

involving small farms or ranches and beginning or socially disadvantaged farmers or ranchers.

(12) Administer the USDA/1994 Land Grant Institutions (Tribal Colleges) Programs.

(13) Administer the USDA/1890 Liaison Officer Program.

(14) Administer the Hispanic Serving Institutions National Program, including through the use of cooperative agreements under 7 U.S.C. 3318(b).

(15) Serve as a lead agency in carrying out student internship programs (7 U.S.C. 2279c).

(16) Coordinate outreach to Asian-Americans and Pacific Islanders.

(b) [Reserved]

[83 FR 61317, Nov. 29, 2018, as amended at 85 FR 65524, Oct. 15, 2020]

§ 2.701 [Reserved]

PART 3—DEBT MANAGEMENT

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3.91 Adjusted civil monetary penalties.

AUTHORITY: 5 U.S.C. 301; 7 U.S.C. 1506, 1981, 1981a, 1981d, and 2008h; 15 U.S.C. 714b; 31 U.S.C. 3701, 3711, 3716–18, and 3720B; and 31 CFR parts 285 and 901–904.

SOURCE: 85 FR 36672, June 17, 2020, unless otherwise noted.

Subpart A—General

§ 3.1 Purpose and scope.

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

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

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

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

(c) The regulations of this part will not apply to:

(1) Collection of debts owed government travel card contractors by USDA employees;

(2) Collection of debts owed by individual Food Stamp Program recipients for whom debt collection procedures are provided under § 273.18 of this title.

(3) Collection of debts owed by foreign governments and, sovereign institutions of foreign governments.

(4) Actions pursuant to the FSA FLP Debt Settlement regulations in part 761, subpart F, of this title are author-

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ized under the Consolidated Farm and Rural Development Act (ConAct), which are independent of the DCIA are excepted from this part.

(5) Actions pursuant to the following RD Debt Settlement regulations authorized under the ConAct and the Housing Act, which are independent of the DCIA are excepted from this part:

(i) 7 CFR part 1717, subpart Y;

(ii) 2 CFR part 175;

(iii) 7 CFR 1782.20;

(iv) 7 CFR 1951.213;

(v) 7 CFR part 1956;

(vi) 7 CFR part 3550, subpart F;

(vii) 7 CFR 3560.457; and

(viii) 7 CFR 3565.56.

§ 3.2 Authority.

(a) Generally, the regulations in this part are issued under the Debt Collection Act of 1982, as amended by the Debt Collection Improvement Act of 1996 (DCIA) (31 U.S.C. 3701, 3711–3720) and the Federal Claims Collection Standards (FCCS) issued pursuant to the DCIA by Treasury and Justice (31 CFR parts 901–904) that prescribe government-wide standards for administrative collection, compromise, suspension, or termination of agency collection action, disclosure of debt information to credit reporting agencies, referral of claims to private collection contractors for resolution, and referral to Justice for litigation to collect debts owed the government. The regulations under this part also are issued under Treasury regulations implementing DCIA (31 CFR part 285) and related statutes and regulations governing the offset of Federal salaries (5 U.S.C. 5512 and 5514; 5 CFR part 550, subpart K) and administrative offset of tax refunds (31 U.S.C. 3720A).

(b) With respect to agency specific provisions of this part, the following authorities are applicable:

(1) The Commodity Credit Corporation (CCC); section 4 of the Commodity Credit Corporation Charter Act (15 U.S.C. 714b).

(2) The Farm Service Agency (FSA); sections 331, 331A, 331D, and 373 of the Consolidated Farm and Rural Development Act (ConAct) (7 U.S.C. 1981, 1981a, 1981d, and 2008h).

(3) The Federal Crop Insurance Corporation (FCIC); section 506(j) of the

Federal Crop Insurance Act (7 U.S.C. 1506(j)).

§ 3.3 Definitions.

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

Account means a record of transactions involving the debt, claim, or loan for a particular person or entity, including the name, address, taxpayer identification number, other information necessary to establish the person's or entity's identity, the balance, status, history of the debt, and program under which the debt or claim arose.

Administrative charges means the additional costs of processing delinquent debts against the debtor, to the extent such costs are attributable to the delinquency. Such costs include, but are not limited to, costs incurred in obtaining a credit report, costs of employing commercial firms to locate debtor, costs of employing contractors for collection services, and costs of selling collateral or property to satisfy the debt.

Administrative offset means withholding funds payable by the United States (including funds payable by the United States on behalf of a State government) to, or held by the United States for, a person to satisfy a debt. This definition is consistent with 31 U.S.C. 3701(a)(1).

Agency means an agency, office, or corporation within USDA subject to the authority or general supervision of the Secretary.

Borrower and *debtor* have the same meaning and refer to a person who owes a delinquent, nontax debt to the United States.

Carrier means a person or other entity, including but not limited to railroads, motor carriers, ocean carriers or inter-modal marketing companies, that provide transportation or other transportation-related services for compensation.

CCC means Commodity Credit Corporation.

Centralized administrative offset means referral of a debt to the Treasury Offset Program (TOP) to collect debts that creditor agencies have certified pursuant to 31 U.S.C. 3716(c), 3720A(a), and applicable regulations for offset of

payments made to a debtor by Federal agencies other than USDA. Centralized offset also includes offset of payments made by States pursuant to 31 U.S.C. 3716(h) and 31 CFR 285.6.

CFO means Chief Financial Officer.

Civil monetary penalties are assessed for violations and failures to comply with various program requirements. The management and settlement of these debts are specified in this part, and the applicable laws and program specific regulations.

Claim and debt have the same meaning and refer to an amount of money, funds, or property that has been determined by an agency official to be owed to the United States from any person, organization, or entity, except another Federal agency.

Compromise means the settlement or forgiveness of a debt under 31 U.S.C. 3711, in accordance with standards specified in FCCS and applicable federal law.

Contracting officer has the same meaning as in 41 U.S.C. 7101.

Credit reporting agencies (also known as credit bureaus) means major credit reporting agencies that have signed agreements with agencies to receive and integrate credit information (data) from voluntary subscribers (Federal agencies and private sector entities) into their respective databases for the purpose of generating credit reports for sale to purchasers of credit data.

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

Cross-servicing means the centralized collection of Federal debt and the various collection actions taken by Treasury on behalf of a Federal agency in accordance with the provisions of 31 U.S.C. 3711, 31 U.S.C. 3720D, 31 CFR part 285, and other Treasury regulations. Cross-servicing includes, but is not limited to, the use of debt collection centers and private collection contractors.

Day means calendar day unless otherwise specified.

DCIA means the Debt Collection Improvement Act of 1996.

§3.3

Debt means an amount of money, funds, or property that has been determined by an agency official to be owed to the United States from any person, organization, or entity, except another Federal agency.

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

Debt record means the account, register, balance sheet, file, ledger, data file, or similar record of debts owed to any Federal agency with respect to which collection action is being pursued.

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

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

Discharged debt means any debt, or part thereof, that an agency has determined is uncollectible and has closed out or, in the case of FSA FLP, means the amount of debt that was discharged through bankruptcy proceedings where no further collection actions may be taken on that debt.

Disposable pay means that part of the debtor's compensation (including, but not limited to, salary, bonuses, commissions, and vacation pay) from an employer remaining after the deduction of health insurance premiums and any amounts required by law to be withheld including social security taxes and other withholding taxes, but not including any amount withheld pursuant to a court order.

Federal agency means any department or entity within the Executive branch of the government that is not a USDA agency.

Financial statement means a statement of financial condition at a given date that accurately reflects the deb-

tor's assets, liabilities, income, and expenses.

Fiscal Service means the United States Department of the Treasury's Bureau of the Fiscal Service.

Foreign debt means debt owed by a sovereign or non-sovereign entity, when the debt is subject to adjudication in a non-U.S. jurisdiction.

FSA FLP means the Farm Loan Programs of FSA.

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

Justice means the United States Department of Justice.

Late payment interest rate means the amount of interest charged on delinquent debts and claims in cases where the annual rate of interest is not established by a promissory note. Unless otherwise provided by the law, regulation, contract, or agreement that established the debt, the late payment interest rate will be equal to the higher of the Prompt Payment Act interest rate or the standard late payment rate prescribed by 31 U.S.C. 3717, as of the date the debt became delinquent. Interest on delinquent debts will accrue on a daily basis.

NAD means the USDA National Appeals Division.

Non-centralized administrative offset means an agreement between a USDA creditor agency and a payment authorizing agency to offset the payments made by the payment authorizing agency to satisfy a USDA debt. The creditor agency and paying agency can be the same.

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

OGC means the USDA Office of the General Counsel.

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

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

Penalty charge or penalty interest means the additional penalty amount charged on delinquent debts as specified in 31 U.S.C. 3717(e)(2) and §3.17(d).

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

Private Collection Agency means any organization or corporation that specializes in debt collection is known as a collection agency or debt collector.

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

Reviewing officer means a person designated by a creditor agency as responsible for conducting a hearing or providing documentary review on the existence of the debt and the propriety of an administrative collection action.

Salary offset means the deduction of money from the current pay account of a present or former Government employee as specified in 5 U.S.C. 5514 to satisfy a debt that person owes the Government.

Secretary means the Secretary of Agriculture, unless otherwise specified.

Settlement or debt settlement means, for the purposes of this part only, the final disposition or resolution of a debt or claim that results in cancellation of any remaining balance owed and reporting of the canceled amount to the IRS as specified in § 3.90, and applicable IRS requirements.

Tax Identification Number or TIN means the identification number required on tax returns and other documents submitted to the Internal Revenue Service; that is, an individual's social security number (SSN) or employer identification number (EIN).

TOP means Treasury Offset Program, which is a centralized offset program that collects delinquent debts owed to Federal agencies and states.

Treasury means the United States Department of the Treasury.

USDA means the United States Department of Agriculture.

Withholding of payment means the action taken to temporarily prevent the payment of some or all amounts to a debtor under one or more contracts or programs.

§ 3.4 Delegations of authority.

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

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

§ 3.10 Aggressive agency collection activity.

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

§ 3.11 Demand for payment.

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

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When necessary to protect the government's interest (for example, to prevent the running of a statute of limitations), written demand may be preceded by other appropriate actions under this part, including immediate referral for litigation.

(b) In demand letters, the USDA creditor agency will inform the debtor:

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

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

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

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

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

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

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

(ii) Refer the debt to a private collection agency.

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

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

(v) Refer the debt to Justice in accordance with §3.21 to initiate litigation to collect the debt;

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

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

(8) How the debtor may request an administrative review of the determination that the debtor owes a debt and present evidence that the debt is not delinquent or legally enforceable (see subpart F of this part);

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

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

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

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

(13) That certain debtors may be ineligible for government loans, guarantees, and insurance (see §3.14);

(14) If applicable, the intention to suspend or revoke licenses, permits, or privileges (see §3.14); and

(15) That the debtor must advise the creditor agency of the filing of any bankruptcy proceedings of the debtor or of another person liable for the debt being collected.

(16) The debtor's right to appeal the determination in accordance with applicable appeal procedures;

(17) The debtor's right to present evidence that all or part of the debt is not past-due or not legally enforceable.

(c) A USDA creditor agency may omit from a demand letter one or more of the provisions contained in paragraphs (b)(6) through (17) of this section if the USDA creditor agency, in consultation with OGC, determines that any provision is not legally required given the collection remedies to be applied to a particular debt. In the case of foreign debt that is subject to insolvency or bankruptcy proceedings outside the United States, a USDA creditor agency may, in lieu of a demand letter, submit such documentation necessary to establish its claim as a creditor.

(d) Agencies will exercise care to ensure that demand letters are mailed or delivered (as applicable for the program) on the same day that they are

dated. There is no prescribed format for demand letters. Agencies will utilize demand letters and procedures that will lead to the earliest practicable determination of whether the debt can be resolved administratively or must be referred for litigation.

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

(f) Prior to the initiation of the demand process or at any time during or after completion of the demand process, if an agency determines to pursue, or is required to pursue, administrative offset, the procedures applicable to offset must be followed (see subpart D of this part). The availability of funds or money for debt satisfaction by administrative offset, and the agency's determination to pursue collection by administrative offset, will release the agency from the necessity of further compliance with paragraphs (a), (b), and (c) of this section.

(g) Prior to referring a debt for litigation under 31 CFR part 904, agencies will advise each debtor determined to be liable for the debt that, unless the debt can be collected administratively, litigation may be initiated. This notification complies with Executive Order 12988 (58 FR 51735, October 4, 1993) and may be given as part of a demand letter under paragraph (b) of this section or in a separate document. Litigation counsel for the government will be advised that this notice has been given. In general, only one agency should service a debt at a time; that is, agencies should not simultaneously refer a debt to both Treasury and Justice for collection.

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

against the debtor must stop immediately. The agency should take the following steps:

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

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

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

§3.12 Reporting of debts to Credit Reporting Agencies.

(a) In demand letters to debtors sent in accordance with §3.11, agencies will inform debtors:

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

(2) The specific information to be transmitted (that is, name, address, and taxpayer identification number, information about the debt);

(3) The actions which may be taken by the debtor to prevent the reporting (that is, repayment in full or a repayment agreement); and

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

(b) Disclosure of delinquent consumer debts must be consistent with the requirements of 31 U.S.C. 3711(e), the Privacy Act of 1974 (5 U.S.C. 552a), the Bankruptcy Code, and 31 CFR 901.4.

(c) When an agency has given a debtor any of the notices required by this part and an opportunity for administrative review under subpart F of this part, the agency need not duplicate such notice and review opportunities

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before reporting the delinquent debt to credit reporting agencies.

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

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

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

(b) Similarly, agencies also are not permitted to extend financial assistance (either directly or indirectly) in the form of grants, loans, or loan guarantees to judgment debtors who have a judgment lien placed against their property until the judgment is satisfied, unless the agency grants a waiver in accordance with agency regulations. See 31 U.S.C. 3720B.

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

(d) Any agency making, guaranteeing, insuring, acquiring, or participating in, loans must consider sus-

pending or disqualifying any lender, contractor, or broker from doing further business with the agency or engaging in programs sponsored by the agency if such lender, contractor, or broker fails to pay its debts to the government within a reasonable time or if such lender, contractor, or broker has been suspended, debarred, or disqualified from participation in a program or activity by USDA or another Federal agency. Failure to pay a single substantial debt, or a number of outstanding debts (including disallowed costs and overrun payments, but not including sums owed to the government under the Internal Revenue Code or as specified in the appropriations provisions regarding outstanding tax debt in sections 745 and 746 of Division E of the Consolidated Appropriations Act, 2016 (Pub. L. 114–113) and successor provisions of law) owed to any Federal agency or instrumentality is grounds for non-procurement suspension or debarment if the debt is uncontested and the debtor’s legal administrative remedies for review of the debt are exhausted. See 2 CFR 180.800(c)(3).

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

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

(g) In bankruptcy cases, before advising the debtor of an agency’s intention to suspend or revoke licenses, permits, or privileges, agencies may request legal advice from OGC concerning the impact of the Bankruptcy Code, particularly 11 U.S.C. 362 and 525, which may restrict such action.

§ 3.15 Liquidation of collateral.

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

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

§ 3.16 Collection in installments.

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

(b) The size and frequency of installment payments will bear a reasonable relation to the size of the debt and the debtor's ability to pay. If possible, the installment payments will be sufficient in size and frequency to liquidate the debt in 3 years or less.

(c) Security for deferred payments will be obtained in appropriate cases. Agencies may accept installment pay-

ments notwithstanding the refusal of the debtor to execute a written agreement or to give security, at the agency's option.

§ 3.17 Interest, penalties, and administrative costs.

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

(b) Agencies will charge interest on debts owed the United States except as otherwise required by law and as provided in paragraph (i) of this section for debts owed to CCC and FSA. In charging such interest, agencies will apply the following provisions:

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

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

(3) The rate of interest, as initially charged, will remain fixed for the duration of the indebtedness. When a debtor defaults on a repayment agreement and requests to enter into a new agreement, the agency may require payment of interest at a new rate that reflects the current value of funds to the Treasury at the time the new agreement is executed. Interest will not be compounded, that is, interest will not be

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charged on interest, penalties, or administrative costs required by this section. If, however, a debtor defaults on a previous repayment agreement, charges that accrued but were not collected under the defaulted agreement will be added to the principal under the new repayment agreement.

(c) Agencies will assess administrative costs incurred for processing and handling delinquent debts. The calculation of administrative costs will be based on actual costs incurred or upon estimated costs as determined by the assessing agency.

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

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

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

(g) Agencies will waive the collection of interest and administrative charges

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

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

(i)(1) For debts resulting from CCC loans made in accordance with chapter XIV of this title:

(i) Late payment interest will begin to accrue from the date on which a claim is established. In addition, an additional charge of 3 percent per year will be assessed on a portion of a debt that remains unpaid 60 days after the date on which a claim was established. Such rate will be assessed retroactively from the date of claim establishment and apply on a daily basis and will continue to be used until the delinquent debt has been paid.

(ii) Penalty charges, administrative costs and interest will continue to accrue if a debtor makes a request for appeal as provided by any agency or USDA-wide appeal regulation. Collection by offset will continue during the appeal process unless prohibited by statute. If the debtor ultimately wins an appeal and the debt is found to be incorrect, CCC will credit the debtor's debt for the amount of penalty charges, administrative costs, and interest that has accrued from the date such charges were initiated on the portion determined in the appeal to not be due.

(2) Late payment interest provisions of this section do not apply to FSA and

CCC debts owed by Federal agencies and State and local governments. Interest on debts owed by such entities will be assessed at the rate of interest charged by the U.S. Treasury for funds borrowed by CCC on the day the debt became delinquent.

(3) Late payment interest, penalty charges, and administrative costs may be waived by FSA or CCC in full or in part, if it is determined by the agency that such action is in the Government's interest.

(4) The provisions of this section do not apply to CCC foreign debt.

§ 3.18 Use and disclosure of mailing addresses.

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

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

§ 3.19 Standards for the compromise of claims and debt settlement.

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

(b) For FSA FLP debts, the first instance of debt cancellation is exempt from the monetary limits established in 31 CFR 902.1.

(c) For CCC debts, CCC will, in exercising its authority pursuant to section 4 of the CCC Charter Act (15 U.S.C. 714b) to make final and conclusive settlement and adjustment of any CCC claims, follow the standards specified in 31 CFR 902.2, 902.3, 902.4, 902.6, and 902.7, for the compromise of debts owed to CCC, to the maximum extent practicable. In addition to the bases for the compromise of debts specified in 31

CFR 902.2, CCC may compromise a debt when the approving official with the authority to compromise the debt has determined that such action is in the interest of CCC.

§ 3.20 Standards for suspending or terminating collection activities.

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

(b) CCC will, in exercising its authority pursuant to section 4 of the CCC Charter Act (15 U.S.C. 714b) to make final and conclusive settlement and adjustment of any CCC claims, follow the standards specified in 31 CFR 903.2, 903.3, 903.4, and 903.5(c) and (d), for the suspension or termination of collection activities with regard to debts owed to CCC, to the maximum extent practicable. In addition to the bases for the termination of collection activities specified in 31 CFR 903.3, CCC may terminate collection activities when the approving official with the authority to terminate collection activities with regard to the debt has determined that such action is in the interest of CCC.

§ 3.21 Referrals of debts to Justice.

An agency will promptly refer to Justice for litigation debts on which aggressive collection activity has been taken in accordance with this part, and that cannot be compromised by the agency or on which collection activity cannot be suspended or terminated in accordance with 31 CFR parts 902 and 903. Agencies will follow the procedures specified in 31 CFR part 904 in making such referrals. Agencies will consult with OGC on all debts which are to be collected in foreign jurisdictions to determine how and if a referral to Justice will take place.

§ 3.22 CCC withholding of payment.

(a) CCC may temporarily withhold issuance of payment of some or all amounts to a debtor under one or more contracts or programs. Withholding of a payment prior to the completion of an applicable offset procedure may be made from amounts payable to a debtor by CCC to ensure that the interests

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of CCC and the United States will be protected as provided in this section.

(b) A payment may be withheld to protect the interests of CCC or the United States if CCC determines that:

(1) There has been a serious breach of contract or violation of program requirements and the withholding action is considered necessary to protect the financial interests of CCC;

(2) There is substantial evidence of violations of criminal or civil fraud laws and criminal prosecution or civil fraud action is of primary importance to program operations of CCC;

(3) Prior experience with the debtor indicates that collection will be difficult if amounts payable to the debtor are not withheld;

(4) There is doubt that the debtor will be financially able to pay a judgment on the claim of CCC;

(5) The facts available to CCC are insufficient to determine the amount to be offset or the proper payee;

(6) A judgement on a claim of CCC has been obtained; or

(7) Such action has been requested by Justice.

§ 3.23 CCC assignment of payment.

(a) No amounts payable to a debtor by CCC will be paid to an assignee of the debt until amounts owed by the debtor have been collected and applied to the debt.

(b) A payment that is assigned as specified in part 1404 of this title by execution of any CCC assignment form will be subject to offset for any debt owed to CCC, or any USDA agency, or any other Federal agency, any IRS notice of levy, or any judgment in favor of the United States, without regard to the date notice of assignment was accepted by CCC.

(c) Except as provided in 7 CFR 1404.6(b), any indebtedness owed by the assignor to CCC will be offset from any payment which is owed by CCC if such indebtedness was entered on the debt record of the applicable USDA office prior to the date of the filing Forms CCC-251 (Notice of Assignment) and CCC-252 (Instrument of Assignment).

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Subpart C—Referral of Debts to Treasury

§ 3.30 General requirements.

(a) Agencies are required by law to transfer delinquent, nontax, legally enforceable debts to Treasury for collection through cross-servicing and through centralized administrative offset with the exception of foreign debt that is exempt from cross-servicing per the Debt Collection Improvement Act of 1996. Additionally, USDA will transfer debts to Treasury for collection through administrative wage garnishment. Agencies need not make duplicate referrals to Treasury for all these purposes; a debt may be referred simultaneously for purposes of collection by cross-servicing, centralized administrative offset, and administrative wage garnishment where applicable. However, in some instances a debt exempt from collection via cross-servicing may be subject to collection by centralized administrative offset so simultaneous referrals are not always the norm. This subpart specifies the rules applicable to the transfer of debts to Treasury for collection by cross-servicing. Rules for transfer to Treasury for centralized administrative offset are specified in subpart D of this part, and for administrative wage garnishment in subpart E of this part.

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

(c) In cases where a debtor has more than one FSA FLP loan that has been referred to cross-servicing and Treasury accepts an agreement to compromise or adjust one loan, or several loans, but not all of the debt, cancellation of any loan balances remaining on the compromised or adjusted debt will not be processed for the debtor until:

(1) All payments have been received as agreed; and

(2) All loans referred to the cross-servicing program for that debtor have

been returned to FSA, with or without payment agreements.

§ 3.31 Mandatory referral for cross-servicing.

(a) Agencies will transfer to Treasury any legally enforceable nontax debt in excess of \$25, or combination of debts less than \$25 that exceeds \$25 (in the case of a debtor whose taxpayer identification number (TIN) is unknown the applicable threshold is \$100), that has or have been delinquent for a period of 180 days in accordance with 31 CFR 285.12 so that Treasury may take appropriate action on behalf of the creditor agency to collect or compromise, or to suspend or terminate collection, of the debt, including use of debt collection centers and private collection contractors to collect the debt or terminate collection action. Agencies that transfer delinquent debts to Fiscal Service for the purposes of debt collection and that rely on Fiscal Service to submit the transferred debts for administrative offset on the agency's behalf must transfer the debts to Fiscal Service no later than 120 days after the debts become delinquent in order to satisfy the 120-day notice requirement for purposes of administrative offset in accordance with 31 CFR 285.12(c)(1). For accounting and reporting purposes, the debt remains on the books and records of the agency which transferred the debt.

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

(1) Is in litigation or foreclosure (see 31 CFR 285.12 (d)(2) for definition);

(2) Will be disposed of under an approved asset sale program (see 31 CFR 285.12(d)(3)(i) for definition);

(3) Has been referred to a private collection contractor for a period of time acceptable to Treasury;

(4) Is at a debt collection center for a period of time acceptable to Treasury;

(5) Will be collected under administrative offset procedures within 3 years after the debt first became delinquent;

(6) Is exempt from this requirement based on a determination by the Secretary of the Treasury that exemption for a certain class of debt is in the interest of the United States. Federal agencies may request that the Sec-

retary of the Treasury exempt specific classes of debts. Any such request by an agency must be sent to the Fiscal Assistant Secretary of the Treasury by the USDA CFO.

(7) Is foreign debt; or

(8) Is FSA FLP debt in which case the delinquent loan servicing procedures and appeals process required by the ConAct will apply, including the deferral for cross-servicing until all security has been liquidated, and FSA concludes its review of any pending debt settlement application from the debtor.

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

§ 3.32 Discretionary referral for cross-servicing.

Agencies will consider referring legally enforceable nontax debts that are less than 180 days delinquent to Treasury or to Treasury-designated "debt collection centers" in accordance with 31 CFR 285.12 to accomplish efficient, cost effective debt collection if no USDA payments will be available to

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collect the debt through administrative offset under § 3.43.

§ 3.33 Required certification.

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

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

§ 3.34 Fees.

Federal agencies operating Treasury-designated debt collection centers are authorized to charge a fee for services rendered regarding referred or transferred debts. The fee may be paid out of amounts collected and may be added to the debt as an administrative cost.

Subpart D—Administrative Offset**§ 3.40 Scope.**

- (a) This subpart specifies the procedures to be used by agencies in collecting debts by administrative offset.
- (b) This subpart does not apply to:
 - (1) Debts arising under the Social Security Act, except as provided in 42 U.S.C. 404;
 - (2) Payments made under the Social Security Act, except as provided for in 31 U.S.C. 3716(c) (see 31 CFR 285.4, Federal Benefit Offset);
 - (3) Debts arising under, or payments made under, the Internal Revenue Code (except for offset of tax refunds) or the tariff laws of the United States;
 - (4) Offsets against Federal salaries (such offsets are covered by subpart F of this part);
 - (5) Offsets under 31 U.S.C. 3728 against a judgment obtained by a debtor against the United States;
 - (6) Offsets or recoupments under common law, State law, or Federal laws specifically prohibiting offsets or recoupments of particular types of debts;
 - (7) Offsets in the course of judicial proceedings, including bankruptcy;

(8) Intracontractual offsets to satisfy contract debts taken by a contracting officer under the Contract Disputes Act, 41 U.S.C. 7101-7109; or

(9) Foreign Debt.

(c) Unless otherwise provided for by contract or law, debts or payments that are not subject to administrative offset under 31 U.S.C. 3716 may be collected by administrative offset under the common law or other applicable statutory authority.

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

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

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

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

(2) Give the debtor the opportunity:

- (i) To inspect and copy agency records related to the debt;
- (ii) For a review within the agency of the determination of indebtedness in accordance with subpart F of this part; and
- (iii) To make a written agreement to repay the debt.

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

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

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

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

(4) The agency previously has given a debtor any of the notice and review opportunities required under this part, with respect to a particular debt (see, for example, § 3.11). With respect to loans paid on an installment basis, notice and opportunity to review under this part may only be provided once for the life of the loan upon the occurrence of the first delinquent installment. Subsequently, if an agency elects this option, credit reporting agencies may be furnished periodically with updates as to the current or delinquent status of the loan account and the borrower may receive notice of referral to TOP for delinquent installments without further opportunity for review. Any interest accrued or any installments coming due after the offset is initiated also would not require a new notice and opportunity to review.

(c) The Notice of Intent to Collect by Administrative Offset will be included as part of a demand letter issued under § 3.11 to advise the debtor of all debt collection possibilities that the agency may employ.

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

(a) A debtor who intends to inspect or copy agency or USDA records with respect to the debt must notify the creditor agency in writing within 30 days of the date of the Notice of Intent to Collect by Administrative Offset. In response, the agency must notify the debtor of the location, time, and any

other conditions, consistent with part 1, subpart A, of this title, for inspecting and copying, and that the debtor may be liable for reasonable copying expenses. A decision by the agency under this paragraph will not be subject to review under subpart F of this part or by NAD under part 11 of this title.

(b) The debtor may, in response to the Notice of Intent to Collect by Administrative Offset, propose to the creditor agency a written agreement to repay the debt as an alternative to administrative offset. Any debtor who wishes to do this must submit a written proposal for repayment of the debt, which must be received by the creditor agency within 30 days of the date of the Notice of Intent to Collect by Administrative Offset or 15 days after the date of a decision adverse to the debtor under subpart F of this part. In response, the creditor agency must notify the debtor in writing whether the proposed agreement is acceptable. In exercising its discretion, the creditor agency must balance the government's interest in collecting the debt against fairness to the debtor. A decision by the agency under this paragraph will not be subject to review under subpart F of this part or by NAD under part 11 of this title. For proposed agreements to pay delinquent amounts owed on FSA FLP loans, the proposed payments in the agreement must cure the delinquency before the next loan installment is due, or within 90 days, whichever is sooner.

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

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§ 3.43 Non-centralized administrative offset.

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

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

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

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

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

(d) Payment authorizing agencies will comply with offset requests by creditor agencies to collect debts owed to the United States, unless the offset would not be in the interest of the United States with respect to the program of the payment authorizing agency or would otherwise be contrary to law. Appropriate use should be made of

the cooperative efforts of other agencies in effecting collection by administrative offset.

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

(f) Debts arising from the shipment of commodities procured by CCC are subject to the following:

(1) Debts due CCC from a carrier for overcharges will be offset against amounts due to the carrier under freight bills involving shipments if:

(i) The carrier, without reasonable justification, has declined payment of the debt or has failed to pay the debt after being given a reasonable opportunity to make payment; and

(ii) The periods of limitation as specified in 49 U.S.C. 11705(f) or 49 U.S.C. 14705(f) have not expired;

(2) Debts due to CCC from a carrier for loss or damage will be offset against amounts due to the carrier under freight bills involving shipments if:

(i) Timely demand for payment was made on the carrier;

(ii) The carrier has declined payment of the debt without reasonable justification or has ignored the debt; and

(iii) The periods of limitation as specified in 49 U.S.C. 11706(e) or 49 U.S.C. 14706(e) have not expired; and

(3) Any overcharge, loss, or damage debt due to CCC on which the applicable period of limitation has expired may be offset against any amounts owed by CCC to the carrier which are subject to limitation.

§ 3.44 Centralized administrative offset.

(a)(1) Except as provided in paragraph (a)(2) of this section, after the notice and review opportunity requirements of § 3.41 are met, an agency will refer debts which are over 120 days delinquent to Fiscal Service for collection through centralized administrative TOP 61 days after the date of the Notice of Intent to Collect by Administrative Offset provided in accordance

with § 3.41. If the debtor requests review under subpart F of this part, referral of the debt must occur within 30 days of the final decision upholding the agency decision to offset the debt if the debt is more than 120 days delinquent.

(2) For FSA FLP and Rural Development debt:

(i) The delinquent loan servicing procedures and timeframes required by the ConAct will be followed; and.

(ii) Offsets will not occur during any moratorium required by the ConAct.

(b) After the notice and review opportunity requirements of § 3.41 are met, and administrative review under subpart F of this part is not sought or is unsuccessful on the part of the debtor, an agency may refer a debt that is less than 120 days delinquent.

(c) Agencies will refer debts to Treasury for collection in accordance with Treasury procedures specified in 31 CFR 285.5.

(d) The agencies will ensure that:

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

(2) Any USDA official serving as a Federal disbursing official for purposes of effecting centralized administrative offset under this section, or Fiscal Service on behalf of the disbursing official, must notify a debtor or payee in writing that an offset has occurred to satisfy, in part or in full, a past due, legally enforceable delinquent debt. The notice must include the information specified in paragraph (d)(4) of this section.

(3) As described in 31 CFR 285.5(g)(1) and (2), any USDA official serving as a Federal disbursing official for purposes of centralized administrative offset under this section, or Fiscal Service on

behalf of the disbursing official, will furnish a warning notice to a payee or debtor prior to beginning offset of recurring payments. Such warning notice will include the information specified in paragraph (d)(4) of this section.

(4) The notice will include a description of the type and amount of the payment from which the offset was taken, the amount of offset that was taken, the identity of the creditor agency requesting the offset, and a contact point within the creditor agency who will respond to questions regarding the offset.

(5) The priorities for collecting multiple payments owed by a payee or debtor will be those specified in 31 CFR 285.5(f)(3).

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

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

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

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

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

§ 3.46 Offset against tax refunds.

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

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

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

Subpart E—Administrative Wage Garnishment

§ 3.50 Purpose.

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

§ 3.51 Scope.

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

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

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

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

(e) This subpart does not apply to the collection of delinquent nontax debt owed to the United States from the wages of Federal employees from their

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Federal employment. Federal pay is subject to the salary offset procedures of subpart G of this part.

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

(g) This subpart does not apply to foreign debt.

§ 3.52 Definitions.

As used in this subpart the following definitions will apply:

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

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

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

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

§ 3.53 Procedures.

(a) USDA has determined to pursue administrative wage garnishment of USDA debtors by referral of nontax legally enforceable debts to Treasury for issuance of garnishment orders by Treasury or its contractors.

(b) As specified in § 3.11, agencies must notify debtors of their intent to pursue garnishment of their disposable

pay through referral of the debt to Treasury for issuance of an administrative wage garnishment order and provide debtors with the opportunity for review of the existence of the debt under subpart F of this part within 60 days of the date of the demand letter.

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

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

(e) If the debtor requests a hearing at any time, Treasury will forward the request to the USDA creditor agency to which the debt is owed, and the creditor agency will contact the Office of the CFO (OCFO) for selection of a hearing official. The issuance of proposed garnishment orders by Treasury will not be subject to appeal to NAD under part 11 of this title. Hearings will be conducted in accordance with 31 CFR 285.11(f).

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

Subpart F—Administrative Reviews for Administrative Offset, Administrative Wage Garnishment, and Disclosure to Credit Reporting Agencies

§ 3.60 Applicability.

(a) This section establishes consolidated administrative review procedures for debts subject to administrative offset, administrative wage garnishment,

and disclosure to credit reporting agencies, under subparts D and E of this part. A hearing or review under this section will satisfy the required opportunity for administrative review by the agency of the determination of a debt for both administrative offset and administrative wage garnishment that is required before transfer to Treasury for collection or collection by the agency through non-centralized administrative offset.

(b) For debt collection proceedings initiated by FSA, CCC, FCIC, the Rural Housing Service, the Rural Business-Cooperative Service, the Risk Management Agency, the Natural Resources Conservation Service, Rural Development, and the Rural Utilities Service (but not for programs authorized by the Rural Electrification Act of 1936 or the Rural Telephone Bank Act, 7 U.S.C. 901-950cc-2), part 11 of this title will be applicable and not the provisions of this subpart.

§ 3.61 Presiding employee.

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

§ 3.62 Procedures.

(a) A debtor who receives a Notice of Intent to Collect by Administrative Offset, Notice of Disclosure to Credit Reporting Agencies, or Notice of Intent to Collect by Administrative Wage Garnishment, or more than one of the above simultaneously, may request administrative review of the agency's determination that the debt exists and the amount of the debt. Any debtor who wishes to do this must submit a written explanation of why the debtor disagrees and requests review. The request must be received by the creditor agency within 60 days of the date of the notice in the case of a Notice of Intent to Collect by Administrative Offset that includes referral to Treasury for offset against other Federal payments

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including tax refunds and 30 days in the case of all other notices.

(b) In response, the creditor agency must notify the debtor in writing whether the review will be by documentary review or by hearing. An oral hearing is not necessary with respect to debt collection systems in which a determination of indebtedness rarely involves issues of credibility or veracity and the agency has determined that review of the written record is ordinarily an adequate means to correct prior mistakes. The agency will provide the debtor with a reasonable opportunity for an oral hearing when the debtor requests reconsideration of the debt and the agency determines that the question of the indebtedness cannot be resolved by review of the documentary evidence, for example, when the validity of the debt turns on an issue of credibility or veracity. If the debtor requests a hearing, and the creditor agency decides to conduct a documentary review, the agency must notify the debtor of the reason why a hearing will not be granted. The agency must also advise the debtor of the procedures to be used in reviewing the documentary record, or of the date, location and procedures to be used if review is by a hearing.

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

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

- (1) The date and time of a telephonic hearing;
- (2) The date, time, and location of an in-person oral hearing; or
- (3) The deadline for the submission of evidence for a documentary review.

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

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

(g) The hearing procedure will consist of:

(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) The agency will have the burden of going forward to prove the existence or amount of the debt.

(i) Thereafter, if the debtor disputes the existence or amount of the debt, the debtor must prove by a preponderance of the evidence that no debt exists or that the amount of the debt is incorrect.

(ii) In addition, the debtor may present evidence that repayment would cause a financial hardship to the debtor or that collection of the debt may not be pursued due to operation of law.

(3) Witnesses must testify under oath or affirmation.

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

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

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

(i) The determination will be made:

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

(2) The written decision will include:

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

(j) The reviewing officer's decision constitutes final agency action for purposes of judicial review under the Administrative Procedure Act (5 U.S.C. 701-703) as to the following issues:

(1) 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

(2) 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.

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

Subpart G—Federal Salary Offset

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

§ 3.70 Scope.

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

(b) This subpart applies to:

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

(c) This subpart does not apply to debts owed by FSA county executive directors or non-Federal county office employees. For debts owed by FSA county executive directors or non-Federal county office employees to CCC or FSA, the salaries of these employees are subject to administrative offset not to exceed 15 percent of the employee's disposable pay. CCC and FSA will follow the notification requirements and procedures for collection by administrative offset as specified in 31 CFR part 285 and 31 U.S.C. 3716.

(d) This subpart does not apply to debts or claims arising under the Internal Revenue Code of 1986 (26 U.S.C. 1-8023); 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 law (for example travel advances in 5 U.S.C. 5705 or employee training expense in 5 U.S.C. 4108).

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

(1) Any adjustment to pay arising out of an employee's election of coverage or a change in coverage under a Federal benefits program requiring periodic deductions from pay, if the amount to be recovered was accumulated over four pay periods or less;

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

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

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point of contact for contesting such adjustment.

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

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

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

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

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

§ 3.71 Definitions.

As used in this subpart the following definitions will apply:

Disposable pay means that part of current basic pay, special pay, incentive pay, retired pay, retainer pay, or in the case of an employee not entitled to basic pay, other authorized pay remaining after the deduction of any amount required by law to be withheld (other than deductions to execute garnishment orders in accordance with 5 CFR parts 581 and 582). Among the legally required deductions that must be applied first to determine disposable pay are levies pursuant to the Internal Revenue Code (title 26, United States Code) and deductions described in 5 CFR 581.105(b) through (f).

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

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

§ 3.72 Coordinating offset with another Federal agency.

(a) When USDA is owed a debt by an employee of another agency, the other agency will 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

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USDA has complied with these regulations.

(b) USDA may use salary offset against one of its employees who is indebted to another agency, if requested to do so by that agency. Such a request must be accompanied by:

(1) 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).

(2) That the agency has complied with its regulations required by 5 U.S.C. 5514 and 5 CFR part 550, subpart K.

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

§ 3.73 Determination of indebtedness.

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

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

§ 3.74 Notice requirements before offset.

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

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

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

(c) The approximate beginning date, frequency, and amount of the intended deduction (stated as a fixed dollar amount or as a percentage of pay, not to exceed 15 percent of disposable pay),

and the intention to continue the deductions until the debt is paid in full or otherwise resolved;

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

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

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

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

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

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

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

(1) Disciplinary procedures appropriate under 5 U.S.C. chapter 75, 5 CFR part 752, or any other applicable laws 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 laws or regulations governing the program for which the collection is being made;

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

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

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

§ 3.75 Request for a hearing.

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

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

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

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

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

§ 3.76 Result if employee fails to meet deadlines.

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

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

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

§ 3.77 Hearing.

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

(b) A hearing will not be held and Federal salary offset will not be pursued if the cost of the hearing is greater than the delinquent debt.

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(c)(1) Hearings will be conducted by the hearing official designated in accordance with 5 CFR 550.1107; and

(2) Rules of evidence will not be adhered to, but the hearing official will 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.

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

(e) The employee requesting the hearing will bear the ultimate burden of proof.

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

§ 3.78 Written decision following a hearing.

Written decisions provided after a hearing will include:

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

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

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

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

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

(f) Notice that the final determination by the hearing official regarding the existence and amount of a debt is subject to referral to Treasury under

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§ 3.33 in the same manner as any other delinquent debt.

§ 3.79 Review of USDA records related to the debt.

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

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

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

(a)(1) The employee may propose, in response to a Notice of Intent to Offset Salary, a written agreement to repay the debt as an alternative to salary offset. Any employee who wishes to do this must submit a proposed written agreement to repay the debt that is received by USDA within 30 days of the date of the Notice of Intent to Offset Salary or 15 days after the date of a hearing decision issued under § 3.78.

(2) For FSA FLP debt, an alternative repayment agreement submitted after a hearing decision must include a payment schedule similar to the payment schedule in the hearing decision and include payment amounts that are at least equal to the payment amounts in the hearing decision.

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

FLP debt, a decision by USDA under this paragraph is not subject to review by NAD under part 11 of this title.

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

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

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

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

§ 3.82 Procedures for salary offset: types of collection.

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

§ 3.83 Procedures for salary offset: methods of collection.

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

(b) *Installment deductions.* Installment deductions will be made over a period not greater than the anticipated period of employment. The size and frequency of installment deductions will bear a reasonable relation to the size of the debt and the employee's ability to pay. However, the amount deducted for any period will not exceed 15 percent of the disposable pay from which the deduction is made, unless the employee has agreed in writing to the deduction of a

greater amount. If possible, the installment payment will be sufficient in size and frequency to liquidate the debt in no more than 3 years. Installment payments of less than \$25 per pay period or \$50 a month will be accepted only in the most unusual circumstances.

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

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

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

§ 3.85 Non-waiver of rights.

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

§ 3.86 Refunds.

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

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

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

§ 3.87 Agency regulations.

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

Subpart H—Cooperation With the Internal Revenue Service

AUTHORITY: 26 U.S.C. 61; 31 U.S.C. 3720A.

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§ 3.90 Reporting discharged debts to the Internal Revenue Service.

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

Subpart I—Adjusted Civil Monetary Penalties

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

§ 3.91 Adjusted civil monetary penalties.

(a) *In general*—(1) *Adjustments*. The Secretary will adjust the civil monetary penalties, listed in paragraph (b) of this section, to take account of inflation as mandated by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, as amended.

(2) *Timing*. Any increase in the dollar amount of a civil monetary penalty listed in paragraph (b) of this section applies only to violations occurring after February 15, 2022.

(3) *Illustrative purposes*. The descriptions of the civil monetary penalties listed in paragraph (b) of this section are for illustrative purposes only. This section does not amend, interpret, implement, or alter in any way the statutory provisions in which the civil monetary penalties listed in paragraph (b) of this section are set. Moreover, the descriptions of the civil monetary penalties listed in paragraph (b) of this section do not necessarily contain a complete description of the circumstances (for example, requirements regarding the “state of mind” of the violator(s), requirements regarding the type of law or issuance violated, etc.) under which the penalties are assessed. Persons should consult the statutory text in which the civil monetary penalties are set and any implementing regulations to make applicability determinations.

(b) *Penalties*—(1) *Agricultural Marketing Service*. (i) Civil penalty for improper record keeping codified at 7 U.S.C. 136i-1(d), has: A maximum of \$1,036 in the case of the first offense, and a minimum of \$2,012 in the case of subsequent offenses, except that the

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penalty will be less than \$2,012 if the Secretary determines that the person made a good faith effort to comply.

(ii) Civil penalty for a violation of the 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 \$5,638.

(iii) Civil penalty for violation of the licensing requirements under the Perishable Agricultural Commodities Act, codified at 7 U.S.C. 499c(a), has a maximum of \$1,800 for each such offense and not more than \$449 for each day it continues, or a maximum of \$449 for each 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 penalty of \$3,599 for each violative transaction or each day the violation continues.

(v) Civil penalty for a violation of the Export Apple Act, codified at 7 U.S.C. 586, has a minimum of \$163 and a maximum of \$16,444.

(vi) Civil penalty for a violation of the Export Grape and Plum Act, codified at 7 U.S.C. 596, has a minimum of \$314 and a maximum of \$31,465.

(vii) Civil penalty for a violation of an order issued by the Secretary under the Agricultural Adjustment Act, reenacted with amendments by the Agricultural Marketing Agreement Act of 1937, codified at 7 U.S.C. 608c(14)(B), has a maximum of \$3,147. Each day the violation continues is a separate violation.

(viii) Civil penalty for failure to file certain reports under the Agricultural Adjustment Act, reenacted by the Agricultural Marketing Agreement Act of 1937, codified at 7 U.S.C. 610(c), has a maximum of \$314.

(ix) Civil penalty for a violation of a seed program under the Federal Seed Act, codified at 7 U.S.C. 1596(b), has a minimum of \$107 and a maximum of \$2,146.

(x) Civil penalty for failure to collect any assessment or fee for a violation of the Cotton Research and Promotion Act, codified at 7 U.S.C. 2112(b), has a maximum of \$3,147.

(xi) Civil penalty for failure to pay, collect, or remit any assessment or fee for a violation of a program under the

Potato Research and Promotion Act, codified at 7 U.S.C. 2621(b)(1), has a minimum of \$1,411 and a maximum of \$13,009.

(xii) Civil penalty for failure 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 \$1,411. Each day the violation continues is a separate violation.

(xiii) Civil penalty for failure to pay, collect, or remit any assessment or fee or for a violation of a program under the Egg Research and Consumer Information Act, codified at 7 U.S.C. 2714(b)(1), has a minimum of \$1,631 and a maximum of \$16,308.

(xiv) Civil penalty for failure to obey a cease and desist order under the Egg Research and Consumer Information Act, codified at 7 U.S.C. 2714(b)(3), has a maximum of \$1,631. Each day the violation continues is a separate violation.

(xv) Civil penalty for failure to remit any assessment or fee or for a violation of a program under the Beef Research and Information Act, codified at 7 U.S.C. 2908(a)(2), has a maximum of \$12,722.

(xvi) Civil penalty for failure to remit any assessment or for a violation of a program regarding wheat and wheat foods research, codified at 7 U.S.C. 3410(b), has a maximum of \$3,147.

(xvii) Civil penalty for failure to pay, collect, or remit any assessment or fee or for a violation of a program under the Floral Research and Consumer Information Act, codified at 7 U.S.C. 4314(b)(1), has a minimum of \$1,481 and a maximum of \$14,807.

(xviii) Civil penalty for failure 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 \$1,481. Each day the violation continues is a separate violation.

(xix) Civil penalty for violation of an order under the Dairy Promotion Program, codified at 7 U.S.C. 4510(b), has a maximum of \$2,737.

(xx) Civil penalty for pay, collect, or remit any assessment or fee or for a violation of the Honey Research, Promotion, and Consumer Information Act, codified at 7 U.S.C. 4610(b)(1), has

a minimum of \$822 and a maximum of \$8,433.

(xxi) Civil penalty for failure to obey a cease and desist order under the Honey Research, Promotion, and Consumer Information Act, codified at 7 U.S.C. 4610(b)(3), has a maximum of \$843. Each day the violation continues is a separate violation.

(xxii) Civil penalty for a violation of a program under the Pork Promotion, Research, and Consumer Information Act of 1985, codified at 7 U.S.C. 4815(b)(1)(A)(i), has a maximum of \$2,545.

(xxiii) Civil penalty for failure to obey a cease and desist order under the Pork Promotion, Research, and Consumer Information Act of 1985, codified at 7 U.S.C. 4815(b)(3)(A), has a maximum of \$1,273. Each day the violation continues is a separate violation.

(xxiv) Civil penalty for failure to pay, collect, or remit any assessment or fee or for a violation of a program under the Watermelon Research and Promotion Act, codified at 7 U.S.C. 4910(b)(1), has a minimum of \$1,273 and a maximum of \$12,722.

(xxv) Civil penalty for failure to obey a cease and desist order under the Watermelon Research and Promotion Act, codified at 7 U.S.C. 4910(b)(3), has a maximum of \$1,273. Each day the violation continues is a separate violation.

(xxvi) Civil penalty for failure to pay, collect, or remit any assessment or fee or for a violation of a program under the Pecan Promotion and Research Act of 1990, codified at 7 U.S.C. 6009(c)(1), has a minimum of \$2,072 and a maximum of \$20,709.

(xxvii) Civil penalty for failure to obey a cease and desist order under the Pecan Promotion and Research Act of 1990, codified at 7 U.S.C. 6009(e), has a maximum of \$2,070.

(xxviii) Civil penalty for failure to pay, collect, or remit any assessment or fee or for a violation of a program under the Mushroom Promotion, Research, and Consumer Information Act of 1990, codified at 7 U.S.C. 6107(c)(1), has a minimum of \$1,007 and a maximum of \$10,066.

(xxix) Civil penalty for failure to obey a cease and desist order under the Mushroom Promotion, Research, and Consumer Information Act of 1990,

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codified at 7 U.S.C. 6107(e), has a maximum of \$1,007. Each day the violation continues is a separate violation.

(xxx) Civil penalty for failure to pay, collect, or remit any assessment or fee or for a violation of the Lime Research, Promotion, and Consumer Information Act of 1990, codified at 7 U.S.C. 6207(c)(1), has a minimum of \$1,007 and a maximum of \$10,066.

(xxxii) Civil penalty for failure to obey a cease and desist order under the Lime Research, Promotion, and Consumer Information Act of 1990, codified at 7 U.S.C. 6207(e), has a maximum of \$1,007. Each day the violation continues is a separate violation.

(xxxiii) Civil penalty for failure to pay, collect, or remit any assessment or fee or for a violation of a program under the Soybean Promotion, Research, and Consumer Information Act, codified at 7 U.S.C. 6307(c)(1)(A), has a maximum of \$2,072.

(xxxiv) Civil penalty for failure 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 \$10,310. Each day the violation continues is a separate violation.

(xxxv) Civil penalty for failure to pay, collect, or remit any assessment or fee or for a violation of a program under the Fluid Milk Promotion Act of 1990, codified at 7 U.S.C. 6411(c)(1)(A), has a minimum of \$1,007 and a maximum of \$10,066, or in the case of a violation that is willful, codified at 7 U.S.C. 6411(c)(1)(B), has a minimum of \$19,781 and a maximum of \$201,301.

(xxxvi) Civil penalty for failure to obey a cease and desist order under the Fluid Milk Promotion Act of 1990, codified at 7 U.S.C. 6411(e), has a maximum of \$10,360. Each day the violation continues is a separate violation.

(xxxvii) Civil penalty for knowingly labeling or selling a product as organic except in accordance with the Organic Foods Production Act of 1990, codified at 7 U.S.C. 6519(c), has a maximum of \$20,130.

(xxxviii) Civil penalty for failure to pay, collect, or remit any assessment or fee or for a violation of a program under the Fresh Cut Flowers and Fresh Cut Greens Promotion and Information Act of 1993, codified at 7 U.S.C.

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6808(c)(1)(A)(i), has a minimum of \$949 and a maximum of \$9,491.

(xxxviii) Civil penalty for failure to obey a cease and desist order under the Fresh Cut Flowers and Fresh Cut Greens Promotion and Information Act of 1993, codified at 7 U.S.C. 6808(e)(1), has a maximum of \$9,491. Each day the violation continues is a separate violation.

(xxxix) Civil penalty for a violation of a program under the Sheep Promotion, Research, and Information Act of 1994, codified at 7 U.S.C. 7107(c)(1)(A), has a maximum of \$1,850.

(xl) Civil penalty for failure to obey a cease and desist order under the Sheep Promotion, Research, and Information Act of 1994, codified at 7 U.S.C. 7107(e), has a maximum of \$924. Each day the violation continues is a separate violation.

(xli) 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 \$1,746 and a maximum of \$17,472 for each violation.

(xlii) Civil penalty for failure to obey a cease and desist order under the Commodity Promotion, Research, and Information Act of 1996, codified at 7 U.S.C. 7419(e), has a minimum of \$1,746 and a maximum of \$17,472. Each day the violation continues is a separate violation.

(xliii) 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)(A)(i), has a maximum of \$1,746 for each violation.

(xliv) Civil penalty for failure to obey a cease and desist order under the Canola and Rapeseed Research, Promotion, and Consumer Information Act, codified at 7 U.S.C. 7448(e), has a maximum of \$8,736. Each day the violation continues is a separate violation.

(xlv) Civil penalty for 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 \$874 and a maximum of \$8,736 for each violation.

(xlvi) Civil penalty for failure to obey a cease and desist order under the National Kiwifruit Research, Promotion, and Consumer Information Act, codified at 7 U.S.C. 7468(e), has a maximum of \$874. Each day the violation continues is a separate violation.

(xlvii) Civil penalty for a violation of an order or regulation under the Popcorn Promotion, Research, and Consumer Information Act, codified at 7 U.S.C. 7487(a), has a maximum of \$1,746 for each violation.

(xlviii) Civil penalty for certain violations under the Egg Products Inspection Act, codified at 21 U.S.C. 1041(c)(1)(A), has a maximum of \$10,066 for each violation.

(xlix) Civil penalty for violation of an order or regulation issued under the Hass Avocado Promotion, Research, and Information Act of 2000, codified at 7 U.S.C. 7807(c)(1)(A)(i), has a minimum of \$1,588 and a maximum of \$15,880 for each violation.

(l) Civil penalty for failure to obey a cease and desist order under the Hass Avocado Promotion, Research, and Information Act of 2000, codified at 7 U.S.C. 7807(e)(1), has a maximum of \$15,896 for each offense. Each day the violation continues is a separate violation.

(li) Civil penalty for violation of certain provisions of the Livestock Mandatory Reporting Act of 1999, codified at 7 U.S.C. 1636b(a)(1), has a maximum of \$16,444 for each violation.

(lii) Civil penalty for failure to obey a cease and desist order under the Livestock Mandatory Reporting Act of 1999, codified at 7 U.S.C. 1636b(g)(3), has a maximum of \$16,444 for each violation. Each day the violation continues is a separate violation.

(liii) Civil penalty for failure to obey an order of the Secretary issued pursuant to the Dairy Product Mandatory Reporting program, codified at 7 U.S.C. 1637b(c)(4)(D)(iii), has a maximum of \$15,896 for each offense.

(liv) Civil penalty for a willful violation of the Country of Origin Labeling program by a retailer or person engaged in the business of supplying a covered commodity to a retailer, codified at 7 U.S.C. 1638b(b)(2), has a maximum of \$1,277 for each violation.

(lv) Civil penalty for violations of the Dairy Research Program, codified at 7 U.S.C. 4535 and 4510(b), has a maximum of \$2,737 for each violation.

(lvi) Civil penalty for a packer or swine contractor violation, codified at 7 U.S.C. 193(b), has a maximum of \$31,459.

(lvii) Civil penalty for a livestock market agency or dealer failure to register, codified at 7 U.S.C. 203, has a maximum of \$2,145 and not more than \$107 for each day the violation continues.

(lviii) Civil penalty for operating without filing, or in violation of, a stockyard rate schedule, or of a regulation or order of the Secretary made thereunder, codified at 7 U.S.C. 207(g), has a maximum of \$2,146 and not more than \$107 for each day the violation continues.

(lix) Civil penalty for a stockyard owner, livestock market agency, or dealer, who engages in or uses any unfair, unjustly discriminatory, or deceptive practice or device in connection with determining whether persons should be authorized to operate at the stockyards, or with receiving, marketing, buying, or selling on a commission basis or otherwise, feeding, watering, holding, delivery, shipment, weighing, or handling of livestock, codified at 7 U.S.C. 213(b), has a maximum of \$31,459.

(lx) Civil penalty for a stockyard owner, livestock market agency, or dealer, who knowingly fails to obey any order made under the provisions of 7 U.S.C. 211, 212, or 213, codified at 7 U.S.C. 215(a), has a maximum of \$2,146.

(lxi) Civil penalty for live poultry dealer violations, codified at 7 U.S.C. 228b-2(b), has a maximum of \$91,517.

(lxii) Civil penalty for a violation, codified at 7 U.S.C. 86(c), has a maximum of \$307,438.

(lxiii) Civil penalty for failure to comply with certain provisions of the U.S. Warehouse Act, codified at 7 U.S.C. 254, has a maximum of \$39,740 per violation if an agricultural product is not involved in the violation.

(2) *Animal and Plant Health Inspection Service.* (i) Civil penalty for a violation of the imported seed provisions of the Federal Seed Act, codified at 7 U.S.C.

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1596(b), has a minimum of \$107 and a maximum of \$2,146.

(ii) Civil penalty for a violation of the Animal Welfare Act, codified at 7 U.S.C. 2149(b), has a maximum of \$12,771, and knowing failure to obey a cease and desist order has a civil penalty of \$1,915.

(iii) Civil penalty for any person that causes harm to, or interferes with, an animal used for the purposes of official inspection by USDA, codified at 7 U.S.C. 2279e(a), has a maximum of \$15,896.

(iv) Civil penalty for a violation of the Swine Health Protection Act, codified at 7 U.S.C. 3805(a), has a maximum of \$31,948.

(v) Civil penalty for any person that violates the Plant Protection Act (PPA), or that forges, counterfeits, or, without authority from the Secretary, uses, alters, defaces, or destroys any certificate, permit, or other document provided for in the PPA, codified at 7 U.S.C. 7734(b)(1), has a maximum of the greater of: \$79,480 in the case of any individual (except that the civil penalty may not exceed \$1,589 in the case of an initial violation of the PPA by an individual moving regulated articles not for monetary gain), \$397,397 in the case of any other person for each violation, \$638,556 for all violations adjudicated in a single proceeding if the violations do not include a willful violation, and \$1,277,111 for all violations adjudicated in a single proceeding if the violations include a willful violation; or twice the gross gain or gross loss for any violation, forgery, counterfeiting, unauthorized use, defacing, or destruction of a certificate, permit, or other document provided for in the PPA that results in the person deriving pecuniary gain or causing pecuniary loss to another.

(vi) Civil penalty for any person (except as provided in 7 U.S.C. 8309(d)) that violates the Animal Health Protection Act (AHPA), or that forges, counterfeits, or, without authority from the Secretary, uses, alters, defaces, or destroys any certificate, permit, or other document provided under the AHPA, codified at 7 U.S.C. 8313(b)(1), has a maximum of the greater of: \$76,279 in the case of any individual, except that the civil penalty may not exceed \$1,526 in the case of an

initial violation of the AHPA by an individual moving regulated articles not for monetary gain, \$381,394 in the case of any other person for each violation, \$638,556 for all violations adjudicated in a single proceeding if the violations do not include a willful violation, and \$1,277,111 for all violations adjudicated in a single proceeding if the violations include a willful violation; or twice the gross gain or gross loss for any violation, forgery, counterfeiting, unauthorized use, defacing, or destruction of a certificate, permit, or other document provided under the AHPA that results in the person's deriving pecuniary gain or causing pecuniary loss to another person.

(vii) Civil penalty for any person that violates certain regulations under the Agricultural Bioterrorism Protection Act of 2002 regarding transfers of listed agents and toxins or possession and use of listed agents and toxins, codified at 7 U.S.C. 8401(i)(1), has a maximum of \$381,394 in the case of an individual and \$762,791 in the case of any other person.

(viii) Civil penalty for violation of the Horse Protection Act, codified at 15 U.S.C. 1825(b)(1), has a maximum of \$6,294.

(ix) Civil penalty for failure to obey Horse Protection Act disqualification, codified at 15 U.S.C. 1825(c), has a maximum of \$12,299.

(x) Civil penalty for knowingly violating, or, if in the business as an importer or exporter, violating, with respect to terrestrial plants, any provision of the Endangered Species Act of 1973, 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) (other than regulations relating to record keeping or filing reports), (f), or (g), as specified at 16 U.S.C. 1540(a)(1), has a maximum of \$57,528 for each violation.

(xi) Civil penalty for knowingly violating, or, if in the business as an importer or exporter, violating, with respect to terrestrial plants, any other regulation under the Endangered Species Act of 1973, as specified at 16 U.S.C. 1540(a)(1), has a maximum of \$27,549 for each violation.

(xii) Civil penalty for violating, with respect to terrestrial plants, the Endangered Species Act of 1973, or any

regulation, permit, or certificate issued thereunder, as specified at 16 U.S.C. 1540(a)(1), has a maximum of \$1,452 for each violation.

(xiii) Civil penalty for knowingly and willfully violating 49 U.S.C. 80502 with respect to the transportation of animals by any rail carrier, express carrier, or common carrier (except by air or water), a receiver, trustee, or lessee of one of those carriers, or an owner or master of a vessel, codified at 49 U.S.C. 80502(d), has a minimum of \$181 and a maximum of \$924.

(xiv) Civil penalty for a violation of the Commercial Transportation of Equine for Slaughter Act, 7 U.S.C. 1901 note, and its implementing regulations in 9 CFR part 88, as specified in 9 CFR 88.6, has a maximum of \$5,468. Each horse transported in violation of 9 CFR part 88 is a separate violation.

(xv) Civil penalty for knowingly violating section 3(d) or 3(f) of the Lacey Act Amendments of 1981, or for violating any other provision provided that, in the exercise of due care, the violator should have known that the plant was taken, possessed, transported, or sold in violation of any underlying law, treaty, or regulation, has a maximum of \$28,606 for each violation, as specified in 16 U.S.C. 3373(a)(1) (but if the plant has a market value of less than \$382, and involves only the transportation, acquisition, or receipt of a plant taken or possessed in violation of any law, treaty, or regulation of the United States, any Indian tribal law, any foreign law, or any law or regulation of any State, the penalty will not exceed the maximum provided for violation of said law, treaty, or regulation, or \$28,606, whichever is less).

(xvi) Civil penalty for violating section 3(f) of the Lacey Act Amendments of 1981, as specified in 16 U.S.C. 3373(a)(2), has a maximum of \$715.

(3) *Food and Nutrition Service.* (i) Civil penalty for violating a provision of the Food and Nutrition Act of 2008 (Act), or a regulation under the Act, by a retail food store or wholesale food concern, codified at 7 U.S.C. 2021(a) and (c), has a maximum of \$127,712 for each violation.

(ii) Civil penalty for trafficking in food coupons, codified at 7 U.S.C. 2021(b)(3)(B), has a maximum of \$46,021

for each violation, except that the maximum penalty for violations occurring during a single investigation is \$82,871.

(iii) Civil penalty for the sale of firearms, ammunitions, explosives, or controlled substances for coupons, codified at 7 U.S.C. 2021(b)(3)(C), has a maximum of \$41,436 for each violation, except that the maximum penalty for violations occurring during a single investigation is \$82,871.

(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 bids for the purpose of influencing a bid, codified at 42 U.S.C. 1786(h)(8)(H)(i), has a maximum of \$195,054,878.

(v) Civil penalty for a vendor convicted of trafficking in food instruments, codified at 42 U.S.C. 1786(o)(1)(A) and 42 U.S.C. 1786(o)(4)(B), has a maximum of \$16,865 for each violation, except that the maximum penalty for violations occurring during a single investigation is \$67,461.

(vi) Civil penalty for a vendor convicted of selling firearms, ammunition, explosive, or controlled substances in exchange for food instruments, codified at 42 U.S.C. 1786(o)(1)(B) and 42 U.S.C. 1786(o)(4)(B), has a maximum of \$16,451 for each violation, except that the maximum penalty for violations occurring during a single investigation is \$67,461.

(4) *Food Safety and Inspection Service.* (i) Civil penalty for certain violations under the Egg Products Inspection Act, codified at 21 U.S.C. 1041(c)(1)(A), has a maximum of \$10,066 for each violation.

(ii) [Reserved]

(5) *Forest Service.* (i) Civil penalty for willful disregard of the prohibition against the export of unprocessed timber originating from Federal lands, codified at 16 U.S.C. 620d(c)(1)(A), has a maximum of \$1,035,909 per violation or three times the gross value of the unprocessed timber, whichever is greater.

(ii) Civil penalty for a violation in disregard of the Forest Resources Conservation and Shortage Relief Act or

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the regulations that implement such Act regardless of whether such violation caused the export of unprocessed timber originating from Federal lands, codified in 16 U.S.C. 620d(c)(2)(A)(i), has a maximum of \$155,387 per violation.

(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 or the regulations that implement such Act regardless of whether such violation caused the export of unprocessed timber originating from Federal lands, codified at 16 U.S.C. 620d(c)(2)(A)(ii), has a maximum of \$103,591 per violation.

(iv) Civil penalty for a willful violation of the Forest Resources Conservation and Shortage Relief Act or the regulations that implement such Act regardless of whether such violation caused the export of unprocessed timber originating from Federal lands, codified in 16 U.S.C. 620d(c)(2)(A)(iii), has a maximum of \$1,035,909.

(v) Civil penalty for a violation involving protections of caves, codified at 16 U.S.C. 4307(a)(2), has a maximum of \$22,640.

(6) [Reserved]

(7) *Federal Crop Insurance Corporation.*

(i) Civil penalty for any person who willfully and intentionally provides any false or inaccurate information to the Federal Crop Insurance Corporation or to an approved insurance provider with respect to any insurance plan or policy that is offered under the authority of the Federal Crop Insurance Act, or who fails to comply with a requirement of the Federal Crop Insurance Corporation, codified in 7 U.S.C. 1515(h)(3)(A), has a maximum of the greater of: The amount of the pecuniary gain obtained as a result of the false or inaccurate information or the noncompliance; or \$13,437.

(ii) [Reserved]

(8) *Rural Housing Service.* (i) Civil penalty for a violation of section 536 of Title V of the Housing Act of 1949, codified in 42 U.S.C. 1490p(e)(2), has a maximum of \$220,212 in the case of an individual, and a maximum of \$2,202,123 in the case of an applicant other than an individual.

(ii) Civil penalty for equity skimming under section 543(a) of the Hous-

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ing Act of 1949, codified in 42 U.S.C. 1490s(a)(2), has a maximum of \$39,740.

(iii) Civil penalty under section 543b of the Housing Act of 1949 for a violation of regulations or agreements made in accordance with Title V of the Housing Act of 1949, by submitting false information, submitting false certifications, failing to timely submit information, failing to maintain real property in good repair and condition, failing to provide acceptable management for a project, or failing to comply with applicable civil rights laws and regulations, codified in 42 U.S.C. 1490s(b)(3)(A), has a maximum of the greater of: Twice the damages USDA, guaranteed lender, or project that is secured for a loan under Title V suffered or would have suffered as a result of the violation; or \$79,480 per violation.

(9) [Reserved]

(10) *Commodity Credit Corporation.* (i) Civil penalty for willful failure or refusal to furnish information, or willful furnishing of false information under of section 156 of the Federal Agricultural Improvement and Reform Act of 1996, codified at 7 U.S.C. 7272(g)(5), has a maximum of \$17,472 for each violation.

(ii) Civil penalty for willful failure or refusal to furnish information or willful furnishing of false data by a processor, refiner, or importer of sugar, syrup and molasses under section 156 of the Federal Agriculture Improvement and Reform Act of 1996, codified at 7 U.S.C. 7272(g)(5), has a maximum of \$17,472 for each violation.

(iii) Civil penalty for filing a false acreage report that exceeds tolerance under section 156 of the Federal Agriculture Improvement and Reform Act of 1996, codified at 7 U.S.C. 7272(g)(5), has a maximum of \$17,472 for each violation.

(iv) Civil penalty for knowingly violating any regulation of the Secretary of the Commodity Credit Corporation pertaining to flexible marketing allotments for sugar under section 359h(b) of the Agricultural Adjustment Act of 1938, codified at 7 U.S.C. 1359hh(b), has a maximum of \$12,771 for each violation.

(v) Civil penalty for knowing violation of regulations promulgated by the Secretary pertaining to cotton insect

eradication under section 104(d) of the Agricultural Act of 1949, codified at 7 U.S.C. 1444a(d), has a maximum of \$15,733 for each offense.

(11) *Office of the Secretary.* (i) Civil penalty for making, presenting, submitting or causing to be made, presented or submitted, a false, fictitious, or fraudulent claim as defined under the Program Fraud Civil Remedies Act of 1986, codified at 31 U.S.C. 3802(a)(1), has a maximum of \$12,538.

(ii) Civil penalty for making, presenting, submitting or causing to be made, presented or submitted, a false, fictitious, or fraudulent written statement as defined under the Program Fraud Civil Remedies Act of 1986, codified at 31 U.S.C. 3802(a)(2), has a maximum of \$12,538.

[85 FR 36672, June 17, 2020, as amended at 86 FR 24699, May 10, 2021; 86 FR 30535, June 9, 2021; 87 FR 8395, Feb. 15, 2022]

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.

EDITORIAL NOTE: Nomenclature changes to part 5 appear at 62 FR 8361, Feb. 25, 1997.

§ 5.1 Parity index and index of prices received by farmers.

(a) The parity index and related indices for the purpose of calculating parity prices after May 1, 1976, according to the formula contained in section 301(a) of the Agricultural Adjustment Act of 1938, as amended by the Agricultural Acts of 1948, 1949, 1954, and 1956 (hereinafter referred to as section 301(a)) shall be the index of prices paid by farmers, interest, taxes, and farm wage rates, as revised May 1976 and published in the May 28, 1976, and subsequent issues of the monthly report,

“Agricultural Prices.” The publication of these indices by the National Agricultural Statistics Service in the monthly report, “Agricultural Prices”, shall be continued.

(b) The measure of the general level of prices received by farmers as provided for in section 301(a)(1)(B)(ii) after January 1, 1959, shall be the index of prices received by farmers as revised January 1959 and published in the January 30, 1959, and subsequent issues of “Agricultural Prices”. The simple average of the 120 monthly indices included in the preceding 10 calendar years plus an adjustment to take account of the effect on the index of any adjustment made on average prices of individual commodities as hereinafter specified shall be used in the calculation of the adjusted base prices. Parity prices heretofore published for periods prior to January 1, 1959 shall not be revised.

(c) The term *milkfat* as used in these regulations is synonymous with the term *butterfat*, and when any statute requires calculation of the parity price of butterfat, the parity price of milkfat shall be the parity price of butterfat.

[24 FR 697, Jan. 31, 1959, as amended by Amdt. 6, 24 FR 9778, Dec. 5, 1959; Amdt. 29, 41 FR 22333, June 3, 1976]

§ 5.2 Marketing season average price data.

It is hereby found that it is impractical to use averages of prices received by farmers on a calendar year basis for the following agricultural commodities for the purpose of calculating adjusted base prices and, therefore, marketing season average prices will be used. An allowance for any supplemental payment resulting from price support operations shall be included in the determination of the adjusted base prices. For cigar binder tobacco, types 51–52, for each of the marketing seasons beginning in the years 1949 through 1958, 37.9 cents per pound shall be used in lieu of the average of prices received by farmers for such tobacco during each such marketing season.

BASIC COMMODITIES

Extra long staple cotton; peanuts; rice, and the following types of tobacco: Flue-cured,