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a settlement agreement under the authority of the Equal Credit Opportunity Act and the authority to obligate agency funds, including CCC and FCIC funds to satisfy such an award.

(21) Provide civil rights and equal employment opportunity support services, with authority to take actions required by law or regulation to perform such services for:

(i) The Secretary of Agriculture.

(ii) The general officers of the Department.

(iii) The offices and agencies reporting to the Assistant Secretary for Administration.

(iv) Any other offices or agencies of the Department as may be agreed.

(22) *Related to outreach.*

(i) Develop policy guidelines and implement a Departmental outreach program which delivers services to traditionally under-served customers.

(ii) Develop a strategic outreach plan for the Department which coordinates the goals, objectives, and expectations of mission area outreach programs.

(iii) Coordinate the dissemination/communication of all outreach information from the Department and its mission areas ensuring its transmission to as wide a public spectrum as possible.

(iv) Serve as the Department's official outreach spokesperson.

(v) Provide coordination and oversight of agency outreach activities including the establishment of outreach councils.

(vi) Develop a system to monitor the delivery of outreach grants and funding.

(vii) Establish requirements and procedures for reporting agency outreach status and accomplishments including Departmental reporting under the Outreach and Assistance for Socially Disadvantaged Farmers and Ranchers Program (7 U.S.C. 2279).

(24) *Related to conflict management.*

(i) Designate the senior official to serve as the Department Dispute Resolution Specialist under the Administrative Dispute Resolution Act of 1996, 5 U.S.C. 571, *et seq.*, and provide leadership, direction and coordination for the Department's conflict prevention and resolution activities.

(ii) Issue Departmental regulations, policies, and procedures relating to the use of Alternative Dispute Resolution (ADR) to resolve employment complaints and grievances, workplace disputes, Departmental program disputes, and contract and procurement disputes.

(iii) Provide ADR services for:

(A) The Secretary of Agriculture.

(B) The general officers of the Department.

(C) The offices and agencies reporting to the Assistant Secretary for Administration.

(D) Any other officer or agency of the Department as may be agreed.

(iv) Develop and issue standards for mediators and other ADR neutrals utilized by the Department.

(v) Coordinate ADR activities throughout the Department.

(vi) Monitor Agency ADR programs and report at least annually to the Secretary on the Department's ADR activities.

(25) Redelegate, as appropriate, any authority delegated under this section to general officers of the Department and heads of Departmental agencies.

(b) [Reserved]

[69 FR 34255, June 21, 2004]

PART 3—DEBT MANAGEMENT

Subpart A—Settlement of Small or Old Debts

Sec.
3.1 Purposes of the act and regulations.
3.2 Definitions.
3.3 Settlement of indebtedness.
3.4 Investigations and findings.
3.5 Delegations of authority.
3.6 Forms and records.
3.8 Penalties.
3.9 Indebtedness referred to the Comptroller General or the Attorney General.
3.10 Scope of the act.

Subpart B—Debt Collection

3.21 Debt collection standards.
3.22 Definitions.
3.23 Collection by administrative offset.
3.24 Coordinating administrative offset with other Federal agencies.
3.25 Notice requirements before offset.
3.26 Exceptions to notice requirements.
3.27 Inspection of USDA records related to the debt.

3.28 Written agreements to repay debt as alternative to administrative offset.
3.29 Hearings and reviews.
3.30 Stay of offset.
3.31 Agency procedures.
3.32 Offset against amounts payable from Civil Service retirement and disability fund.
3.33 Offset of debtor's judgment against the United States.
3.34 Interest, penalties and administrative costs.
3.35 Disclosure to a credit reporting agency.
3.36 Use of collection agencies.

Subpart C—Salary Offset

3.51 Scope.
3.52 Definitions.
3.53 Coordinating offset with another Federal agency.
3.54 Determination of indebtedness.
3.55 Notice requirements before offset.
3.56 Request for a hearing.
3.57 Result if employee fails to meet deadlines.
3.58 Hearings.
3.59 Written decision following a hearing.
3.60 Review of Departmental record related to the debt.
3.61 Written agreement to repay debt as alternative to salary offset.
3.62 Procedures for salary offset: When deductions may begin.
3.63 Procedures for salary offset: Types of collection.
3.64 Procedures for salary offset: Methods of collection.
3.65 Procedures for salary offset: Imposition of interest, penalties and administrative costs.
3.66 Nonwaiver of rights.
3.67 Refunds.
3.68 Agency regulations.

Subpart D—Cooperation with the Internal Revenue Service

3.81 Reporting discharged debts to the Internal Revenue Service.
3.82 Offset against tax refunds.

Subpart E—Adjusted Civil Monetary Penalties

3.91 Adjusted civil monetary penalties.

Subpart A—Settlement of Small or Old Debts

AUTHORITY: Sec. 1, 58 Stat. 836; 12 U.S.C. 1150.

SOURCE: 10 FR 807, Jan. 23, 1945, unless otherwise noted. Redesignated at 13 FR 6903, Nov. 24, 1948.

§ 3.1 Purposes of the act and regulations.

The principal purposes of the act and of the regulations in this part are to provide means of:

(a) Settling, by compromise, adjustment or cancellation relatively small debts long past due and owing to the Government arising from loans or payments made under farm programs administered by the Department;

(b) recovering by the Department of substantial sums which are found uncollectible when the indebtednesses are treated as full obligations, and which otherwise would probably never be collected;

(c) clearing the accounts of balances so small as not to warrant continued efforts of collection; and

(d) the clearing of the accounts of the records of indebtedness made uncollectible by reason of the death or disappearance of the debtors.

The existence of the act will neither serve as grounds for any relaxation in the general collection policy of the Department nor should it serve as grounds for any lessening of the efforts of farmers to pay their indebtedness.

§ 3.2 Definitions.

(a) *Department* means Department of Agriculture.

(b) *Indebtedness* with respect to any person, means a debt to the Government under each of the acts and programs listed in § 3.10.

(c) *Compromise* means final liquidation of the indebtedness through the immediate payment of a portion thereof, and acceptance by the United States of such payment in full satisfaction of the indebtedness.

(d) *Adjustment* means the scaling down of the amount of the indebtedness including interest, conditioned upon the payment of the adjusted amount at some specified future time or times; such adjustment is not to be considered as effective as a settlement under this act until the provisions of the adjustment arrangement have been carried out.

(e) *Cancellation* means the complete discharge, without payment, of the indebtedness and the debtor.

[10 FR 807, Jan. 23, 1945, as amended at 11 FR 11984, Oct. 15, 1946. Redesignated at 13 FR 6903, Nov. 24, 1948; 55 FR 38662, Sept. 20, 1990]

§3.3 Settlement of indebtedness.

(a) Indebtedness will be compromised, adjusted, or canceled, upon applicability by the debtor except in those cases where it is found that it is legally impossible for the debtor to make application, and upon the making of all the following findings:

(1) That said indebtedness has been due and payable for five years or more;

(2) That the debtor is unable to pay said indebtedness in full and has no reasonable prospect of being able to do so; officers of the Department shall not make such findings on the basis of mere unwillingness to pay on the part of the debtor, or mere financial disadvantage to him, but should find that the settlement is the most advantageous arrangement possible from the standpoint of the Government under the findings prescribed in this part. In no event shall cancellation be made unless, in addition to the foregoing requirements, there is an advantage in removing the indebtedness from the accounts.

(3) That the debtor has acted in good faith in an effort to meet his obligation; and

(4) That the principal amount of said indebtedness is not in excess of $1,000.

(b) Indebtedness may also be canceled without application when any one of the following circumstances is found:

(1) The amount of said indebtedness, including interest, is less than $10; such efforts of collection have been made as are warranted under the circumstances, and the cost of collection or of continued maintenance of accounts is deemed greater than the amount of the indebtedness;

(2) The debtor is deceased and there is no reasonable prospect of recovering from his estate;

(3) The debtor's whereabouts has remained unknown for two years and there is no reasonable prospect of obtaining collection; heads of agencies designated in §3.5 will prescribe procedures which will assure that cancellations on this ground will be made only after a diligent effort has been made to locate the debtor, including such contact with other agencies of the Department or otherwise as the amount of the indebtedness and the circumstances warrant;

(4) The debtor has been discharged of the indebtedness in any proceeding under ''An act to establish a uniform system of bankruptcy throughout the United States.''

(5) It is impossible or impracticable for legal or other reasons to obtain the debtor's application but all of the findings required by paragraph (a) of this section are made.

[10 FR 807, Jan. 23, 1945, as amended at 12 FR 441, Jan. 22, 1947. Redesignated at 13 FR 6903, Nov. 24, 1948, and amended at 21 FR 3213, May 16, 1956]

§3.4 Investigations and findings.

The heads of agencies designated in §3.5 shall prescribe procedures for the conduct of investigations to determine the facts incident to the settlement of any indebtedness. These procedures should include, among other things, provisions for consultations with local authorities, businessmen, or local representatives of other Government agencies, or for obtaining the recommendations of committees or other groups or persons designated by each agency for assistance in its regular program, or otherwise. The file relating to each debtor shall contain the formal findings required by §3.3, together with such evidence as has been obtained in support of such findings.

In order to effect uniformity in settlements, agency procedures should also provide that, where it appears from the application of the debtor or from investigation that the debtor is otherwise indebted to the United States, to the extent practicable consultation should be had (other than in cases under §3.3(b)(1) and (4) with any other creditor agencies, to ascertain pertinent information as to the status of such other obligation or obligations. Such information shall be considered in connection with the settlement and for inclusion in the findings.

The head of each agency shall provide for review of proposed indebtedness settlements within his agency by officers or employees designated for that purpose under such conditions as he shall determine to be adequate to insure the protection of the interests of the United States.

§ 3.5 Delegations of authority.

The heads of any administration or other agency having jurisdiction over any of the acts or programs listed in § 3.10 (including those of Federal Crop Insurance Corporation) are hereby authorized, within their respective jurisdictions, to exercise any or all of the functions prescribed by this part. The head of each of such agencies may delegate and authorize the redelegation of any of the functions vested in him by this part: *Provided,* That the determination of any settlement shall not be delegated beyond the head of the highest field office having jurisdiction, except that in the case of the Agricultural Stabilization and Conservation State Offices, such authority may also be delegated to the State Administrative Officers and except that in the case of the Farmers Home Administration, such authority may also be delegated to Assistant State Directors and Chiefs, Production Loan Operations, in State offices of that administration.

[21 FR 3213, May 16, 1956, as amended at 55 FR 18591, May 3, 1990]

§ 3.6 Forms and records.

The Office of Management and Budget may prescribe or approve forms for applications for settlement of indebtedness under this part; and shall require each agency to establish records to insure the immediate availability of necessary information of operations under this part. Each agency shall furnish to the Office of Management and Budget a report of operations under this part quarterly, or for such other periods as the Director of Finance may designate.

[21 FR 3213, May 16, 1956, as amended at 55 FR 38662, Sept. 20, 1990]

§ 3.8 Penalties.

The act prescribes the punishment by a fine of not more than $1,000 or imprisonment for not more than one year, or both, upon conviction, for anyone making any material representation, knowing it to be false, for the purpose of influencing in any way the action of the Secretary or of any person acting under his authority in connection with any compromise, adjustment, or cancellation of indebtedness provided for in the act. The act also prohibits the acceptance by any officer, employee, or other person to whom is delegated any power or function under the act, of any fee, commission, gift, or other consideration, directly or indirectly, for or in connection with any transaction or business relating to the compromise, adjustment, or cancellation of indebtedness under the act.

§ 3.9 Indebtedness referred to the Comptroller General or the Attorney General.

No settlement shall be effected under this part if the indebtedness is pending before the Comptroller General for compromise, or the Attorney General for collection.

[10 FR 807, Jan. 23, 1945. Redesignated at 13 FR 6903, Nov. 24, 1948, and amended at 55 FR 38662, Sept. 20, 1990]

§ 3.10 Scope of the act.

The authorities prescribed in this part are applicable to indebtedness arising from loans or payments made or credit extended pursuant to the following acts and programs:

1. Act of July 1, 1918 (40 Stat. 635), Loans for seed.
2. Act of March 3, 1921 (41 Stat. 1347), Loans for seed.
3. Act of March 20, 1922 (42 Stat. 467), Loans for seed.
4. Act of April 26, 1924 (43 Stat. 110), Loans for seed and feed.
5. Act of February 25, 1927 (44 Stat. 1245), Loans for seed, feed and fertilizer.
6. Act of February 28, 1927 (44 Stat. 1251), Hurricane damage loans.
7. Act of February 25, 1929 (45 Stat. 1306), as amended May 17, 1929 (46 Stat. 3), Loans for seed, feed and fertilizer and to vegetable and fruit growers.
8. Act of March 3, 1930 (46 Stat. 78–79), as amended April 24, 1930 (46 Stat. 254). Loans for seed, feed, fertilizer, fuel and oil.
9. Act of December 20, 1930 (46 Stat. 1032), as amended February 14, 1931 (46 Stat. 1160). Loans for seed, feed, fertilizer, fuel and oil and crop production, and for assisting in

forming local agricultural credit corporations, livestock loan companies, or like organizations.

10. Act of February 23, 1931 (46 Stat. 1276), Loans for seed, feed, fertilizer, fuel and oil.

11. Act of January 22, 1932 (47 Stat. 5), Loans for crop production.

12. Act of March 3, 1932 (47 Stat. 60), Loans for agricultural credit corporations, livestock loan companies, or like organizations.

13. Act of February 4, 1933 (47 Stat. 795), Loans for crop production and harvesting.

14. Act of February 23, 1934 (48 Stat. 354), Loans for crop production and harvesting.

15. Act of June 19, 1934 (48 Stat. 1056), Loans for emergency relief and for seed, feed, freight, summer fallowing and similar purposes.

16. Act of February 20, 1935 (49 Stat. 28), Loans for crop production and harvesting.

17. Act of March 21, 1935 (49 Stat. 50), appropriation to effectuate Act of February 20, 1935.

18. Act of April 8, 1935 (49 Stat. 115), E. O. 7305, Loans for crop production and harvesting.

19. Act of January 29, 1937 (50 Stat. 5), Loans for crop production and harvesting.

20. Act of February 4, 1938 (52 Stat. 27), Loans for crop production and harvesting.

21. Agricultural Adjustment Act (of 1933), as heretofore amended.

22. Bankhead Cotton Act of April 21, 1934, as heretofore amended, on account of the several cotton tax-exemption certificate pools.

23. Jones-Connally Cattle Act of April 7, 1934, as heretofore amended.

24. Emergency Appropriation Act, fiscal year 1935, approved June 19, 1934 (48 Stat. 1056), as heretofore amended, (amendment to Agricultural Adjustment Act of 1933, relating to cotton option contracts.)

25. Kerr Tobacco Act of June 28, 1934 and Public Resolution No. 76 of March 14, 1936, as heretofore amended.

26. Section 32 of the Act of August 24, 1935 and related legislation, as heretofore amended.

27. Supplemental Appropriation Act, fiscal year 1936, as heretofore amended, (rental and benefit payments and cotton price adjustment payments).

28. Sections 7 to 17 of the Soil Conservation and Domestic Allotment Act, as heretofore amended.

29. Sugar Act of 1937, as heretofore amended.

30. Sections 303 and 381(a) of the Agricultural Adjustment Act of 1938 and related or subsequent legislation, as heretofore amended, authorizing parity or adjustment payments.

31. Title IV and Title V of the Agricultural Adjustment Act of 1938 and related legislation, as heretofore amended, (Cotton Pool Participation Trust Certificates (Title IV), and crop insurance (Title V)).

32. Any other Act of Congress heretofore enacted authorizing payments to farmers under programs administered through the Agricultural Adjustment Agency.

33. Act of April 8, 1935 (49 Stat. 115), Loan for rural rehabilitation and relief.

34. Act of June 22, 1936 (49 Stat. 1608), Loan for rural rehabilitation and relief.

35. Act of February 9, 1937 (50 Stat. 8), Loans for rural rehabilitation and relief.

36. Act of June 29, 1937 (50 Stat. 352), Loans for rural rehabilitation and relief.

37. The Bankhead-Jones Farm Tenant Act (50 Stat. 522 *et seq.*).

38. The Water Facilities Act of August 28, 1937 (50 Stat. 869 *et seq.*).

39. Act of March 2, 1938 (52 Stat. 83, Pub. Res. 80), Loans for rural rehabilitation and relief.

40. Act of June 21, 1938 (52 Stat. 809), Loans for rural rehabilitation and relief.

41. Act of June 30, 1939 (53 Stat. 927), Loans for rural rehabilitation and relief.

42. Act of June 26, 1940 (54 Stat. 611), Loans for rural rehabilitation and relief.

43. Act of July 1, 1941 (55 Stat. 408), Loans for rural rehabilitation.

44. Act of July 22, 1942 (56 Stat. 664), Loans for rural rehabilitation.

45. Act of July 12, 1943 (57 Stat. 392), Loans for rural rehabilitation.

46. Act of June 28, 1944 (58 Stat. 425), Loans for rural rehabilitation.

47. Flood restoration loans, Second Deficiency Appropriation Act, 1943 (57 Stat. 537, 542)

48. Subsequent legislation appropriating or making available funds for such loans as those listed under numbers 33 through 47, made by or through Resettlement Administration or the Farm Security Administration.

49. Crop-insurance programs formulated pursuant to Title V of the Agricultural Adjustment Act of 1938 (the Federal Crop Insurance Act), and any amendment or supplement thereto heretofore or hereafter enacted.

50. Any indebtedness of farmers evidenced by notes or accounts receivable, title to which has been acquired in the liquidation of loans to cooperative associations made under the provisions of the Act of June 15, 1929 (46 Stat. 11).

51. Any indebtedness of food stamp recipients and retailers/wholesalers. Food Stamp Act.

(Sec. 2, 58 Stat. 836; 12 U.S.C. 1150a)

[10 FR 807, Jan. 23, 1945. Redesignated at 13 FR 6903, Nov. 24, 1948, and amended at 55 FR 38662, Sept. 20, 1990; 62 FR 60451, Nov. 10, 1997; 64 FR 11755, Mar. 10, 1999]

Subpart B—Debt Collection

AUTHORITY: 31 U.S.C. 3701, 3711, 3716–3719, 3728; 4 CFR part 102; 4 CFR 105.4.

SOURCE: 50 FR 7722, Feb. 26, 1985, unless otherwise noted.

§ 3.21 Debt collection standards.

(a) The regulations in this subpart are issued under the Federal Claims Collection Act of 1966, as amended by the Debt Collection Act of 1982 (31 U.S.C. 3701, 3711, 3716–3719), and the Joint Regulations issued under the Act by the Attorney General and the Comptroller General (4 CFR parts 101–105), prescribing Government-wide standards for administrative collection, compromise, suspension or termination of agency collection action, disclosure of debt information to consumer reporting agencies, referral of claims to private collection contractors for resolution, and referral to the General Accounting Office and to the Department of Justice for litigation of civil claims by the Government for money or property.

(b) The head of each agency of the Department may carry out the duties and exercise the authority of the Secretary under 31 U.S.C. 3701, 3711, 3716–3719, 3728, the Joint Regulations of the Attorney General and the Comptroller General, and the regulations in this part, with respect to the claims of the agency. An agency head may adopt regulations, in accordance with the Debt Collection Act and the Joint Regulations, setting out agency procedures for the collection by administrative offset of such claims and debts. If the head of an agency of the Department adopts regulations separate from this subpart, the procedures thereby established, rather than those set out in this part, shall be followed for the collection of the claims and debts to which the separate regulations apply. If an agency does not adopt separate regulations, the Director of the Office of Finance and Management may carry out the duties and exercise the authority of the Secretary on behalf of agency heads.

(c) Except where administrative offset is explicitly prohibited by statute or where other procedures are explicitly provided for by statute, all contracts and other written agreements which are executed after the effective date of these regulations between an agency and any person or entity must include the following or substantially similar language:

Any monies that are payable or may become payable from the United States under this agreement to any person or legal entity not an agency or subdivision of a State or local government may be subject to administrative offset for the collection of a delinquent debt the person or legal entity owes to the United States, under the Federal Claims Collection Act of 1966, as amended by the Debt Collection Act of 1982 (31 U.S.C. 3701, 3711, 3716–3719); 4 CFR part 102 and subpart B of this part. Information on the person's or legal entity's responsibility for a commercial debt or delinquent consumer debt owed the United States will be disclosed to consumer or commercial credit reporting agencies.

[50 FR 7722, Feb. 26, 1985, as amended at 55 FR 38662, Sept. 20, 1990]

§ 3.22 Definitions.

In this subpart:

(a) *Debt management officer* means an agency employee responsible for collection by administrative offset of debts owed the United States.

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

(c) *Creditor agency* means a Federal agency to whom a debtor owes a monetary debt. It need not be the same agency that effects the offset.

(d) *Offsetting agency* means an agency that withholds from its payment to a debtor an amount owed by the debtor to a creditor agency, and assures that the funds are paid to the creditor agency to be applied to the debt.

(e) *Reviewing officer* means an agency employee responsible for conducting a hearing or providing documentary review on the existence of the debt and the propriety of administrative offset.

[50 FR 7722, Feb. 26, 1985, as amended at 55 FR 38662, Sept. 20, 1990]

§ 3.23 Collection by administrative offset.

(a) Whenever feasible, each agency of the Department of Agriculture must use, or request any other Federal agency to use, administrative offset in accordance with 31 U.S.C. 3716 and 4 CFR 102.3 to collect debts due the United

States. The debt need not be reduced to judgment or be undisputed.

(b) The feasibility of collecting a debt by administrative offset will be determined on a case-by-case basis considering among other factors the following:

(1) Legal impediments to administrative offset, such as contract provisions, or degree of certainty as to the factual basis (other than the debt amount) of the Government's claim.

(2) Practicality, considering such questions as costs in time and money of administrative offset relative to the size of the debt.

(3) Whether offset would substantially interfere with or defeat the purposes of a program authorizing payments against which offset is contemplated, as where payment is an advance for future performance by the debtor of a service the Government desires.

(4) Whether the agency has substantiated the existence of the debt.

(c) The offset will be effected 31 days after the debtor receives a Notice of Intent to Collect by Administrative Offset, or when a stay of offset expires, unless the agency determines under §3.26 that immediate action is necessary. If the debtor owes more than one debt, amounts recovered through administrative offset may be applied to them in any order, with attention to applicable statutes of limitation.

(d) These procedures will be used to collect any debt subject to 31 U.S.C. 3716, including contract debts, but not including intracontractual claims or intracontractual disputes. A contracting officer administering a claim under the Contract Disputes Act (CDA), 41 U.S.C. 601–613 must promptly refer the claim to the agency debt management officer for consideration of administrative offset apart from CDA proceedings.

(e) An agency debt management officer will determine the prima facie existence of the debt, the feasibility of administrative offset as a means of collection and what monies, if any, are payable or may become payable to the debtor. No agency employee may act as debt management officer for the consideration of collection by administrative offset in a matter for which the employee was a contracting officer.

(f) An agency reviewing officer will afford debtors review of the issue of administrative offset under these rules. No agency employee may act as a reviewing officer for the consideration of collection by administrative offset in a matter for which the employee was a contracting officer or a debt management officer.

[50 FR 7722, Feb. 26, 1985, as amended at 55 FR 38662, Sept. 20, 1990]

§3.24 Coordinating administrative offset with other Federal agencies.

(a) A Government list or other notice, naming debtors and their creditor agencies, which is provided to USDA will constitute a request for administrative offset.

(b) Any agency which requests another agency to effect administrative offset must certify that the debtor owes the debt (including the amount and basis of the debt and the due date of the payment) and that all of the applicable requirements of 31 U.S.C. 3716 and 4 CFR part 102 have been met.

(c) An agency which is requested by another agency to effect administrative offset must not do so without obtaining a written certification that the debtor owes the creditor agency a debt (including the amount and basis of the debt and the due date of the payment) and that all of the applicable requirements of 31 U.S.C. 3716 and 4 CFR part 102 have been met. An offsetting USDA agency may rely on the information contained in a requesting creditor agency's certification.

(d) Only a creditor agency may agree to an installment repayment system or compromise, suspension or termination of the collection process.

(e) A USDA agency which is requested by another agency to effect administrative offset may decline for good cause. Good cause includes direct or indirect disruption of the offsetting agency's essential program operations that might result from the offset. The refusal and the reasons must be sent in writing to the creditor agency.

§ 3.25 Notice requirements before offset.

(a) Before an agency effects administrative offset, the creditor agency must provide the debtor with a minimum of 30 calendar days' written notice that unpaid debt amounts will be collected by administrative offset against any money that the United States is going to pay to the debtor, unless the creditor agency determines immediate action is necessary under §3.26, or the debtor enters into a repayment agreement or requests review.

(b) The Notice of Intent to Collect by Administrative Offset must be served on the debtor by personal delivery, first class mail, or certified mail and will state:

(1) The amount of the debt, the date it was incurred, the name and address of the offsetting agency, and the program under which the debt was incurred.

(2) The rate of interest accrued from the date of mailing or other delivery of the initial demand letter, and the amount of any other penalties or administrative costs added to the principal debt.

(3) The creditor agency's intention to collect the debt by administrative offset against any funds that might become available, until the principal debt and all accumulated interest and other charges are paid in full.

(4) The date on which administrative offset will be effected, unless the creditor agency determines immediate action is necessary under §3.26, or the debtor enters into a repayment agreement or requests a review.

(5) That the debtor has a right to inspect and copy agency or other Department records related to the debt. The debtor must pay copying costs unless they are waived by the agency.

(6) That the debtor may enter into a written agreement to repay the debt, which must be approved by the creditor agency.

(7) That the debtor has a right to obtain review of the agency's determination that the debt exists and the propriety of administrative offset.

(8) That a repayment agreement or request for review may be sought only from the creditor agency and not the offsetting agency.

(9) Time limitations and other procedures or conditions imposed by the agency.

(10) The address to which the debtor should send all correspondence relating to the offset.

(c) Any demand for payment will include a Notice of Intent to Collect by Administrative Offset, even if the debt is not delinquent at the time the letter is sent.

[50 FR 7722, Feb. 26, 1985, as amended at 55 FR 38662, Sept. 20, 1990; 62 FR 60451, Nov. 10, 1997]

§ 3.26 Exceptions to notice requirements.

(a) When the procedural requirements of §3.25 have been met by the creditor agency or under some other statutory or regulatory authority, an agency need not duplicate the notice before effecting administrative offset.

(b) A USDA agency may effect administrative offset against a payment to be made to a debtor before completion of the procedures in §3.25 when the agency finds, or is advised by the requesting creditor agency, that:

(1) Failure to take the offset would substantially prejudice the Government's ability to collect the debt, such as where possible insolvency of the debtor might encourage competition among creditors for funds, or where expiration of a statute of limitations is imminent; and

(2) The time before the payment is to be made does not reasonably permit the completion of these procedures.

(c) The finding required by paragraph (b) of this section must be furnished by the offsetting agency to the debtor in writing as soon as reasonably possible after the offset is effected. Promptly after administrative offset is effected under this subsection, the creditor agency must give the debtor the notice required by §3.25.

(d) An offsetting USDA agency may rely on the information contained in a creditor agency's request for administrative offset under this section.

§ 3.27 Inspection of USDA records related to the debt.

A debtor who intends to inspect or copy agency or Departmental records with respect to the claim action must

notify the agency in writing within 20 calendar days of the date the Notice of Intent to Offset was delivered to the debtor. In response, the agency must notify the debtor of the location, time, and any other conditions, consistent with part 1, subpart A of this title, for inspecting and copying, and that the debtor may be liable for reasonable copying expenses.

[50 FR 7722, Feb. 26, 1985, as amended at 55 FR 38662, Sept. 20, 1990]

§3.28 Written agreements to repay debt as alternative to administrative offset.

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

§3.29 Hearings and reviews.

(a) A debtor who receives a Notice of Intent to Collect by Administrative Offset may request a hearing or documentary review of the agency's determination that the debt exists and the propriety of administrative offset. Any debtor who wishes to do this must submit a written explanation of why the debtor disagrees and seeks review. The request must be received by the creditor agency within 20 calendar days of the date the notice was delivered to the debtor.

(b) In response, the creditor agency must notify the debtor in writing whether the review will be by documentary review or by hearing. If the debtor requests a hearing, and the creditor agency decides to conduct a documentary review, the agency must notify the debtor of the reason why a hearing will not be granted. The agency must also advise the debtor of the procedures to be used in reviewing the documentary record, or of the date, location and procedures to be used if review is by a hearing.

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

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

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

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

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

(f)(1) Within no more than 30 calendar days after the hearing or the documentary review, the reviewing officer will issue a written decision to the debtor and the agency, including the supporting rationale for the decision. The deadline for issuance of the decision may be extended by the reviewing officer for good cause for no more than 30 calendar days, and beyond the 30 calendar days extension only with the consent of the debtor. The decision need not be lengthy or formal in style, but must address the

substantive issues. The decision should address any significant procedural matter which was in dispute before or during the hearing or documentary review.

(2) The reviewing officer's decision constitutes final agency action as to the following issues:

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

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

(g) The reviewing officer will promptly distribute copies of the decision to the Assistant Secretary for Administration, USDA and to the debtor and the debtor's representative.

[50 FR 7722, Feb. 26, 1985, as amended at 55 FR 38662, Sept. 20, 1990]

§ 3.30 Stay of offset.

(a)(1) Unless otherwise arranged by mutual agreement between the debtor and the agency, evidenced in writing, when an agency receives a debtor's request for inspection of agency records, the offset is stayed for no longer than 10 calendar days beyond the date set by the creditor agency for the record inspection.

(2) When an agency receives a debtor's proposal for a repayment agreement, the offset is stayed until the debtor is notified as to whether the proposed agreement is acceptable.

(3) When a review is conducted, the offset is stayed until the creditor agency issues a final written decision.

(b) When administrative offset is stayed, the amount of the debt and interest will be withheld from payments to the debtor, but not applied against the debt until the stay expires. If withheld funds are later determined not to be subject to offset, they will be promptly refunded to the debtor.

(c) When administrative offset is stayed, the creditor agency will immediately notify an offsetting agency to withhold the payment pending termination of the stay.

[50 FR 7722, Feb. 26, 1985, as amended at 55 FR 38663, Sept. 20, 1990]

§ 3.31 Agency procedures.

(a) Any USDA agency may publish in the FEDERAL REGISTER, by rule or notice, a listing by category of the order in which any funds it holds for or intends to pay to a person may be reached by administrative offset.

(b) For principal debts of $600 or more, an agency head may direct that no compromise be made, or no collection action suspended or terminated without advice from the USDA General Counsel.

§ 3.32 Offset against amounts payable from Civil Service retirement and disability fund.

An agency may request that monies payable to a debtor from the Civil Service Retirement and Disability Fund be administratively offset to collect debts owed to the agency by the debtor. The creditor agency must certify that the debtor owes the debt, the amount of the debt, and that the creditor agency has complied with 4 CFR 102.4 and Office of Personnel Management regulations. The request must be submitted to the official designated in Office of Personnel Management regulations.

[50 FR 7722, Feb. 26, 1985, as amended at 55 FR 38663, Sept. 20, 1990]

§ 3.33 Offset of debtor's judgment against the United States.

Collection by offset against a judgment obtained by a debtor against the United States must be effected in accordance with 31 U.S.C. 3728.

§ 3.34 Interest, penalties and administrative costs.

(a) USDA creditor agencies must attempt to collect interest, penalties and administrative costs on any delinquent debts owed to the United States in accordance with 4 CFR 102.13 and 102.14, or according to written documentation constituting the basis of the debt, or under any guidelines issued by the Assistant Secretary for Administration or by the creditor agency's fiscal officer.

(1) Interest will not be assessed on interest, penalties or administrative costs. However, if a debtor defaults on a repayment agreement, interest which has accrued but was not collected under the defaulted agreement will be added to the principal to be paid under a new repayment agreement.

(2) Agencies will assess a penalty of six percent a year on any unpaid debt balance delinquent for more than 90 days. This charge accrues from the date the debt becomes delinquent.

(3) Agencies will charge the debtor for administrative costs incurred in processing and handling a delinquent debt. Administrative costs may include costs of obtaining credit reports, using a private debt collector, or selling collateral or property to satisfy the debt.

(b) Agencies will waive the collection of interest assessed under these regulations on a delinquent debt or any portion of that debt which is paid within 30 days after the date on which interest began to accrue. Agencies may extend the 30-day period on a case-by-case basis, if it is determined that an extension is appropriate because of partial or complete absence of culpability by the debtor for the delay in payment.

(c) Agencies may waive collection of all or part of the interest, penalties, and administrative costs assessed under these regulations when it is determined:

(1) That the Government cannot collect the full amount of the delinquent debt or interest and costs because of the debtor's inability to pay the full amount within a reasonable time (considering such factors as those listed at 4 CFR 103.2(b)), or the debtor's refusal to pay the full amount where the Government is unable to effect collection in full within a reasonable time; or

(2) That there is a real doubt concerning the Government's ability to recover interest, penalties or costs in court, either because of the legal or equitable issues involved or because the facts are being disputed in court; or

(3) That the cost of collecting the delinquent debt with interest, penalties, or costs outweighs the amounts to be recovered; or

(4) That the collection of some or all of these charges would be against equity and good conscience or not in the best interests of the United States; or

(5) (For waiver of interest) that a request is pending for reconsideration, administrative review, or waiver of the underlying delinquent debt under a statute allowing but not requiring one or more of these remedies. If the statute under which review or waiver is sought by the debtor prohibits the agency from collecting the delinquent debt before resolution of the review or waiver request, interest, penalties and administrative costs must be waived during the period in which collection action is stayed. Otherwise, interest, penalties and administrative costs will not be waived except for a separate reason included in this section; or

(6) (For waiver of interest) that the agency has agreed to a repayment plan consistent with 4 CFR 102.11 and with §3.28 of this subpart, there is no indication of fault or lack of good faith by the debtor, and the amount of interest is sufficiently large relative to the size of the installments reasonably affordable by the debtor that the principal debt would never be repaid; or

(7) The debt is repaid after the date on which interest, penalties and administrative costs became payable and the estimated costs of recovering the remaining interest balance exceed the amount owed to the agency.

(d) The creditor agency must document its reasons for waiving interest, penalties, or administrative costs. This documentation must be retained by the agency for at least three years.

[50 FR 7722, Feb. 26, 1985, as amended at 55 FR 38663, Sept. 20, 1990]

§3.35 Disclosure to a credit reporting agency.

(a) The Department may report all commercial debts and all delinquent consumer debts to credit reporting agencies. The Department need not report foreign debts, or the debts of State and local governments, Indian tribal governments, or other public institutions.

(b) Disclosure of delinquent consumer debts must be consistent with the requirements of 31 U.S.C. 3711(f), 4 CFR

102.3(c), and 5 U.S.C. 552a (the Privacy Act).

[50 FR 7722, Feb. 26, 1985, as amended at 55 FR 38663, Sept. 20, 1990]

§ 3.36 Use of collection agencies.

USDA agencies should use collection agencies at any time accounts become delinquent. Agencies must refer all accounts 6 months or more delinquent unless other collection actions are being pursued or referral is prohibited by statute.

[55 FR 38663, Sept. 20, 1990]

Subpart C—Salary Offset

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

SOURCE: 51 FR 8995, Mar. 17, 1986, unless otherwise noted.

§ 3.51 Scope.

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

(b) These regulations apply to:

(1) Current employees of the Department and other agencies who owe debts to the Department; and

(2) Current employees of the Department who owe debts to other agencies.

(c) These regulations do not apply to debts or claims arising under the Internal Revenue Code of 1954 (26 U.S.C. 1 *et seq.*); the Social Security Act (42 U.S.C. 301 *et seq.*); the tariff laws of the United States; or to any case where collection of a debt by salary offset is explicitly provided for or prohibited by another statute.

(d) These regulations identify the types of salary offset available to the Department, as well as certain rights provided to the employee, which include a written notice before deductions begin, the opportunity to petition for a hearing and to receive a written decision if a hearing is granted. These employee rights do not apply to any adjustment to pay arising out of an employee's election of coverage or a change in coverage under a Federal benefits program requiring periodic deductions from pay, if the amount to be recovered was accumulated over four pay periods or less.

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

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

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

(3) Questioning the amount or validity of a debt by submitting a subsequent claim to the General Accounting Office.

(f) Nothing in these regulations precludes the compromise, suspension or termination of collection actions where appropriate under the Department's regulations contained elsewhere.

§ 3.52 Definitions.

(a) *Agency* means:

(1) An Executive Agency as defined by section 105 of title 5 U.S.C., the U.S. Postal Service, the U.S. Postal Rate Commission; and

(2) A Military Department as defined by section 102 of title 5, U.S.C.

(b) *Debt* means:

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

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

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

(ii) False claims for services and travel;

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

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

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

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

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

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

(d) *Disposable pay* means any pay due an employee that remains after required deductions for Federal, State and Local income taxes; Social Security taxes, including Medicare taxes; Federal retirement programs; premiums for life and health insurance benefits; and such other deductions required by law to be withheld.

(e) *Employee* means a current employee of an agency, including a current member of the Armed Forces or a Reserve of the Armed Forces.

(f) *Hearing official* means an administrative law judge of the Department or some other individual not under the control of the Secretary.

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

(h) *Secretary* means the Secretary of the U.S. Department of Agriculture or his or her designee.

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

§3.53 Coordinating offset with another Federal agency.

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

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

§3.54 Determination of indebtedness.

(a) In determining that an employee is indebted to USDA and that 4 CFR parts 101 through 105 have been satisfied and that salary offset is appropriate, the Secretary will review the debt to make sure that it is valid and past due.

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

§3.55 Notice requirements before offset.

Except as provided in §3.51(d), salary offset will not be made unless the Secretary first provides the employee with a minimum of 30 calendar days written notice. This Notice of Intent to Offset Salary (Notice of Intent) will state:

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

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

(c) The amount, frequency, approximate beginning date, and duration of the intended deductions;

(d) An explanation of the Department's requirements concerning interest, penalties and administrative costs; unless such payments are waived in accordance with 31 U.S.C. 3717 and §3.34;

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

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

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

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

(i) That a final decision on the hearing will be issued at the earliest practical date, but not later than 60 calendar days after the filing of the petition requesting the hearing, unless the employee requests, and the hearing officer grants, a delay in the proceedings;

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

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

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

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

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

(l) That amounts paid on or deducted for the debt which are later waived or found not owed to the United States will be promptly refunded to the employee, unless there are applicable contractual or statutory provisions to the contrary;

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

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

§ 3.56 Request for a hearing.

(a) Except as provided in paragraph (c) of this section, an employee must file a petition for a hearing, that is received by the Secretary not later than 30 calendar days from the date of the Department's notice described in § 3.55, if an employee wants a hearing concerning:

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

(2) The Secretary's proposed offset schedule (including percentage).

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

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

§ 3.57 Result if employee fails to meet deadlines.

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

(a) Fails to file a petition for a hearing as prescribed in §3.56; or

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

§ 3.58 Hearings.

(a) If an employee timely files a petition for a hearing under § 3.56, the Secretary shall select the time, date, and location for the hearing.

(b)(1) Hearings shall be conducted by an appropriately designated hearing official; and

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

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

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

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

§3.59 Written decision following a hearing.

Written decisions provided after a hearing will include:

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

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

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

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

(e) The determination of the amount of the debt at this hearing is the final agency action on this matter.

§3.60 Review of Departmental record related to the debt.

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

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

§3.61 Written agreement to repay debt as alternative to salary offset.

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

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

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

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

(b) If the employee filed a petition for a hearing with the Secretary before the expiration of the period provided for in §3.56 then deductions will begin after the hearing officer has provided the employee with a hearing, and a final written decision has been rendered in favor of the Secretary.

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

§3.63 Procedures for salary offset: Types of collection.

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

these cases, deduction will be by installments, as set forth in § 3.64.

§ 3.64 Procedures for salary offset: Methods of collection.

(a) *General.* A debt will be collected by deductions at officially-established pay intervals from an employee's current pay account, unless the employee and the Secretary agree to alternative arrangements for repayment under § 3.61.

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

(c) *Sources of deductions.* The Department will make deductions only from basic pay, special pay, incentive pay, retired pay, retainer pay, or in the case of an employee not entitled to basic pay, other authorized pay.

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

Interest, penalties and administrative costs will be charged in accordance with 4 CFR 102.13.

§ 3.66 Nonwaiver of rights.

So long as there are no statutory or contractual provisions to the contrary, no employee payment (or all or portion of a debt) collected under these regulations will be interpreted as a waiver of any rights that the employee may have under 5 U.S.C. 5514.

§ 3.67 Refunds.

The Department will refund promptly to the appropriate individual amounts offset under these regulations when:

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

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

§ 3.68 Agency regulations.

The Head of each USDA agency is delegated the authority to act for the Secretary under these regulations and may issue regulations or policies not inconsistent with Office of Personnel Management regulations (5 CFR part 550, subpart K) and regulations in this subpart governing the collection of a debt by salary offset.

Subpart D—Cooperation with the Internal Revenue Service

AUTHORITY: 26 U.S.C. 61, 31 U.S.C. 3720A, I TFRM 4055.50.

§ 3.81 Reporting discharged debts to the Internal Revenue Service.

When the Department discharges a debt for less than the full value of the indebtedness it will report the outstanding balance discharged, not including interest, to the Internal Revenue Service, using IRS Form 1099–G or any other form prescribed by the Service, when:

(a) The principal amount of the debt not in dispute is $600 or more; and

(b) The obligation has not been discharged in a bankruptcy proceeding; and

(c) The obligation is no longer collectible either because the time limit in the applicable statute for enforcing collection expired during the tax year, or because during the year a formal compromise agreement was reached in which the debtor was legally discharged of all or a portion of the obligation.

[50 FR 7726, Feb. 26, 1985]

§ 3.82 Offset against tax refunds.

The Department will take action to effect administrative offset against tax refunds due to debtors under 26 U.S.C.

6402, in accordance with the provisions of 31 U.S.C. 3720A and Treasury Department regulations.

[50 FR 7726, Feb. 26, 1985]

Subpart E—Adjusted Civil Monetary Penalties

AUTHORITY: 28 U.S.C. 2461 note.

§3.91 Adjusted civil monetary penalties.

(a) *In general.* The Secretary will adjust the civil monetary penalties, listed in paragraph (b), to take account of inflation at least once every 4 years as required by the Federal Civil Penalties Inflation Adjustment Act of 1990 (Pub. L. No. 101–410), as amended by the Debt Collection Improvement Act of 1996 (Pub. L. No. 104–134).

(b) *Penalties*—(1) *Agricultural Marketing Service.* (i) Civil penalty for improper pesticide recordkeeping, codified at 7 U.S.C. 136i–1(d), has:

(A) A maximum of $550 in the case of the first offense, and

(B) A minimum of $1,100 in the case of subsequent offenses unless the Secretary determines that the person made a good faith effort to comply.

(ii) Civil penalty for a violation of unfair conduct rule under the Perishable Agricultural Commodities Act, in lieu of license revocation or suspension, codified at 7 U.S.C. 499b(5), has a maximum of $2,200.

(iii) Civil penalty for a violation of the licensing requirements under the Perishable Agricultural Commodities Act, codified at 7 U.S.C. 499c(a), has—

(A) A maximum of $1,000 for each such offense and not more than $250 for each day it continues; or

(B) A maximum of $250 for each such offense if the Secretary determines the violation was not willful.

(iv) Civil penalty in lieu of license suspension under the Perishable Agricultural Commodities Act, codified at 7 U.S.C. 499h(e), has a maximum of $2,000 for each violative transaction or each day the violation continues.

(v) Civil penalty for a violation of Export Apple and Pear Act, codified at 7 U.S.C. 586, has a minimum of $110 and a maximum of $11,000.

(vi) Civil penalty for a violation of the Export Grape and Plum Act, codified at 7 U.S.C. 596, has a minimum of $110 and a maximum of $11,000.

(vii) Civil penalty for a violation of an order issued by the Secretary, under the Agricultural Marketing Agreement Act of 1937, codified at 7 U.S.C. 608c(14)(B), has a maximum of $1,100.

(viii) Civil penalty for failing to file certain reports under the Agricultural Marketing Agreement Act of 1937, codified at 7 U.S.C. 610(c), has a maximum civil penalty of $110.

(ix) Civil penalty for a violation of seed program under the Federal Seed Act, codified at 7 U.S.C. 1596(b), has a minimum civil penalty of $27.50 and a maximum of $550.

(x) Civil penalty for a failure to collect an assessment or fee or for a violation of the Cotton Research and Promotion Act, codified at 7 U.S.C. 2112(b), has a maximum of $1,100.

(xi) Civil penalty for a violation of a cease and desist order or for deceptive marketing under the Plant Variety Protection Act, codified at 7 U.S.C. 2568(b), has a minimum of $550 and a maximum of $11,000.

(xii) Civil penalty for failing to pay, collect, remit any assessment or fee or for violating a program regarding Potato Research and Promotion Act, codified at 7 U.S.C. 2621(b)(1), has a minimum of $550 and a maximum of $5,500.

(xiii) Civil penalty for failing to obey a cease and desist order under the Potato Research and Promotion Act, codified at 7 U.S.C. 2621(b)(3), has a maximum of $550.

(xiv) Civil penalty for failing to pay, collect, remit any assessment or fee or for violating a program under the Egg Research and Consumer Information Act, codified at 7 U.S.C. 2714(b)(1), has a minimum of $550 and a maximum of $5,500.

(xv) Civil penalty for failing to obey a cease and desist order for a program under the Egg Research and Consumer Information Act, codified at 7 U.S.C. 2714(b)(3), has a maximum of $550.

(xvi) Civil penalty for failing to remit any assessment or fee or for violating a program under the Beef Research and Information Act, codified at

7 U.S.C. 2908(a)(2), has a maximum of $5,500.

(xvii) Civil penalty for failing to remit any assessment or for violating a program regarding wheat and wheat foods research, codified at 7 U.S.C. 3410(b), has a maximum of $1,100.

(xviii) Civil penalty for failing to pay, collect, or remit any assessment or fee or violating a program under the Floral Research and Consumer Information Act, codified at 7 U.S.C. 4314(b)(1), has a minimum $550 and a maximum of $5,500.

(xix) Civil penalty for failing to obey a cease and desist order under the Floral Research and Consumer Information Act, codified at 7 U.S.C. 4314(b)(3), has a maximum of $550.

(xx) Civil penalty for a violation of an order under the Dairy Promotion Program, codified at 7 U.S.C. 4510(b), has a maximum of $1,100.

(xxi) Civil penalty for failing to pay, collect, or remit any assessment or fee or for violating the Honey Research, Promotion, and Consumer Information Act, codified at 7 U.S.C. 4610(b)(1), has a minimum civil penalty of $550 and a maximum of $5,500.

(xxii) Civil penalty for failing to obey a cease and desist order of the Honey Research, Promotion, and Consumer Information Act, codified at 7 U.S.C. 4610(b)(3), has a maximum civil penalty of $550.

(xxiii) Civil penalty for a violation of a program of the Pork Promotion, Research, and Consumer Information Act, codified at 7 U.S.C. 4815(b)(1)(A)(i), has a maximum of $1,100.

(xxiv) Civil penalty for failing to obey a cease and desist order under the Pork Promotion, Research, and Consumer Information Act, codified at 7 U.S.C. 4815(b)(3)(A), has a maximum of $550.

(xxv) Civil penalty for failing to pay, collect, or remit any assessments or fee or for violating a program under the Watermelon Research and Promotion Act, codified at 7 U.S.C. 4910(b)(1), has a minimum of $550 and a maximum of $5,500.

(xxvi) Civil penalty for failing to obey a cease and desist order for a program under the Watermelon Research and Promotion Act, codified at 7 U.S.C. 4910(b)(3), has a maximum of $550.

(xxvii) Civil penalty for failing to pay, collect, or remit any assessments or fee or for a violation of program under the Pecan Promotion and Research Act, codified at 7 U.S.C. 6009(c)(1), has a minimum of $1,100 and a maximum of $11,000.

(xviii) Civil penalty for failing to obey a cease and desist order of the Pecan Promotion and Research Act, codified at 7 U.S.C. 6009(e), has a maximum of $1,100.

(xxix) Civil penalty for failing to pay, collect, or remit any assessments or fee or for violating a program of the Mushroom Promotion, Research, and Consumer Information Act, codified at 7 U.S.C. 6107(c)(1), has a minimum of $550 and a maximum of $5,500.

(xxx) Civil penalty for failing to obey a cease and desist order under the Mushroom Promotion, Research, and Consumer Information Act, codified at 7 U.S.C. 6107(e), has a maximum of $550.

(xxxi) Civil penalty for failing to pay, collect, or remit any assessments or fee or for violation of the Lime Research, Promotion, and Consumer Information Act, codified at 7 U.S.C. 6207(c)(1), has a minimum of $550 and a maximum of $5,500.

(xxxii) Civil penalty for failing to obey a cease and desist order under the Lime Research, Promotion, and Consumer Information Act, codified at 7 U.S.C. 6207(e), has a maximum of $550.

(xxxiii) Civil penalty for failing to pay, collect, or remit any assessments or fee or for violating a program under the Soybean Promotion, Research, and Consumer Information Act, codified at 7 U.S.C. 6307(c)(1), has a maximum civil penalty of $1,100.

(xxxiv) Civil penalty for failing to obey a cease and desist order under the Soybean Promotion, Research, and Consumer Information Act, codified at 7 U.S.C. 6307(e), has a maximum of $5,500.

(xxxv) Civil penalty for failing to pay, collect, or remit any assessments or fee or for violating a program of the Fluid Milk Promotion Act, codified at 7 U.S.C. 6411(c)(1)(A), has a minimum of $550 and a maximum civil penalty of $5,500; or in the case of a violation which is willful, codified at 7 U.S.C. 6411(c)(1)(B), has a minimum of $11,000 and a maximum of $110,000.

(xxxvi) Civil penalty for failing to obey a cease and desist order for a program under the Fluid Milk Promotion Act of 1990, codified at 7 U.S.C. 6411(e), has a maximum of $5,500.

(xxxvii) Civil penalty for knowingly labeling or selling a product as organic except in accordance with the Organic Foods Production Act, codified at 7 U.S.C. 6519(a), has a maximum of $11,000.

(xxxviii) Civil penalty for failing to pay, collect, or remit any assessments or fee or for violation of a program of the Fresh Cut Flowers and Fresh Cut Greens Promotion and Information Act, codified at 7 U.S.C. 6808(c)(1), has a minimum of $530 and a maximum of $5,300.

(xxxix) Civil penalty for failing to obey a cease and desist order for a program of the Fresh Cut Flowers and Fresh Cut Greens Promotion and Information Act, codified at 7 U.S.C. 6808(e), has a maximum of $5,300.

(xl) Civil penalty for a violation of program of the Sheep Promotion, Research, and Consumer Information Act, codified at 7 U.S.C. 7107(c)(1), has a maximum of $1,030.

(xli) Civil penalty for failing to obey a cease and desist order for a program of the Sheep Promotion, Research, and Consumer Information Act, codified at 7 U.S.C. 7107(e), has a maximum of $520.

(xlii) Civil penalty for a violation of an order or regulation issued under the Commodity Promotion, Research, and Information Act of 1996, codified at 7 U.S.C. 7419(c)(1), has a minimum of $1,000 and a maximum of $10,000 for each violation.

(xliii) Civil penalty for a violation of a cease and desist order issued under the Commodity Promotion, Research, and Information Act of 1996, codified at 7 U.S.C. 7419(e), has a minimum of $1,000 and a maximum of $10,000 for each day the violation occurs.

(xliv) Civil penalty for a violation of an order or regulation issued under the Canola and Rapeseed Research, Promotion, and Consumer Information Act, codified at 7 U.S.C. 7448(c)(1), has a maximum of $1,000 for each violation.

(xlv) Civil penalty for a violation of a cease and desist order issued under the Canola and Rapeseed Research, Promotion, and Consumer Information Act, codified at 7 U.S.C. 7448(e), has a maximum of $5,000 for each day the violation occurs.

(xlvi) Civil penalty for a violation of an order or regulation issued under the National Kiwifruit Research, Promotion, and Consumer Information Act, codified at 7 U.S.C. 7468(c)(1), has a minimum of $500 and a maximum of $5,000 for each violation.

(xlvii) Civil penalty for a violation of a cease and desist order issued under the National Kiwifruit Research, Promotion, and Consumer Information Act, codified at 7 U.S.C. 7468(e), has a maximum of $500 for each day the violation occurs.

(xlviii) Civil penalty for a violation of an order or regulation issued under the Popcorn Promotion, Research, and Consumer Information Act, codified at 7 U.S.C. 7487, has a maximum of $1,000 for each violation.

(xlix) Civil penalty for a violation of an order or regulation issued under the egg surveillance provisions of the Eggs Product Inspection Act, codified at 21 U.S.C. 1041(c)(1)(A), has a maximum of $5,500 for each violation.

(2) *Animal and Plant Health Inspection Service.* (i) Civil penalty for a violation of the Act of January 31, 1942, plant and pest regulations, codified at 7 U.S.C. 149(b)(2), has a maximum of $1,100.

(ii) Civil penalty for a violation of the Federal Plant Pest Act, codified at 7 U.S.C. 150gg(b), has a maximum of $1,100.

(iii) Civil penalty for a violation of the Act of August 20, 1912 (commonly known as the Plant Quarantine Act), codified at 7 U.S.C. 163, has a maximum of $1,100.

(iv) Civil penalty for a violation of the Federal Seed Act, codified at 7 U.S.C. 1596(b), has a minimum of $27.50 and a maximum of $550.

(v) Civil penalty for a violation of Animal Welfare Act, codified at 7 U.S.C. 2149(b), has a maximum of $2,750; and knowing failure to obey a cease and desist order has a civil penalty of $1,650.

(vi) Civil penalty for a violation of Swine Health Protection Act, codified at 7 U.S.C. 3805(a), has a maximum of $11,000.

(vii) Civil penalty for a violation of Horse Protection Act, codified at 15 U.S.C. 1825(b)(1), has a maximum of $2,200.

(viii) Civil penalty for failure to obey Horse Protection Act disqualification, codified at 15 U.S.C. 1825(c), has a maximum of $3,300 and exhibition of disqualified horse, codified at 15 U.S.C. 1825(c), has a maximum of $3,300.

(ix) Civil penalty for a violation of the Act of August 30, 1890, codified at 21 U.S.C. 104, has a maximum of $1,100.

(x) Civil penalty for a violation of the Act of May 29, 1884 (commonly known as the Animal Industry Act), codified at 21 U.S.C. 117(b), has a maximum of $1,100.

(xi) Civil penalty for a violation of the Act of February 2, 1903 (commonly known as the Cattle Contagious Disease Act), codified at 21 U.S.C. 122, has a maximum of $1,100.

(xii) Civil penalty for a violation of the Act of March 3, 1905, codified at 21 U.S.C. 127, has a maximum of $1,100.

(xiii) Civil penalty for a violation of the Act of July 2, 1962, codified at 21 U.S.C. 134e(a)(2), has a maximum of $1,100.

(xiv) Civil penalty for a violation of the Act of May 6, 1970, codified at 21 U.S.C. 135a(b), has a maximum of $1,100.

(xv) Civil penalty for knowingly violating, or, if in the business, violating, with respect to terrestrial plants, any provision of the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*) any permit or certificate issued thereunder, or any regulation issued pursuant to section 9(a)(1)(A) through (F), (a)(2)(A) through (D), (c), (d), as set forth at 16 U.S.C. 1540(a) (other than regulations relating to recordkeeping or filing reports), (f), or (g) of the Endangered Species Act of 1973 (16 U.S.C. 1538(a)(1)(A) through (F), (a)(2)(A) through (D), (c), (d), (f), and (g)), has a maximum of $25,000.

(xvi) Civil penalty for knowingly violating, or, if in the business, violating, with respect to terrestrial plants, any regulation issued under the Endangered Species Act (16 U.S.C. 1531 *et seq.*), as set forth at 16 U.S.C. 1540(a) [except as provided in subparagraph (O)], has a maximum of $12,000.

(xvii) Civil penalty for any violation, with respect to terrestrial plants, of the Endangered Species Act (16 U.S.C. 1531 *et seq.*), as set forth at 16 U.S.C. 1540(a) [except as provided in subparagraphs (O) and (P)], has a maximum of $500.

(3) *Food and Consumer Service.* (i) Civil penalty for hardship fine in lieu of disqualification, codified at 7 U.S.C. 2021(a), has a maximum of $11,000 per violation.

(ii) Civil penalty for trafficking in food coupons, codified at 7 U.S.C. 2021(b)(3)(B), has a maximum of $20,000 for each violation, except that the maximum penalty for violations occurring during a single investigation is $40,000.

(iii) Civil penalty for the sale of firearms, ammunition, explosives, or controlled substances for coupons, codified at 7 U.S.C. 2021(b)(3)(C), has a maximum of $20,000 for each violation except that the maximum penalty for violations occurring during a single investigation is $40,000.

(iv) Civil penalty for any entity that submits a bid to supply infant formula to carry out the Special Supplemental Nutrition Program for Women, Infants and Children and discloses the amount of the bid, rebate or discount practices in advance of the bid opening or for any entity that makes a statement prior to the opening of the bids for the purpose of influencing a bid, codified at 42 U.S.C. 1786(h)(8)(H)(i), has a maximum of $100,000,000.

(4) *Food Safety and Inspection Service.* (i) Civil penalty for a violation of the Eggs Products Inspection Act, codified at 21 U.S.C. 1041(c)(1)(A), has a maximum penalty of $5,500 for each violation.

(ii) Civil penalty for a failure to file timely certain reports, codified at 21 U.S.C. 467d, has a maximum civil penalty of $11 per day for each day the report is not filed.

(iii) Civil penalty for a failure to file timely certain reports codified at 21 U.S.C. 677, has a maximum civil penalty of $11 per day for each day the report is not filed.

(iv) Civil penalty for a failure to file timely certain reports codified at 21

U.S.C. 1051, has a maximum civil penalty of $11 per day for each day the report is not filed.

(5) *Forest Service.* (i) Civil penalty for a willful disregard of the prohibition against the export of unprocessed timber originating from Federal lands has a maximum of $550,000 per violation or three times the gross value of the unprocessed timber whichever is greater, codified at 16 U.S.C. 620d(c)(1)(A).

(ii) Civil penalty for a violation in disregard of the Forest Resources Conservation and Shortage Relief Act of 1990 (16 U.S.C. 620 *et seq.*) or the regulations that implement such Act regardless of whether such violation caused the export of unprocessed timber originating from Federal lands, has a maximum penalty of $82,500 per violation, codified at 16 U.S.C. 620d(c)(2)(A)(i).

(iii) Civil penalty for a person that should have known that an action was a violation of the Forest Resources Conservation and Shortage Relief Act of 1990 (16 U.S.C. 620 *et seq.*) or the regulations that implement such Act regardless of whether such violation caused the export of unprocessed timber originating from Federal lands, has a maximum penalty of $55,000 per violation, codified at 16 U.S.C. 620d(c)(2)(A)(ii).

(iv) Civil penalty for a willful violation of the Forest Resources Conservation and Shortage Relief Act of 1990 (16 U.S.C. 620 *et seq.*) or the regulations that implement such Act regardless of whether such violation caused the export of unprocessed timber originating from Federal lands, has a maximum penalty of $550,000 per violation, codified at 16 U.S.C. 620d(c)(2)(A)(iii).

(v) Civil penalty for a violation involving protections of caves, codified at 16 U.S.C. 4307(a)(2), has a maximum of $11,000.

(6) *Grain Inspection, Packers and Stockyards Administration.* (i) Civil penalty for a packer violation, codified at 7 U.S.C. 193(b), has a maximum of $11,000.

(ii) Civil penalty for livestock market agency, dealer, failure to register, codified at 7 U.S.C. 203, has a maximum of $550 and not more than $27.50 for each day the violation continues.

(iii) Civil penalty for a violation of stockyard rate, regulation or practice, codified at 7 U.S.C. 207(g), has a maximum civil penalty of $550 and not more than $27.50 for each day the violation continues.

(iv) Civil penalty for a stockyard owner, livestock market agency and dealer violations, codified at 7 U.S.C. 213(b), has a maximum of $11,000.

(v) Civil penalty for a stockyard owner, livestock market agency and dealer compliance order violations, codified at 7 U.S.C. 215(a), has a maximum of $550.

(vi) Civil penalty for a failure to file required reports, codified at 15 U.S.C. 50, has a maximum of $110.

(vii) Civil penalty for live poultry dealer violations, codified at 7 U.S.C. 228b-2(b), has a maximum of $22,000.

(viii) Civil penalty for a violation, codified at 7 U.S.C. 86(c), has a maximum civil penalty of $82,500.

(7) *Federal Crop Insurance Corporation.* Civil penalty for any person who willfully and intentionally provides materially false or inaccurate information to the Federal Crop Insurance Corporation or an approved insurance provider reinsured by the Federal Crop Insurance Corporation, codified at 7 U.S.C. 1506(n)(1)(A), has a maximum civil penalty of $10,000.

(8) *All USDA Agencies.* Civil penalty for work hours and safety violations, codified at 40 U.S.C. 328, has a maximum of $11 per day of violation.

[62 FR 40925, July 31, 1997; 62 FR 42857, Aug. 8, 1997]

PART 4 [RESERVED]

PART 5—DETERMINATION OF PARITY PRICES

Sec.
5.1 Parity index and index of prices received by farmers.
5.2 Marketing season average price data.
5.3 Selection of calendar year price data.
5.4 Commodities for which parity prices shall be calculated.
5.5 Publication of season average, calendar year, and parity price data.
5.6 Revision of the parity price of a commodity.

AUTHORITY: 7 U.S.C. 1301, 1375.

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