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

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

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

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

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

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

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

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

§3.24 Coordinating administrative offset with other Federal agencies.

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

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

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

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

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

§3.25 Notice requirements before offset.

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

(b) The Notice of Intent to Collect by Administrative Offset must be served on the debtor by personal delivery,

first class mail, or certified mail and will state:

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

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

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

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

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

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

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

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

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

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

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

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

§ 3.26 Exceptions to notice requirements.

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

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

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

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

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

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

§ 3.27 Inspection of USDA records related to the debt.

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

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