Security Number), is liable for a specified unpaid balance of a recipient claim resulting from overissued food stamp benefits. The Department believes that it is unnecessary for the 60-day notice to state that the State agency has records which they are required to develop in the course of establishing and acting on recipient claims. The Department presumes that State agencies have the necessary records to support their claims. Accordingly, the rule proposes to delete the language on this matter in the just cited paragraph.

One of the requirements in the amended DCA at 31 U.S.C. 3716(a) for collecting a claim by ADOP provides the debtor with the right to inspect and copy agency records relating to the claim. This right is covered under the fair hearing and administrative disqualification hearing procedures and is available to the debtor when the claim is initially established. Moreover, the debtor would be provided notice of this right under the notice requirements for demand letters as discussed previously in this proposed rule. The current regulations regarding fair hearings (7 CFR 273.15) and administrative disqualification hearings (7 CFR 273.16) are not affected by this proposed rule.

Previous Actions Taken

In the second sentence of 7 CFR 273.18(g)(5)(iv)(A), current rules require that the 60-day notice 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. This requirement was made to comply with the requirement in DEFRA that the (Federal) agency satisfy the Secretary of the Treasury that the agency has made reasonable efforts to obtain payment of the debt. (See 31 U.S.C. 3720A(b)(4).) The Department believes that this requirement is met by the requirement proposed in this rule and discussed above under which State agencies must pursue State agency collection methods before referring claims for collection through FCCM's. In addition, the Department does not believe that debtors need the information since they would have already received demand letters and other billing actions. Accordingly, this rule proposes to delete the language in question.

Statement on Joint Liability

Current rules at 7 CFR 273.18(g)(5)(iv)(D) require that the 60-day notice advise individuals that 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. The Department believes that questions about this policy are being effectively answered in telephone conversations between debtors and State agencies and that inclusion of the statement of the subject policy unnecessarily lengthens the 60-day notice. In addition, the initial notification of claim or demand letter would already include the jointly and severally language. Accordingly, this rule proposes to delete the currently required language on this matter from the 60-day notice.

Statement on Voluntary and Involuntary Payments

Current rules at 7 CFR 273.18(g)(5)(iv)(E) require that the 60-day notice state that State agency records do not show that the claim is being paid according to either a voluntary agreement or through scheduled, involuntary payments. The language in question was added to the 60-day notice in the rulemaking at 60 FR 45990–46001, dated September 1, 1995. The language was added in response to a public interest group's concern that debtors be informed of this policy.

As discussed above, this rule proposes allowing State agencies to pursue collection through FTROP, FSOP, ADOP and other FCCM's while pursuing other collection efforts except against individuals in households subject to allotment reduction. In addition, at § 273.18(p)(2)(i)(C) the rule would prohibit referring claims for FTROP collection from individuals subject to allotment reduction. Furthermore, in operating FSOP the Department has found that, in response to notices of intent issued under that collection procedure, debtors who are paying the claim call and advise FNS of that fact. The Department believes that the same issue can be resolved over the telephone between debtors and State agencies under FTROP. Accordingly, this rule proposes not to require the language currently required at 7 CFR 273.18(g)(5)(iv)(E).

Summary of Criteria

Current rules in paragraphs 7 CFR 273.18(g)(5)(iv)(I), (J) and (K) require that the 60-day notice include information intended to inform individuals about the criteria for claims which are subject to FTROP and what information they should provide to request a hearing on the intended collection action. These requirements were made in order to both assist individuals in understanding the intended collection action and to reduce State agency workload associated with telephone calls in response to 60-day notices. The Department does not believe that either of these purposes were achieved by the additional information, that individuals' continued to telephone State agencies and that their concerns were adequately dealt with through that form of communication. Accordingly, this rule proposes deleting the just cited paragraphs.

The Notice Would Advise

Current rules at 7 CFR 273.18(g)(5)(iii)(B) require that 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 must contain only the information specified in paragraph (g)(5)(iv). The Department believes that it is adequate to require that State agencies *advise* individuals of the required information. This approach should also provide State agencies flexibility in the design of 60-day notices and also facilitate their production. Accordingly, § 273.18(p)(2)(iii)(B) requires that the 60-day notice *advise* debtors of the matters listed in that paragraph.

Intent to Collect by Various Federal Collection Methodologies

The rule proposes at § 273.18(p)(2)(iii)(B)(*3*) to include in the 60-day notice ADOP, as one of the methodologies to which the debt is to be referred. The other methodologies which would utilize the same 60-day notice are FTROP, FSOP and any other FCCM.

Collection of the Federal Offset Fee

Current rules at 7 CFR 273.18(g)(5)(iv)(C) require that the 60-day notice state that if the State agency refers the claim to the IRS, a charge for the administrative cost of collection will be added to the claim and that amount will also be deducted if the claim, or any portion of the claim, is deducted from the debtor's tax refund. This rule proposes to modify this language to include the cost of any Federally imposed processing fee. (See § 273.18(p)(2)(iii)(B)(5).)

Citation of Authorities

The rule proposes to require language to the effect that collection through ADOP is authorized by the Debt Collection Act of 1982, as amended 31 U.S.C. 3701, and that the 60-day notice meets that statute's requirements for notice to debtors about ADOP. (See § 273.18(p)(2)(iii)(B)(*7*).)

Advice on Joint Tax Returns

Current rules at 7 CFR 273.18(g)(5)(iv)(H) require that the 60-day notice provide substantial guidance concerning jointly filed Federal income tax returns and offsets from tax refunds. The Department is concerned that some of the language may be inappropriately providing information about filing income tax returns. In addition, the Department wants to point out that IRS rules concerning FTROP at 26 CFR 301.6402–6(i) state that the IRS will advise non-debtor spouses of steps to take to protect their share of tax refunds and will refund to such persons such shares that are offset. Consequently, the Department believes that the proposed changes will not adversely affect spouses of debtors who are not liable for the overissued food stamp benefits. Accordingly, the rule proposes to require that 60-day notices advise debtors that, if they are filing a joint Federal income tax return, they may want to contact their local office of the IRS. (See § 273.18(p)(2)(iii)(B)(9).) In addition, this rule proposes to delete from the current required language the sentence discussing spousal liability. The rule also proposes to delete the sentence concerning liability for Treasury offset fees. The Department believes that the paragraph already required on Treasury offset fees information provides adequate information on this matter.

Statement of Compliance

Current rules at 7 CFR 273.18(g)(5)(iii)(B) require that in their annual certification letters State agencies include a statement that their 60-day notices conform to the content requirements of that paragraph. This rule proposes to require that State agencies include in their annual certification letter a statement that their 60-day notices comply with the requirements of § 273.18(p)(2)(iii)(B). (See § 273.18(p)(2)(iii)(C).)

Mailing Schedule

Current rules at 7 CFR 273.18(g)(5)(iii)(C) require that unless otherwise notified by FNS, 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. The date for such mailings in 1996 was September 1. The Department expects that September 1 will continue to be the mailing date for 60-day notices. Nonetheless, to avoid confusion on this point, the rule proposes to state that unless otherwise notified by FNS, the State agency shall mail 60-day notices for claims to be referred for collection through FTROP, FSOP, ADOP and other FCCM's according to the schedule provided by FNS. (See § 273.18(p)(2)(iii)(D).)

Deletion of October 31 Cutoff for Reviews

Current rules at 7 CFR 273.18(g)(5)(v)(E) provide that State agencies may not refer claims for which timely review requests are received unless by October 31 they have completed the review and notified the individual that the claim is past due and legally enforceable. This provision was necessary when 60-day notices were mailed on October 1 because of the length of time necessary to offer the opportunity for both State agency and FNS reviews during an annual processing cycle. Since 60-day notices are now mailed on September 1, and in the future may be mailed more frequently than annually, this requirement is now obsolete. This rule proposes to delete this requirement.

Incorporation of Administrative Offset

Current rules at 7 CFR 273.18(g)(5)(v) state the requirements for State agency action in response to debtor requests for review of intended collection action under FTROP. The Department believes that these requirements exceed the requirements for such action under ADOP. Accordingly, with the exception of appropriate references, this rule proposes no additional review procedures for ADOP or any other FCCM.

Notice of Potential Administrative Offset

Current rules at 7 CFR 273.18(g)(5)(v)(C)(2) require that when the State agency determines that a debt is past due and legally enforceable the State agency notice to the debtor advise the debtor that the State agency intends to refer the claim to Treasury for offset. This rule proposes to require that the notice of the State agency's decision state that the State agency intends to refer the claim for collection from the debtor's Federal income tax refund and/or from other payments which may be payable to the debtor by the Federal government.

No Referral for Federal Collection Pending FNS Review

Under current rules at 7 CFR 273.18(g)(5)(iv)(F), the 60-day notice provides debtors a 60-day period to request that the State agency review whether the claim in question is past due and legally enforceable. The State agency notice of its decision that a claim is past due and legally enforceable must advise the debtor that the debtor has 30 days to request that FNS review that decision. The notice must also advise the debtor that, pending FNS review, the debt will not be referred to Treasury for offset. The rule proposes to also require that such notices advise debtors that, pending the FNS decision, the claim will not be referred for collection from other payments which may be payable to the debtor by the Federal government.

Regional Office Address

Current rules at 7 CFR 273.18(g)(5)(v)(C)(4) require that the State agency notice to the debtor provide the appropriate FNS regional office address, including the phrase ''Tax Offset Review.'' To reflect that the review may pertain to ADOP situations, this rule proposes to change that phrase to ''Offset Review.''

FNS Action on Appeals of State Agency Reviews

Current rules at 7 CFR 273.18(g)(5)(vi) specify the actions which FNS will take in response to appeals of State agency review decisions. In several places in this section, this rule proposes to conform regulation citations to the proposed rule. In addition, this rule proposes to delete the clause in 7 CFR 273.18(g)(5)(v)(B) which sets the condition that the State agency's decision be dated on or before October 31, and to delete paragraph (g)(5)(v)(C). That paragraph currently provides that for timely requests for FNS review of State agency decisions made after

October 31, FNS will complete its review but the claim cannot be referred under FTROP. The clause and the paragraph coordinated with the October 31 cut-off discussed just above are also obsolete because, under an annual processing cycle, the 60-day notices are being mailed September 1. All review requests which FNS receives on State agency decisions will be acted on. Current rules provide at 7 CFR 273.18(g)(5)(v)(B)(*2*) that FNS will advise the State agency if it does not complete its review and the claim must be deleted from the certified files. This rule would not change that provision.

Referral of Claims for Offset

Current rules at 7 CFR 273.18(g)(5)(vii) specify requirements for State agency submission of claims under FTROP and the requirements for the letter certifying that the claims submitted meet the criteria for collection under FTROP. This rule proposes several changes in this paragraph, which is § 273.18(p)(2)(vi) in the proposed rule.

The rule proposes to add to the first sentence of the current 7 CFR 273.18(g)(5)(vii)(A) a reference to administrative offset and to change the paragraph reference to conform to the paragraph in the proposed rule.

The rest of current rules at 7 CFR 273.18(g)(5)(vii)(A) relate to the certification letter. The proposed rule would put this material in a new paragraph, itemize the required contents as subparts of that paragraph, change the references to conform to the paragraphs in the proposed rule, and make editorial changes.

Section 273.18(g)(5)(vii)(A) requires State agencies to submit certification letters to FNS regional offices. State agencies have found this instruction confusing, some sending the letter with their data files, some sending it to regional offices. The rule proposes to require that State agencies submit the letter according to FNS instructions. FNS plans to direct that the certification letters be sent to FNS headquarters with, or at the same time as certified files and to provide in those instructions a specific address for the letter. Also, the requirement for the statement on the conformance of the 60-day notice would be changed to reflect the new requirement discussed earlier in this preamble. Finally, the requirement currently at 7 CFR 273.18(g)(5)(vii)(B) that State agencies include in their certification letter how they determined that the information about the State agency contact for debtors is accurate would be included in the list of required contents for the certification letter.

Current rules at 7 CFR 273.18(g)(5)(vii)(B) require that the State agency provide to FNS the name, address and toll-free or collect telephone numbers of State agency contacts to be included in Treasury notices of offset, and provide FNS updates of that information if and when that information changes. The rule proposes to modify this requirement with a reference to FNS instructions. FNS intends to include such instructions in the expanded Revenue Manual.

State Agency Actions on Offsets Made

Current rules at 7 CFR 273.18(g)(5)(viii)(A) specify requirements for State agency actions on offsets made. For the reasons discussed in the following paragraph, this rule proposes to delete this section because its contents repeat requirements which this rule proposes to make elsewhere.

First, current rules at 7 CFR 273.18(g)(5)(viii)(A) require that State agencies notify debtors about offsets. This rule proposes at § 273.18(o)(4) to require that State agencies keep debtors advised of the status of their claims. Also, the Federal agency from whose payment the debt is offset would advise the debtor of the offset.

Second, current rules at 7 CFR 273.18(g)(5)(viii)(B) require prompt refunds for over collections due to offsets from Federal income tax refunds. As already discussed, this rule proposes at § 273.18(j) to require that State agencies promptly refund all over collections of recipient claims regardless of the source of the over collection.

Third, current rules at 7 CFR 273.18(g)(5)(viii)(C) address several matters relating to over collection and refund situations due to State agency error and Treasury reversals of offsets. FNS periodically issues procedural guidelines on these and related matters and plans to continue to address such matters in the FCCM Manual discussed above in this preamble.

Monitoring and Reporting Offset Activities

Current rules at 7 CFR 273.18(g)(5)(ix) specify several requirements for State agency reporting on offset activities. As discussed in the following paragraphs, this rule proposes to delete several of those requirements because this rule would state the requirements elsewhere. The section would be renamed ''Reporting FTROP and ADOP activities.''

As already discussed, this rule proposes to make a general requirement for the updating of files for FCCM's. Accordingly, this rule proposes to delete paragraph (g)(5)(ix)(A). Paragraph (B) of the section in question repeats the requirement for prompt refunds of over collections. This rule proposes to delete it for reasons discussed earlier in this preamble. Paragraph (E) of the section in question reiterates the requirement that State agencies report collections as required for all recipient claims collection. The rule proposes to delete this restatement.

Current rules at 7 CFR 273.18(g)(5)(ix)(C) require that State agencies annually report on 60-day notices no later than the tenth of October. This rule proposes to require that State agencies make that report no later than the ten days after mailing 60-day notices. In paragraph (g)(5)(ix)(D), this rule proposes to delete the reference to the IRS. The rule proposes to require that State agencies report on 60-day notices, data security and voluntary payments according to instructions in the FCCM manual.

Federal Salary Offset Program (FSOP)

In addition to proposing changes in the requirements for FSOP which are intended to reduce workload on State agencies and to eliminate provisions of the current rule which are extraneous, this rule proposes to reorder several paragraphs of this regulations pertaining to FSOP. Also, whenever possible, the Department's goal is to allow State agencies to combine FSOP activities with FTROP, ADOP, and other FCCM activities.

Claims Subject to FSOP

Current rules at 7 CFR 273.18(g)(6)(i) state that all claims submitted under FTROP are subject to the salary offset match and that all individuals identified in the match are subject to FSOP procedures. As discussed earlier in this preamble, this rule proposes to require that State agencies submit all appropriate claims for collection under FCCM's thereby combining the FSOP advance notice with the FTROP and ADOP 60-day notice. Accordingly, this rule proposes to delete this paragraph as redundant.

Supplemental Information

Current rules at 7 CFR 273.18(g)(6)(iii)(C)(*1*) specify certain information which State agencies are encouraged to include in their advance notices. The Department believes that including such information may improve the credibility of the advance notice, but since the Department does not want to require that the information be included in the advance notice, this

rule proposes to delete the subject language.

Notice of Review Decision

Current rules at 7 CFR 273.18(g)(6)(iii)(C)(*5*) require that the advance notice state that the State agency will notify debtors in writing when, due to a review decision, claims will not be referred for collection from salaries. The Department does not believe that the advance notice needs to advise debtors about the requirements for State agency notification of review decisions. Accordingly, this rule proposes to delete the requirement for language on this matter from the advance notice.

Notice of Right to a Federal-level Hearing

Current rules at 7 CFR 273.18(g)(6)(iii)(C)(*5*) also require that the advance notice state: (1) that debtors have the right to a formal appeal to FNS; and (2) that notification about how to make such appeals is required and will be provided to debtors before any collection action from salaries is taken. The Department believes that the notice of intent which is provided to debtors prior to referral of claims for collection from Federal salaries provides adequate notice of the right to a hearing and related matters. Accordingly, this rule proposes to delete the requirement that the advance notice provide information about such matters.

Reporting

Current rules at 7 CFR 273.18(g)(6)(iv)(A) specify requirements for State agency retention of collections, reporting and about how FNS will report and transfer collections to State agencies. For the reasons discussed earlier in this preamble in relation to the proposed deletion of these same requirements for FTROP, this rule proposes to delete this paragraph.

FNS Recipient Claims Matching Procedures

Current rules at 7 CFR 273.18(g)(6)(ii)(A) describe certain FNS recipient claims matching procedures. This rule would include this material unchanged at § 273.18(p)(3)(i).

Security and Confidentiality

Current rules at 7 CFR 273.18(g)(6)(ii)(B) require that State agencies return security and confidentiality agreements prior to receiving information about Federal employees identified as subject to FSOP. This rule would include this material unchanged at § 273.18(p)(3)(ii).

Except for conforming references to this proposed rule, no changes are proposed for current rules requiring security and confidentiality agreements from State agencies as a condition for receiving FSOP debt information currently at 7 CFR 273.18(g)(6)(iii)(A). (See § 273.18(p)(3)(iii).)

Review of Claim Status

Current rules at 7 CFR 273.18(g)(6)(ii)(D) require that prior to taking any action to collect recipient claims under FSOP, State agencies must review records to verify the amount owed, and to remove claims which have been paid, which are being paid according to an agreed to schedule, or which for other reasons are not collectible. This requirement remains essentially unchanged in this proposed rule. (See § 273.18(p)(3)(iv).)

Advance Notices

Current rules at 7 CFR 273.18(g)(6)(iii) specify the requirements for State agency advance notices to Federal employees. This rule proposes to modify those requirements based on the requirements of DCIA and combine the FSOP advance notice with 60-day notice proposed in this rule, and to conform references to the proposed rule.

Current rules at 7 CFR 273.18(g)(6)(iii)(B) prescribe procedures for referring salary offset claims to FNS following State agency efforts to collect them through advance notices. This rule proposes to place this material after the requirements for the contents of the notice. This rule proposes to reduce the documentation required for FSOP claims referred to FNS. The rule also proposes to move the requirements for referring defaulted claims and to specify that such referrals must include the same documentation as claims referred to FNS because of no timely or adequate response to the advance notice. (See § 273.18(p)(3)(vii).)

Current rules at 7 CFR 273.18(g)(6)(iii)(C) state the requirements for the contents of the advance notice. This rule proposes to require that the notice *advise* debtors of certain matters.

Current rules at 7 CFR 273.18(g)(6)(iii)(C)(*1*) require that the advance notice state that according to State agency records the debtor is liable for a claim for a specified dollar amount due to receiving excess food stamp benefits. This rule proposes to require that the notice advise debtors of what State agency records indicate is their name and SSN and that they are liable for a specified unpaid balance of a recipient claim resulting from overissued food stamp benefits. (See § 273.18(p)(3)(v)(B)(*1*) and (*2*).)

Current rules at 7 CFR 273.18(g)(6)(iii)(C)(*2*) and the first sentence of 7 CFR 273.18(g)(6)(iii)(C)(*3*) discuss procedure and authorities related to FSOP. This rule proposes to modify this material and add the citation of the authority for collection through ADOP. (See § 273.18(p)(3)(v)(B)(*7*).)

Voluntary Payment

Current rules in the second sentence of 7 CFR 273.18(g)(6)(iii)(C)(*3*) and in the rest of that paragraph specify that the advance notice must state that the claim will be referred to FNS for collection from the debtor's Federal salary unless it is paid in full within 30 days or in installments of $50 if the claim was greater than $50. The Department specified an installment structure for FSOP claims with the intent to relieve State agencies of the need to negotiate with debtors. Experience with FSOP indicates that the installment structure did not help in this regard. State agencies often preferred to have the discretion to negotiate a payment schedule with debtors. Accordingly, this rule proposes to provide this flexibility and to incorporate a notice that the claim is subject to administrative offset. Accordingly, § 273.18(p)(3)(v)(B)(*3*) would require that the advance notice advise the debtor that unless the debtor pays the claim within 30 days of the date of the notice or makes other repayment arrangements acceptable to the State agency, the State agency intends to refer the claim for collection from his or her salary and/or by administrative offset from other Federal payments which may be payable to the debtor.

Current rules at 7 CFR 273.18(g)(6)(iii)(C)(*4*) require that the advance notice include 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. As in the case of the FTROP 60-day notice, this rule proposes to require that the advance notice advise debtors that to pay the claim voluntarily or to discuss it, the debtor should contact the State agency. The advance notice would also be required to include the name of the State agency contact for this purpose (such as an office, administrative unit and/or individual), the contact's street address or post office box, and a toll-free or collect telephone number for that contact.

Current rules at 7 CFR 273.18(g)(6)(iii)(C)(*5*) state the required

contents for the advance notice with respect to the debtors' rights for review of the intended collection action under FSOP. The second sentence of that paragraph requires that the advance notice state that unless the State agency receives documentation that the claim is not collectible within 30 calendar days the State agency will refer the claim to FNS for collection from the debtor's salary. This rule proposes to replace that sentence with the requirement that the advance notice advise debtors that the State agency must receive the documentation within 30 days at the address provided in the notice, that the debtor should provide his or her SSN and that the claim will not be referred for collection from the debtor's Federal salary of other Federal payments pending the State agency's review of that documentation. This rule also proposes to add the requirement that the advance notice advise debtors that a claim is not collectible if a bankruptcy filing prevents collection of the claim. (See § 273.18(p)(3)(v)(B)(*5*).)

The Department believes that State agencies should notify debtors of their decision either to refer or not to refer the claim for collection. Accordingly, this rule proposes to require at § 273.18(p)(3)(vi) that State agencies notify debtors in writing of decisions on documentation submitted concerning payments and other matters relating to the collection of claims under FSOP and ADOP.

FNS Action on Claims Referred by State Agencies

Current rules at 7 CFR 273.18(g)(6)(v) specify pertinent matters relating to FNS actions on FSOP claims referred by State agencies. This rule proposes no change in that paragraph except to conform the references in the introductory sentence of 7 CFR 273.18(g)(6)(v) to the paragraphs in this proposed rule and to specify that the notice of intent would advise debtors that their recipient claim is subject to collection through administrative offset as well as from their Federal salary, and to cite the authority for that collection action, the DCA, as amended, 31 U.S.C. 3701.

Administrative Offset Program (ADOP)

As discussed in several places earlier in this preamble, this rule proposes that claims submitted under FTROP and FSOP, but not collected under those programs, would be subject to collection through ADOP from other Federal payments otherwise due debtors. Due process notices for ADOP would have been provided through separate FTROP and FSOP notices or through a combined notice which would include FTROP, FSOP, ADOP or any other FCCM. State agencies would not need to re-submit those claims for ADOP. State agencies would need to keep their balances updated to avoid over-collections. (See § 273.18(p)(4).)

Implementation

The PRWORA set the date of enactment, August 22, 1996, as the effective date for the provisions of the law relating to recipient claims. In response, the Department, on August 26, 1996, issued an implementation memorandum stating that these provisions are to be implemented no later than September 22, 1996.

The Department proposes that State agencies implement the discretionary aspects of these regulations no later than the first day of the month 180 days after the publication of the final rule. This should provide sufficient time to amend food stamp handbooks, demand letters and forms, make any necessary changes in data processing systems and administrative procedures, and train affected State and local agency staff.

List of Subjects

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, Employment, Food stamps, Fraud, Government employees, Grant programs—social programs, Income taxes, Penalties, Reporting and recordkeeping requirements, Social security, Students, Supplemental Security Income (SSI), Wages.

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

1. The authority citation for Parts 272 and 273 continues to read as follows:

Authority: 7 U.S.C. 2011–2032.

PART 272—REQUIREMENTS FOR PARTICIPATING STATE AGENCIES

§ 272.2 [Amended]

2. In § 272.2:

a. Paragraph (a)(2) is amended by removing the last sentence; and

b. Paragraph (d)(1)(xii) is removed.

§ 272.12 [Removed]

3. § 272.12 is removed.

PART 273—CERTIFICATION OF ELIGIBLE HOUSEHOLDS

4. In § 273.2, paragraph (b)(4) is added to read as follows:

§ 273.2 Application processing.

* * * * *

(b) *Food stamp application form.*

* * *

(4) *Privacy Act statement.* At the time of application and at each recertification through a written statement on or provided with the application form, all applicants for food stamp benefits shall be notified of the following:

(i) The collection of this information, including the social security number (SSN) of each household member, is authorized under the Food Stamp Act of 1977 (7 U.S.C. 2011 et seq.) The information will be used to determine whether your household is eligible or continually eligible to participate in the Food Stamp Program and may be subject to verification through computer matching programs. This information will also be used to monitor compliance with program regulations and for program management.

(ii) This information may be disclosed to other Federal assistance programs or federally assisted State programs, to the Comptroller General of the United States for authorized audit and examination purposes and to Federal, State and local law enforcement officials for the purpose of apprehending persons fleeing to avoid prosecution, custody or confinement or to a court, magistrate, or administrative tribunal when required in civil or criminal proceedings.

(iii) If a claim arises against your household as a result of participation in the Food Stamp Program, the information you provide, including the SSN of each member of your household, may be referred to Federal and State agencies, as well as private claims collection agencies, for claims collection action, including but not limited to administrative offset, and to the Department of Justice for litigation.

(iv) The providing of the requested information, including the SSN of each household member, is voluntary. However, failure to provide this information will result in the denial of food stamp benefits to your household.

* * * * *

5. § 273.18 is revised to read as follows:

§ 273.18 Claims against households.

(a) *Responsibility for recovering overpayments*—(1) *Household and individual liability.* (i) All adult household members shall be jointly and severally liable for the value of any overissuance of benefits to the household. All adult household members shall also be responsible for the amount of any claim established for the trafficking of benefits.

(ii) Any sponsor of an alien and the alien's household shall be jointly and severally liable for the value of any benefits overissued as a result of incorrect information being provided by the sponsor. However, if the alien's sponsor had good cause or was without fault, the alien's household shall be solely liable for repayment of the overissuance.

(2) *State agency responsibility.* (i) Unless specified under paragraph (g)(2) of this section, the State agency shall establish a claim against:

(A) Any participating household (including former adult members) or non-participating household that has trafficked benefits or received more food stamp benefits than it was entitled to receive; and

(B) Any household which contains an adult member who was an adult member of another household that trafficked benefits or received more food stamp benefits than it was entitled to receive.

(ii) Even though the establishment and collection of food stamp recipient claims are delegated to State agencies, these debts shall remain Federal debts subject only to this and other regulations governing Federal debts.

(b) *Intentional program violation (IPV) claims.* An IPV is defined in § 273.16(c). A claim shall be handled as an IPV claim only if one of the following occurs:

(1) A court of appropriate jurisdiction has determined that a household member has committed an IPV.

(2) A household member was determined at an administrative disqualification hearing to have committed an IPV.

(3) A household member signs a disqualification consent agreement for a suspected IPV referred for prosecution.

(4) A household member signs a waiver of his/her right to an administrative disqualification hearing.

(c) *Inadvertent household error (IHE) claims.* A claim shall be handled as an IHE claim if the overissuance or recipient misuse incident was caused by a misunderstanding or unintended error on the part of the household. In addition, at the option of the State agency, a potential IPV may be handled as an IHE claim prior to the determination of IPV.

(d) *Agency error (AE) claims.* (1) A claim shall be handled as an AE claim if the overissuance was caused by an action or failure to take action by the State agency.

(2) The State agency shall take action to establish a claim against any household that received an overissuance due to a State agency error. No recipient claim shall be established if an overissuance occurred as a result of the household transacting an expired Authorization to Participate card (ATP), unless the household altered its ATP.

(e) *Calculating the claim amount*—(1) *Non-trafficking claims.* A claim that is not related to trafficking shall be calculated incorporating all of the following:

(i) For each month that a household received an overissuance, the State agency shall determine the correct amount of food stamp benefits, if any, the household was entitled to receive.

(ii) The amount of correct benefits, if any, and the resulting claim shall be, at a minimum, calculated back to twelve months prior to the date of discovery. For an IPV claim, the resulting claim shall be calculated back to the month the act of IPV occurred. However, for any claim, the State agency shall not include in its calculation any amount of the overissuance that occurred in a month more than six years from the discovery date. The discovery date is defined in paragraph (g)(2) of this section.

(iii) In calculating an IPV or IHE claim involving unreported earned income, the State agency shall not apply the earned income deduction to that part of any earned income which the household failed to report in a timely manner when this act was the basis for the claim.

(iv) If the household received a larger allotment than it was entitled to receive, the State agency shall establish a claim against the household as follows:

(A) The allotment that the household should have received is subtracted from the allotment the household actually received.

(B) This amount is then reduced by any EBT benefits expunged from the household's EBT benefit account (up to the amount of the claim) that have not previously been applied to any other claim. The difference is the amount of the claim.

(v) For categorically eligible households, an IHE or AE claim shall only be calculated and established when it can be computed on the basis of a change in net income and/or household size.

(2) *Trafficking-related claims.* Claims arising from trafficking-related offenses shall be the value of the trafficked benefits as determined by: the individual's admission; adjudication; or the documentation which forms the basis for the trafficking determination.

(f) *Claim referral, establishment and backlog prevention.* (1) State agencies shall establish a claim before the last day of the quarter following the quarter in which the overissuance was discovered. For example, if the date of discovery, as defined in paragraph (f)(2) of this section, is in October, November, or December, the last day to timely establish the claim shall be March 31 of the following calendar year.

(2) The ''date of discovery,'' for the purposes of this section, shall be the date the potential claim is initially detected as a possible overissuance by the State agency. The State agency shall annotate the date of discovery for each claim referral in the appropriate case/claim file or claim tracking system.

(3) The ''date of establishment,'' for the purposes of this section, shall be the date that the initial claim notification or demand letter, as described in paragraph (g)(3) of this section, is sent to the household. The State agency shall annotate the date of establishment for each claim referral in the appropriate case/claim file or claim tracking system.

(4) State agencies shall ensure that no less than 90 percent of all claim referrals are either established or, if warranted, disposed of within the time frame established in paragraph (f)(1) of this section.

(g) *Initiating collection action and managing claims*—(1) *Applicability.* State agencies shall initiate collection action on all claims unless the conditions under paragraph (g)(2) of this section apply.

(2) *Pre-establishment cost effectiveness determination.* A State agency may opt not to pursue the establishment of any claim and subsequent collection of the overissuance if the pursuit is determined not to be cost effective by using either of the following methodologies:

(i) *State-agency developed methodology for cost-effectiveness determination.* A State agency may adopt its own procedure, threshold, and/or methodology for use in determining whether to pursue the establishment of any claim and subsequent collection of the overissuance. State agencies shall obtain prior approval from FNS for use of this procedure, threshold, and/or methodology.

(ii) *FNS threshold for establishing and collecting overissuances.* (A) Unless prohibited by paragraph (g)(2)(ii)(C) of this section, a State agency may utilize the claims threshold as defined in paragraph (g)(2)(ii)(B) of this section in determining whether to pursue the establishment of any claim and collection of the subsequent overissuance.

(B) The FNS threshold for establishing a claim and pursuing collection from an

overissuance is the maximum dollar amount of a claim or claim referral that a State agency may decide not to pursue solely based on the amount of the referral. The threshold is equal to $125.

(C) A State agency shall not apply this threshold to overissuances which may be collected by reducing the allotment of the household. This threshold also does not apply to overissuances which have already been established as claims.

(3) *Notification of Claim.* (i) Each State agency shall develop and mail or otherwise deliver to the household written notification to initiate collection action on any claim. The written notification or demand letter shall contain the information required by paragraphs (g)(3)(iii), (g)(3)(iv) and (g)(3)(v) of this section. Subsequent demand letters or notices may be sent at periodic intervals at the discretion of the State agency.

(ii) The claim shall be considered established for tracking and reporting purposes as of the date of the initial written notification or demand letter.

(iii) If the claim or the amount of the claim was not established at a hearing, the State agency shall provide the household with a one-time notice of adverse action as part of or along with the initial demand letter/notification of claim. The notice of adverse action shall contain a statement that informs the household that it has 90 days to request a fair hearing on the claim.

(iv) The demand letter or accompanying notice of adverse action shall inform the household of the following:

(A) The type and amount of the claim, the intent to collect the claim from all adults in the household when the claim occurred; the intent to collect the claim, if not paid, by referral to other agencies, including private collection agencies, for the purposes of various claim collection methods;

(B) The opportunity to inspect and copy records related to the claim;

(C) Unless the amount of the claim was established at a hearing, the opportunity for a fair hearing on the decision related to the claim;

(D) The opportunity to make a written agreement to repay the amount of the claim prior to the claim being referred to Federal tax refund offset, Federal salary offset, Federal administrative offset or other Federal claims collection actions; and

(E) That, if the claim becomes delinquent, the household may be subject to additional processing charges and the claim may be referred to the Department of Justice for litigation.

(v) The demand letter for any claim shall contain a due date for the submission of full repayment of the claim unless the State agency determines that allotment reduction will be invoked to repay the claim of a participating household. The due date shall be not later than 30 days after the date of the initial written notification or demand letter.

(4) *Due dates for repayment agreements.* (i) Any repayment agreement for any claim shall contain due dates for the periodic submission of payments.

(ii) The agreement shall specify that the household shall be subject to involuntary collection action(s) if payment is not received by the due date and the claim becomes delinquent.

(5) *Time frames and delinquency.* (i) Unless specified in either paragraph (g)(6)(iv) or (g)(7)(i) of this section, any claim shall be considered delinquent if either of the following occurs:

(A) The claim has not been paid by the due date and a satisfactory payment arrangement has not been made.

(B) A satisfactory payment arrangement has been made for the claim and payment has not been received by the due date specified in the established repayment schedule.

(ii) The date of delinquency for a claim covered under paragraph (g)(5)(i)(A) of this section is the due date on the initial written notification/ demand letter. The claim shall remain delinquent until payment is received in full, a satisfactory payment agreement is negotiated, or allotment reduction is invoked.

(iii) The date of delinquency for a claim covered under paragraph (g)(5)(i)(B) of this section is the due date of the missed installment payment. The claim shall remain delinquent until payment is received in full, allotment reduction is invoked, or, at the State agency's option, a new repayment schedule is negotiated.

(iv) A claim shall not be considered delinquent if another claim for the same household is currently being paid either through an installment agreement or allotment reduction and the State agency expects to begin collection on the claim once the prior claim(s) is settled. A claim may also not be considered delinquent if it is an IPV where collection is coordinated through the court system and the State agency has limited control over collection action.

(6) *Fair hearings and claims.* (i) Once a household timely requests a fair hearing on the existence or amount of the claim, all attempts by the State agency to collect the claim shall cease. A claim awaiting a fair hearing decision shall not be considered delinquent.

(ii) If the hearing official determines that a claim does, in fact, exist against the household, the household shall be sent another demand letter. The State agency may combine the demand letter with the notice of the hearing decision. Delinquency, as determined in paragraph (g)(6) of this section, shall be based on the due date of this subsequent demand letter and not on the initial pre-hearing demand letter sent to the household.

(iii) If the hearing official determines that a claim does not exist, the claim is disposed of in accordance with paragraph (g)(8) of this section.

(7) *Compromising claims.* (i) A State agency may compromise a claim or any portion of a claim if it can be reasonably determined that a household's economic circumstances dictate that the claim will not be settled in three years.

(ii) The authority to compromise is limited to claims under $20,000.

(iii) A State agency may use the full amount of the claim (including any amount compromised) to offset benefits in accordance with § 273.17.

(iv) If the claim becomes delinquent, any compromised portion of that claim shall be reinstated to the claim balance.

(8) *Terminating and writing-off claims*—(i) A ''terminated claim'' is a claim in which all collection action has ceased. A ''written-off claim'' is a claim which is no longer considered a receivable subject to continued Federal and State agency collection and reporting requirements. All claims that are terminated shall be immediately written-off. If additional collection methodologies are developed in the future, State agencies may reinstate terminated claims.

(ii) State agencies shall terminate any claim if the claim meets one of the following criteria:

(A) The claim is found to be invalid in a fair hearing, administrative disqualification hearing or court determination. Collection efforts shall be pursued, however, if it is established at the hearing or in court that an overissuance did, in fact, occur. In instances where the court or hearing official determines that the act causing the overissuance was not intentional, the claim would continue to be pursued as an IHE or AE claim.

(B) It is discovered that all adult household members have died and the State agency is not planning to pursue collection from the estate.

(C) The claim has an outstanding balance of $25 or less and has been delinquent for 90 days or more.

(D) Any claim which the State agency has determined is not cost effective to pursue further collection activity. The

State cost-effectiveness criteria is subject to prior FNS approval.

(E) The claim has been delinquent for three years or more. The State agency may opt not to terminate the claim if prior collections have been realized through Federal or state tax refund offset, salary offset or any other similar collection mechanism.

(h) *Acceptable forms of payment*—(1) *Allotment reduction.* State agencies may collect claims as specified in paragraph (i)(1) of this section by reducing a household's benefits prior to issuance.

(2) *Cash and its equivalents.* (i) A State agency may accept payment for claims in cash or in any of its generally accepted equivalents. This includes check and money order. In addition, a State agency may accept payments with credit and/or debit cards if the State agency has the capability to accept such payments. Collections made using intercepts such as wage garnishment and tax offset are considered ''cash'' for FNS claim accounting and reporting purposes.

(ii) When an unspecified joint collection is received for a combined public assistance/food stamp recipient claim, each program shall receive its pro rata share of the amount collected.

(3) *Paper food coupons.* Households may pay claims using paper food coupons. If coupon books collected from households as payment for claims are returned intact and in usable form, the State agency may return them to coupon inventory. The State agency shall destroy any coupons or coupon books which are not returned to inventory and document as appropriate.

(4) *Benefits from electronic benefit transfer (EBT) accounts.* (i) State agencies shall allow a household to pay its claim using benefits from its active food stamp EBT benefit account.

(ii) Payments shall be accepted from inactive or stale EBT benefit accounts once the account is reactivated at the request of the household.

(iii) The State agency shall secure and retain documentation from the household authorizing a collection from an active or reactivated EBT benefit account.

(iv) A collection using EBT benefits shall be considered a non-cash collection and corresponding funds shall not be drawn from the Federal EBT benefit account by the State agency when this type of collection is made.

(v) In instances where the benefits are expunged and the State agency was unable to make the adjustment as outlined in paragraph (e)(1)(iv)(B) of this section when calculating the claim, the State agency shall adjust the amount of the claim by subtracting the amount expunged from the claim balance. These adjustments shall not be considered collections and the retention amounts in paragraph (m) of this section shall not apply to these transactions.

(i) *Collection methods*—(1) *Allotment reduction.* (i) Except as specified in paragraph (i)(1)(iv) of this section and upon notification as specified in paragraph (g)(3) of this section, the State agency shall automatically collect payments for any claim by reducing the amount of monthly benefits that a household receives from any participating household that contains an individual liable for that claim. Individuals in households which are subject to allotment reduction shall not be subject to involuntary collection by any other means.

(ii) For IPV claims, unless the household agrees to a higher amount, the amount of benefits to be recovered each month through allotment reduction shall be the greater of 20 percent of the household's monthly allotment/entitlement or $20 per month. The State agency has the option to base this amount on either the actual allotment or entitlement as long as this calculation is handled the same in all areas of the State.

(iii) For IHE and AE claims, unless the household agrees to a higher amount, the amount of benefits to be recovered each month through allotment reduction shall be the greater of 10 percent of the household's monthly allotment or $10 per month.

(iv) At the time the household is certified and receives an initial allotment, the initial allotment shall not be reduced to offset a claim.

(v) Collection via allotment reduction does not preclude the State agency from pursuing additional collections methods against any individual severely liable for payment of the claim who is not currently a member of a participating household.

(2) *Offsets to restored benefits.* State agencies shall immediately offset any restored benefits owed to the household by the amount of any outstanding claim. This is to be accomplished at any time during the claim establishment and collection process.

(3) *Lump sum payments.* State agencies shall accept any payment for a claim whether it represents full or partial payment. State agencies may accept payments in any of the acceptable formats.

(4) *Installment payments.* (i) State agencies may accept installment payments made for a claim as part of a negotiated repayment agreement.

(ii) Households failing to submit payment in accordance with the terms of the negotiated repayment schedule are considered delinquent and shall be subject to additional collection actions.

(5) *Intercept of unemployment compensation benefits.* (i) A State agency may, at its option, arrange for the intercept of unemployment compensation benefits for the collection of any claim.

(ii) A State agency may also attempt to recover claims from liable individuals by obtaining a writ, order, summons, or other similar process in the nature of garnishment from a court of competent jurisdiction to require the withholding of amounts from unemployment compensation.

(iii) Collections made by this method shall be treated as ''cash'' payments as described in paragraph (h)(2) of this section. This collection option may be included as part of a repayment agreement.

(6) *Other collection actions.* State agencies may employ any other collection actions to collect claims. These actions include, but are not limited to, referrals to collection and/or other similar private and public sector agencies, state tax refund and lottery offsets, wage garnishments, property liens and small claims court.

(7) *Coordination with Federal claims collection methods.* State agencies may continue collection efforts on claims as specified in this paragraph (i) after submitting such claims for collection as specified in paragraph (p) of this section.

(j) *Overpaid claims.* If a household has overpaid a claim, the State agency shall provide a refund for the overpaid amount as soon as possible after the overpayment becomes known. The household shall be paid by whatever method the State agency deems appropriate considering the household's circumstances.

(k) *Interstate claims collection.* (1) Unless a transfer occurs as outlined in paragraphs (k)(3) and (k)(4) of this section, a State agency remains responsible for initiating and continuing collection action on any food stamp claim regardless of whether the household remains in its jurisdiction.

(2) A State agency must respond within 30 days to inquiries concerning household participation received from another State agency if the agency has reason to believe that a household with an outstanding claim has relocated to that State.

(3) A State agency must accept the responsibility for collecting the remaining balance of any claim from another State agency if it is discovered that a relocated household with a claim

is receiving food stamp benefits in the receiving State agency's jurisdiction.

(4) A State agency may, but is not required to, accept the responsibility for collecting the remaining balance of any claim from another State agency if it is discovered that the relocated household is residing in but not receiving food stamp benefits in the receiving State agency's jurisdiction.

(l) *Claims discharged through bankruptcy.* State agencies shall act on behalf of, and as, FNS in any bankruptcy proceeding against bankrupt households with outstanding recipient claims. State agencies shall possess any rights, priorities, interests, liens or privileges, and shall participate in any distribution of assets, to the same extent as FNS. Acting as FNS, State agencies shall have the power and authority to file objections to discharge, proofs of claims, exceptions to discharge, petitions for revocation of discharge, and any other documents, motions or objections which are appropriate under the circumstances. Any amounts collected under this authority shall be transmitted to FNS as provided in paragraph (n) of this section.

(m) *Retention rates.* (1) The State agency shall retain 20 percent of the value of IHE claims collected and 35 percent of the value of IPV claims collected. In addition, the State agency shall retain a total of 35 percent of the value of IHE claims collected via unemployment compensation benefit withholdings. These retention rates shall apply for claims and delinquent claims collection charges collected by the State agency, including the value of allotment reductions for the purpose of collecting claims but not reductions in benefits due to disqualification.

(2) The State agency shall not retain any percentage of the value of AE claims collected.

(n) *Submission of payments to FNS.* The State agency shall submit the value of funds collected for IHE, IPV or AE claims in accordance with instructions issued by FNS. Any payment to State agencies for claims collection retention must be made by electronic funds transfer.

(o) *Accounting procedures.* Each State agency shall be responsible for maintaining an accounting system for monitoring recipient claims against households. This accounting system shall consist of both the system of records maintained for individual debtors and the accounts receivable summary data maintained for these debts. At a minimum, the accounting system shall readily accomplish the following:

(1) Document the date of discovery, the circumstances which resulted in a claim, the procedures used to calculate the claim, the date of establishment, the methods used to collect the claim, delinquent claim collection charges, and the circumstances which resulted in the final disposition of the claim.

(2) Identify those situations in which an amount not yet restored to a household can be used to offset a claim owed by the household.

(3) Identify those households whose claims have become delinquent either by not responding to the demand letter or failing to make an installment payment on their claim.

(4) Document how much money was collected in payment of a claim and periodically advise households of the status of their claim balances.

(5) Identify at certification households with outstanding claims.

(6) Produce and accurately support balances in collections and outstanding liabilities for the recipient claims established.

(7) At an interval determined by FNS, produce summary reports of the funds collected, the amount submitted to FNS, the claims established and terminated, the delinquent claims collection charges, the uncollected balance and the delinquency of the unpaid debt.

(8) On a quarterly basis, unless otherwise directed by FNS, reconcile summary balances reported to individual supporting records.

(p) *Federal claim collection methods (FCCM's)*—(1) *General.* Federal claim collection methods (FCCM's) include the Federal Income Tax Refund Offset Program (FTROP), the Federal Salary Offset Program (FSOP) and the Administrative Offset Program (ADOP) specified in this paragraph (p). Under procedures for FCCM's, State agencies are responsible for the recipient claim actions required in § 273.18, including the due process and related actions specified in this paragraph (p). For claims offset under FCCM's, State agencies receive the percentage of such collections specified in paragraph (m) of this section.

(i) *Claims subject to FCCM's.* (A) All claims shall be subject to collection by FCCM's only after the State agency has initiated one or more collection methods specified in paragraph (i) of this section. The requirement for a prior collection effort shall not apply when, as indicated by such evidence as demand letters returned as undeliverable, no liable individual can be located.

(B) State agencies shall submit all claims subject to collection by FCCM's as required in paragraph (p) of this section.

(ii) *Procedures and schedules.* State agencies shall submit data on claims subject to FCCM's in record formats, according to schedules, and by transmission methods as specified by FNS, and follow other technical and procedural guidelines as specified by FNS in the Manual for Federal Claims Collection Methods for the FSP (the FCCM manual).

(iii) *Identification of types of claim.* For each claim submitted under FCCM's, State agencies shall identify whether the claim is due to an inadvertent household error, intentional Program violation or a State agency administrative error. For any claim which is submitted for collection under FCCM's and which is a combination of more than one type of claim, State agencies shall specify the dollar amounts due to each type of claim.

(iv) *Updating claim records.* As instructed in the FCCM manual, State agencies shall update records of claims submitted under FCCM's by reducing the amounts of and deleting claims to reflect payments received, and by deleting claims which for other reasons are no longer subject to collection under FCCM's.

(v) *Hierarchy of collection methods.* Claims submitted under paragraph (p) of this section will be offset from Federal payments due to debtors as such payments are identified and are available for offset.

(2) *Federal Tax Refund Offset Program (FTROP)*—(i) *Criteria for claims subject to FTROP.* State agencies shall submit for collection from Federal income tax refunds all recipient claims which are delinquent as specified in paragraph (p)(1)(i) of this section and which are legally enforceable. Such claims must:

(A) Be claims with a dollar value which is at least the minimum dollar amount established by the Department of Treasury. (B) Be 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.

(C) Not include any claim submitted for collection from an individual in a household which, as specified in paragraph (i)(1) of this section, is subject to allotment reduction

(D) Not include any claim for which collection is barred by a bankruptcy.

(E) Be claims for which individuals have been provided all of the opportunities for review and the notifications specified in paragraphs

(p)(2)(iii), (p)(2)(iv), and (p)(2)(v) of this section.

(ii) *Combined claims.* If a claim which is otherwise subject to 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 (p)(2)(i)(B) of this section. Claims reduced to judgment shall not be combined with claims which are not reduced to judgment.

(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) The 60-day notice shall advise the debtor:

(*1*) What, according to State agency records, is the debtor's name and Social Security Number (SSN).

(*2*) That the debtor is liable for a specified unpaid balance of a recipient claim resulting from overissued food stamp benefits.

(*3*) That unless the debtor pays the claim within 60 days of the date of the notice or makes other repayment arrangements acceptable to the State agency, the State agency intends to refer the claim for deduction from the debtor's Federal income tax refund and/or collection by administrative offset from other Federal payments which may be payable to the debtor.

(*4*) That to pay the claim voluntarily or to discuss it, the debtor should contact the State agency. The 60-day notice shall include the name of the State agency contact for this purpose (such as an office, administrative unit and/or individual), the contact's street address or post office box, and a toll-free or collect telephone number for the State agency contact.

(*5*) That if the debtor's claim is referred for Federal collection, a charge for the administrative cost of collection will be added to the claim and that amount will also be deducted if the claim, or any portion of it, is deducted from the debtor's tax refund or other Federal payment.

(*6*) That the debtor is entitled to request a review of the intended collection action and that the State agency must receive such a request within 60 days of the date of the 60-day notice. Such a request must be written, must be submitted to the address provided in this notice and should contain the debtor's SSN. The claim will not be referred for offset from the debtor's tax refund or for collection from other Federal payments while the State agency's review is pending.

(*7*) That the Debt Collection Act of 1982, as amended (31 U.S.C. 3701), authorizes collection of claims by administrative offset after giving the debtor notice of that intended action and advising the debtor of the debtor's rights under that statute. This notice meets the requirements for providing such notice and advice.

(*8*) That the claim is not legally enforceable if a bankruptcy prevents collection of the claim.

(*9*) That the debtor may want to contact the debtor's local office of the Internal Revenue Service if the debtor is filing a joint Federal income tax return.

(C) In the certification letter required in paragraph (p)(2)(vi)(B)(*4*) of this section, the State agency shall include a statement that its 60-day notice complies with the requirements of paragraph (p)(2)(iii)(B) of this section.

(D) The State agency shall mail 60-day notices for claims to be referred for collection through FTROP and administrative offset according to the schedule provided by FNS.

(E) The State agency shall mail 60-day notices using the address information provided by Treasury 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 Treasury. 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 (p)(2)(iii)(E) and are returned as undeliverable may be referred for collection.

(iv) *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 for collection from the debtor's Federal income tax refund and/or collection from other payments which may be payable to the debtor by the Federal Government.

(*3*) The individual may ask FNS to review the State agency decision. FNS must receive the request for review within 30 days of the date of the State agency decision. FNS will provide the individual a written response to such a request stating its decision and the reasons for its decision. Pending the FNS decision, the claim will not be referred for collection from the debtor's Federal income tax refund and/or from other payments which may be payable to the debtor by the Federal Government.

(*4*) A request for an FNS review must include the individual's SSN and must be sent to the appropriate FNS regional office. The State agency decision shall provide the address of that regional office, including in that address the phrase ''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 the State agency determines the claim past due and legally enforceable, and notifies the individual of that decision as specified in paragraphs (p)(2)(iv)(C)(*1*), (p)(2)(iv)(C)(*2*) and (p)(2)(iv)(C)(*3*) of this section.

(v) *FNS action on appeals of State agency reviews.* (A) FNS shall act on all timely requests for FNS reviews of State agency review decisions as specified in paragraph (p)(2)(iv)(C) of this section. A request for FNS review is timely if it is received by FNS within 30 days of the date of the State agency's review decision.

(B) If a timely request for FNS review is received, FNS shall:

(*1*) Complete a review and notification as specified in paragraphs (p)(2)(v)(C) and (p)(2)(v)(D) 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 FNS according to paragraph (p)(2)(vi) of this section. If FNS fails to timely notify the State agency and because of that failure a claim is offset which FNS later finds does not meet the criteria specified in paragraph (p)(2)(i) of this section, FNS will provide funds to the State agency for refunding the charge for the offset fee.

(C) When FNS receives an individual's request to review a State agency decision, FNS 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.

(D) If FNS finds that the State agency correctly determined that the claim is past due and legally enforceable, FNS 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.

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

(vi) *Referral of claims for offset.* (A) State agencies shall submit to FNS a certified file of claims for collection through FTROP and administrative offset by the date specified by FNS in schedules which FNS will provide as stated in paragraph (p)(2)(ii) of this section.

(B) At the same time they submit the certified file required in paragraph (p)(2)(vi)(A) of this section, according to instructions which FNS will provide as stated in paragraph (p)(2)(ii) of this section, State agencies shall submit a letter which specifically certifies that:

(*1*) All claims contained in the certified file meet the criteria for claims referable for FTROP as specified in paragraph (p)(2)(i) of this section.

(*2*) For all claims on the certified file individuals have been provided all the opportunities for review and the notifications required in paragraphs (p)(2)(iii), (p)(2)(iv), and (p)(2)(v) of this section.

(*3*) The State agency has not included in the certified file of claims any claim which, as provided in paragraph (p)(2)(v) of this section, FNS notified the State agency is not past due or is not legally enforceable, any claim for which FNS notified the State agency that it has not completed a timely requested review, or any claim for which the State agency has not completed a timely requested review.

(*4*) The State agency's 60-day notice complies with the requirements of paragraph (p)(2)(iii)(B) of this section.

(*5*) How the State agency determined that the State agency contact information required in paragraph (p)(2)(vi)(C) of this section is accurate.

(C) The State agency shall provide to FNS according to FNS instructions, the name, address and toll-free or collect telephone numbers of State agency contacts to be included in IRS notices of offset, and shall provide FNS updates of that information if and when that information changes.

(vii) *Reporting FTROP and administrative offset activities.* As specified in the FCCM manual, State agencies shall:

(A) No later than the ten days after mailing 60-day notices, report the number of 60-day notices mailed and the total dollar value of the claims associated with those notices.

(B) Submit data security and voluntary payment reports.

(3) *Federal salary offset program (FSOP)*—(i) *Identification of recipient claims owed by Federal employees.* FNS will match all recipient claims submitted by State agencies under paragraph (p)(2) of this section against Federal employment records maintained by the Department of Defense and the United States Postal Service. FNS will identify recipient claims matched during this procedure with the list of recipient claims to be referred to the Department of Treasury for collection under paragraph (p)(2) of this section.

(ii) *Security and confidentiality agreements.* When FNS 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 (p)(3)(iii) 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, FNS will provide the list of matched Federal employees to the State agency.

(iii) *Security and confidentiality of information.* State agencies which receive lists of Federal employees who have been identified as owing recipient claims shall take the actions specified in this paragraph (p)(3)(iii) to ensure the security and confidentiality of information about those employees and their apparent debts. In addition, those State agencies shall ensure that any contractors or other non-State agency entities to which the records may be disclosed also take these actions:

(A) 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;

(B) 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;

(C) Use the data solely for salary offset purposes as specified in this paragraph (p)(3), including not extracting, duplicating or disseminating the data except for salary offset purposes;

(D) Retain the data only as long as needed for FSOP purposes as specified in this paragraph (p)(3), or as otherwise required by FNS;

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

(F) 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 this paragraph (p)(3)(iii).

(iv) *Record review.* State agencies shall review the claims records of matched Federal employees identified as owing recipient claims to determine the correct amount owed, and to remove from the list of claims any recipient claims which have been paid, which are being paid as specified in paragraph (i)(4) of this section, or which for other reasons are not collectible.

(v) *State agency advance notice of salary offset.* (A) Following the review specified in paragraph (p)(3)(iv) 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 FNS, or shall be otherwise provided, within 60 days of State agency receipt of files of salary offset claims. This notice may be combined with the notice referred to under paragraph (p)(2) of this section.

(B) The advance notice shall advise debtors that:

(*1*) State agency records indicate that the debtor's Social Security Number (SSN) is [the number]. The advance notice shall also advise the debtor what the debtor's name is according to State agency records.

(*2*) The debtor is liable for a specified unpaid balance of a recipient claim resulting from overissued food stamp benefits.

(*3*) Unless the debtor pays the claim within 30 days of the date of the notice or makes other repayment arrangements acceptable to the State agency, the State agency intends to refer the claim for collection from the debtor's Federal salary and/or by administrative offset from other Federal payments which may be payable to the debtor.

(*4*) To pay the claim voluntarily or to discuss it, the debtor should contact the State agency. The advance notice shall include the name of the State agency contact for this purpose (such as an office, administrative unit and/or individual), the contact's street address or post office box, and a toll-free or collect telephone number for that contact.

(*5*) Debtors may submit documentation to State agencies showing such things as payments of claims or other circumstances which would prevent collection of claims. A claim is not collectible if a bankruptcy filing prevents collection of the claim. The State agency must receive the documentation within 30 days at the address provided in the notice. The debtor should provide his or her SSN with the documentation. The claim will not be referred for collection pending the State agency's review.

(*6*) The debtor was found to be employed by a Federal agency through a computer match. That match was conducted under the authority of and according to procedures required by the Privacy Act of 1974, as amended (5 U.S.C. 552a)

(*7*) Collection from the wages of Federal employees, including United States Postal Service employees, for debts such as claims for overissued food stamp benefits is authorized by the Debt Collection Act of 1982, as amended (31 U.S.C. 3701). That statute also authorizes collection of such debts by administrative offset from other Federal payments which may be payable to the debtor.

(vi) *State agency notice of review decisions.* The State agency shall notify debtors in writing of the State agency's decision on documentation submitted concerning payments and on other matters relating to the collection of claims under FSOP and administrative offset.

(vii) *Referral of claims to FNS.* (A) Within 90 days of the date of the advance notice, the State agency shall refer to FNS 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:

(*1*) For each claim, a copy of the advance notice, a copy of the initial demand letter, a record of payments received and the current balance of the claim; or

(*2*) If not previously provided to FNS, one copy each of the State agency's language for advance notices and demand letters, and for each claim the dates of the advance notice and the original demand letter, the amount of the claim cited in each of those two notices, the type of claim, a record of payments received and the current balance of the claim.

(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 FNS, reporting the default, and including the documentation specified in paragraph (p)(3)(v)(A) of this section.

(viii) *FNS 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 FNS as required by paragraph (p)(3)(v) 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 ''FNS'' shall be defined as set forth in § 271.2 of this chapter.

(B) 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, FNS must receive it within 30 calendar days of the date of the notice of intent.

(C) 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.

(D) 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.

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

(*3*) The notice of intent shall advise the debtor that, in addition to being subject to collection from the debtor's Federal salary, the recipient claim is subject to collection from other payments due to the debtor from the Federal Government. The notice shall state that such collection is authorized under the Debt Collection Act of 1982, as amended (31 U.S.C. 3701).

(4) *Administrative Offset Program (ADOP).* Claims submitted under FTROP and FSOP are also subject to collection through the Administrative Offset Program (ADOP) from other Federal payments otherwise due to debtors.

Dated: May 15, 1998.

Shirley R. Watkins,

Under Secretary, Food, Nutrition, and Consumer Services.

[FR Doc. 98–13848 Filed 5–27–98; 8:45 am]

BILLING CODE 3410–30–P