and uniform on all handlers. Some of the additional costs may be passed on to producers. However, these costs are offset by the benefits derived by the operation of the marketing order. In addition, the Committee's meetings were widely publicized throughout the Idaho-Eastern Oregon onion industry and all interested persons were invited to attend the meetings and participate in Committee deliberations on all issues. Like all Committee meetings, the April 3, and the June 12, 2003, meetings were open to the public and all entities, both large and small, were able to express views on this issue.

This rule imposes no additional reporting or recordkeeping requirements on either small or large Idaho-Eastern Oregon onion handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

A proposed rule concerning this action was published in the **Federal Register** on July 9, 2003 (68 FR 40815). A copy of the rule was provided to Committee staff, who in turn made it available to onion producers, handlers, and other interested persons. Finally, the rule was made available through the Internet by the Office of the Federal Register and USDA. A 15-day comment period ending July 24, 2003, was provided to allow interested persons to respond to the proposal. No comments were received.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/fv/moab.html.* Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the information and recommendation submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because the 2003–2004 fiscal period began on July 1, 2003, and the order requires that the rate of assessment for each fiscal period apply to all assessable onions handled during such fiscal period. In addition, the Committee needs sufficient funds to pay its expenses which are incurred on a continuous basis. Further, handlers are aware of this action which was recommended by the Committee at a public meeting and is similar to other assessment rate actions issued in past years. Also, a 15-day comment period was provided for in the proposed rule and no comments were received.

List of Subjects in 7 CFR Part 958

Onions, Marketing agreements, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, 7 CFR part 958 is amended as follows:

PART 958—ONIONS GROWN IN CERTAIN DESIGNATED COUNTIES IN IDAHO, AND MALHEUR COUNTY, OREGON

■ 1. The authority citation for 7 CFR part 958 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. A new § 958.112 is added to read as follows:

§ 958.112 Fiscal period.

The fiscal period shall begin July 1 of each year and end June 30 of the following year, both dates inclusive.

■ 3. Section 958.240 is revised to read as follows:

§ 958.240 Assessment rate.

On and after July 1, 2003, an assessment rate of $0.095 per hundredweight is established for Idaho-Eastern Oregon onions.

Dated: August 8, 2003.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 03–20691 Filed 8–13–03; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF ENERGY

10 CFR Parts 1015 and 1018

RIN 1901–AA98

Collection of Claims Owed the United States

AGENCY: Department of Energy.

ACTION: Direct final rule.

SUMMARY: This direct final rule adopts revisions to the regulations on Collection of Claims Owed the United States to conform to the Federal Claims Collection Standards issued by the Department of the Treasury and the Department of Justice. The revisions clarify and simplify the Department of Energy's debt collection standards and reflect changes to Federal debt collection procedures that were made by the Debt Collection Improvement Act of 1996 and the General Accounting Office Act of 1996.

DATES: This direct final rule will be effective November 12, 2003 without further action, unless significant adverse comment is received by September 15, 2003. If significant adverse comment is received, the Department will publish a timely withdrawal of the rule in the **Federal Register**. (*See also* ''Discussion of Direct Final Rulemaking'' in Section III of the **SUPPLEMENTARY INFORMATION** section of this notice.)

ADDRESSES: All comments should be addressed to Helen O. Sherman, Director, Office of Finance and Accounting Policy (ME–10); Office of Management, Budget and Evaluation, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Philip R. Pegnato, Team Leader, Management Accounting and Cash Management Team, U.S. Department of Energy, at (301) 903–9704; or Susan A. Donahue, Accountant, Management Accounting and Cash Management Team, U.S. Department of Energy, at (301) 903–4666.

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Energy (DOE) today revises and consolidates its debt collection regulations that are codified at 10 CFR parts 1015 and 1018. The principal purpose of this rulemaking is to conform DOE's regulations to the government-wide debt collection regulations that were published by the Treasury and Justice Departments (65 FR 70390, November 22, 2000). Consistent with that purpose, today's revised regulations largely track the wording of the government-wide regulations. Any significant differences are discussed below. The Secretary of Energy has approved the revised regulations for application to all divisions of DOE including the National Nuclear Security Administration.

More specifically, this rulemaking is intended:

(a) To reflect changes to Federal debt collection procedures made by the Debt Collection Improvement Act of 1996 (DCIA), Public Law 104–134, 110 Stat. 1321, 1358 (April 26, 1996) as part of the Omnibus Consolidated Rescissions and Appropriations Act of 1996; and the publication of the revised Federal

Claims Collection Standards (FCCS) under new chapter IX, Title 31, Code of Federal Regulations (65 FR 70390, November 22, 2000) by the Department of the Treasury (Treasury) and the Department of Justice (DOJ).

(b) To reflect the detailed guidance issued by Treasury and codified at 31 CFR part 285, Debt Collection Authorities under the DCIA. See, *e.g.*, Offset of Tax Refund Payments to Collect Past-Due, Legally Enforceable Non-Tax Debt (63 FR 46140, Aug. 28, 1998); Offset of Federal Benefit Payments to Collect Past-Due, Legally Enforceable Non-Tax Debt (63 FR 71204, Dec. 23, 1998); Salary Offset (63 FR 23354, Apr. 28, 1998); Administrative Wage Garnishment (65 FR 51867, Oct. 11, 2001); Transfer of Debts to Treasury for Collection (64 FR 22906, Apr. 28, 1999); Barring Delinquent Debtors From Obtaining Federal Loans or Loan Insurance or Guarantees (63 FR 67754, Dec. 8, 1998).

(c) To incorporate 10 CFR part 1018, Referral of Debts to IRS for Tax Refund Offset, into 10 CFR part 1015, Collection of Claims Owed the United States.

II. Discussion of Direct Final Rule

Revised 10 CFR part 1015 includes the following major changes from DOE's existing regulations:

(1) The content of 10 CFR part 1018, Referral of Debts to IRS for Tax Refund Offset, was merged into 10 CFR part 1015.

(2) The revised 10 CFR part 1015 reflects the elimination of the Comptroller General's role in Federal debt collection.

(3) The revised 10 CFR part 1015 reflects the requirement that DOE use government-wide debt collection contracts (with certain exceptions) for referrals to private collection contractors.

(4) The revised 10 CFR part 1015 contains a new requirement that DOE and debtors exchange mutual releases of non-tax liabilities in all appropriate instances when a claim is compromised.

(5) The revised 10 CFR part 1015 reflects the increase in the principal claim amount from up to $20,000 to up to $100,000, or such other amount as the Attorney General may direct, that DOE is authorized to compromise or to suspend or terminate collection activity thereon, without concurrence by the DOJ. In addition, the minimum amount of a claim that may be referred to the DOJ is increased from $600 to $2,500, or such other amount as the Attorney General may direct. The circumstances under which the DOJ will litigate when the claim amount does not meet the minimum threshold have not been changed.

(6) The revised 10 CFR part 1015 reflects several new debt collection procedures under the DCIA, including, but not limited to:

(a) The Treasury Regulations provide that agencies shall set forth in their regulations the circumstances under which interest and related charges will not be imposed for periods during which collection activity has been suspended pending agency review. The revised 10 CFR 1015.212(h) provides that when a debtor requests a waiver or review of the debt, DOE will continue to accrue interest, penalties and administrative costs during the period collection activity is suspended. Upon completion of DOE's review, interest, penalties and administrative costs related to the portion of the debt found to be without merit will be waived;

(b) Transfer or referral of delinquent debt to Treasury or Treasury-designated debt collection centers for collection, known as ''cross-servicing'';

(c) Mandatory credit bureau reporting, and;

(d) Mandatory prohibition against extending Federal financial assistance in the form of a loan or loan guarantee to delinquent debtors.

(7) The revised 10 CFR part 1015 requires one demand letter before taking appropriate collection actions. Previously DOE required three letters before taking further collection action.

(8) A section on cost analysis has been added to 10 CFR 1015.212, Interest, penalties and administrative costs. This section ensures that the most cost effective alternative collection techniques are used with respect to the extensiveness of collection efforts, the evaluation of offers of compromise, and the establishment of minimum debt amounts below which collection efforts need not be taken.

(9) A new § 1015.207, Suspension or revocation of eligibility for loans and loan guarantees, licenses, permits, or privileges, has been added.

III. Discussion of Direct Final Rulemaking

DOE is publishing this final rule without prior proposal because we view this as a noncontroversial amendment and anticipate no significant adverse comment. This rulemaking merely conforms DOE's regulations on debt collection to Treasury and DOJ standards and to procedures required by statute. However, in the ''Proposed Rules'' section of today's **Federal Register**, we are publishing a separate document that will serve as the proposal to amend 10 CFR part 1015 if significant adverse comment is filed. This rule will be effective on November 12, 2003 without further notice unless we receive significant adverse comment by September 15, 2003. If DOE receives such an adverse comment on one or more distinct amendments, paragraphs, or sections of this direct final rule, DOE will publish a timely withdrawal in the **Federal Register** indicating which provisions will become effective and which provisions are being withdrawn due to adverse comment. Any distinct amendment, paragraph, or section of today's direct final rule for which we do not receive significant adverse comment will become effective on the date set forth in this direct final rule, notwithstanding any adverse comment on any other distinct amendment, paragraph, or section of today's rule. If significant adverse comment is received, we will address all public comments in a subsequent final rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

IV. Regulatory Analysis

A. Executive Order 12866

Today's regulatory action has been determined not to be ''a significant regulatory action'' under Executive Order 12866, ''Regulatory Planning and Review,'' (58 FR 51735, October 4, 1993). Accordingly, this action was not subject to review under that Executive Order by the Office of Information and Regulatory Affairs of OMB.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of an initial regulatory flexibility analysis for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. This rule amends 10 CFR part 1015 to incorporate revisions to the Federal Claims Collection Standards issued by Treasury and DOJ and to reflect changes to Federal debt collection procedures made by the Debt Collection Improvement Act of 1996 and the General Accounting Office Act of 1996. Most of the rule provisions relate to agency management and procedure or are stated as policy statements. This rule contains few, if any, new substantive requirements that directly apply to members of the public. Any incremental economic impact of this rule on small entities would be small. For these reasons, DOE certifies that this direct final rule will not have a significant

economic impact on a substantial number of small entities. Accordingly, DOE did not prepare a regulatory flexibility analysis for the rule.

C. Paperwork Reduction Act

No new collection of information is imposed by this direct final rule. Accordingly, no clearance by OMB is required under the Paperwork Reduction Act (44 U.S.C. 3501, *et seq.*).

D. National Environmental Policy Act

DOE has concluded that promulgation of this rule falls into a class of actions that would not individually or cumulatively have a significant impact on the human environment, as determined by DOE's regulations implementing the National Environmental Policy Act of 1969 (42 U.S.C. 4321, *et seq.*). Specifically, this rule deals only with agency procedures and, therefore, is covered under the Categorical Exclusion in paragraph A6 to subpart D, 10 CFR part 1021. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

E. Executive Order 13132

Executive Order 13132 (64 FR 43255, August 4, 1999) imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have federalism implications. Agencies are required to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and carefully assess the necessity for such actions. DOE has examined today's rule and has determined that it does not preempt State law and does not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. No further action is required by Executive Order 13132.

F. Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, ''Civil Justice Reform,'' (61 FR 4729, February 7, 1996), imposes on Federal agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. Section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, this final rule meets the relevant standards of Executive Order 12988.

G. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires each Federal agency to prepare a written assessment of the effects of any Federal mandate in a proposed or final rule that may result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100 million in any one year. The Act also requires a Federal agency to develop an effective process to permit timely input by elected officers of State, local, and tribal governments on a proposed ''significant intergovernmental mandate,'' and it requires an agency to develop a plan for giving notice and opportunity for timely input to potentially affected small governments before establishing any requirement that might significantly or uniquely affect small governments. The rule published today does not contain any Federal mandate; therefore, these requirements do not apply.

H. Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any proposed rule or policy that may affect family well-being. This rulemaking is not subject to a requirement to propose for public comment, and section 654 therefore does not apply.

I. Review Under the Treasury and General Government Appropriations Act, 2001

The Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516, note) provides for agencies to review most disseminations of information to the public under guidelines established by each agency pursuant to general guideline issued by OMB. OMB's guidelines were published at 67 FR 8452 (February 22, 2002), and DOE's guidelines were published at 67 FR 62446 (October 7, 2002). DOE has reviewed today's notice under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

J. Review Under the Small Business Regulatory Enforcement Fairness Act

As required by 5 U.S.C. 801, DOE will report to Congress on the promulgation of today's rule prior to its effective date. The report will state that it has been determined that the rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects

10 CFR Part 1015

Administrative practice and procedure, Antitrust, Claims, Federal employees, Fraud penalties, Privacy.

10 CFR Part 1018

Claims, Income taxes.

Issued in Washington, DC, on August 6, 2003.

James T. Campbell,

Acting Director, Office of Management, Budget and Evaluation/Acting Chief Financial Officer.

■ For the reasons set out in the preamble, DOE hereby amends title 10 of the Code of Federal Regulations as follows:

PART 1015—COLLECTION OF CLAIMS OWED THE UNITED STATES

■ 1. Part 1015 is revised to read as follows:

PART 1015—COLLECTION OF CLAIMS OWED THE UNITED STATES

Subpart A—General

Sec.

Authority: 31 U.S.C. 3701, 3711, 3716, 3717, 3718, and 3720B; 42 U.S.C. 2201 and 7101, *et seq.*; 50 U.S.C. 2401 *et seq.*

Subpart A—General

§ 1015.100 Scope.

This subpart describes the scope of the standards set forth in this part. This subpart corresponds to 31 CFR part 900 in the Department of the Treasury (Treasury) Federal Claims Collection Standards.

§ 1015.101 Prescription of standards.

(a) The Secretary of the Treasury and the Attorney General of the United States issued regulations in 31 CFR parts 900–904, under the authority contained in 31 U.S.C. 3711(d)(2). Those regulations prescribe standards for Federal agency use in the administrative collection, offset, compromise, and the suspension or termination of collection activity for civil claims for money, funds, or property, as defined by 31 U.S.C. 3701(b), unless specific Federal agency statutes or regulations apply to such activities or, as provided for by Title 11 of the United States Code, when the claims involve bankruptcy. The regulations in 31 CFR parts 900–904 also prescribe standards for referring debts to the Department of Justice (DOJ) for litigation. Additional guidance is contained in the Office of Management and Budget's (OMB) Circular A–129 (Revised), ''Policies for Federal Credit Programs and Non-Tax Receivables,'' the Treasury's ''Managing Federal Receivables,'' and other publications concerning debt collection and debt management. These publications are available from the Department of Energy (DOE) Office of Financial Policy, 1000 Independence Ave., SW., Washington, DC 20585.

(b) Additional rules governing centralized administrative offset and the transfer of delinquent debt to Treasury or Treasury-designated debt collection centers for collection (cross-servicing) under the Debt Collection Improvement Act of 1996 (DCIA), Public Law 104–134, 110 Stat. 1321, 1358 (April 26, 1996), are set forth in separate regulations issued by Treasury. Rules governing the use of certain debt collection tools created under the DCIA, such as administrative wage garnishment, also are set forth in separate regulations issued by Treasury. See generally, 31 CFR part 285.

(c) DOE is not limited to the remedies contained in this part and may use any other authorized remedies, including alternative dispute resolution and arbitration, to collect civil claims, to the extent that such remedies are not inconsistent with the Federal Claims Collection Act, as amended, Public Law 89–508, 80 Stat. 308 (July 19, 1966), the Debt Collection Act of 1982, Public Law 97–365, 96 Stat. 1749 (October 25, 1982), the DCIA or other relevant law. The regulations in this part do not impair DOE's common law rights to collect debts.

(d) Standards and policies regarding the classification of debt for accounting purposes (for example, write-off of uncollectible debt) are contained in OMB's Circular A–129 (Revised), ''Policies for Federal Credit Programs and Non-Tax Receivables.''

§ 1015.102 Definitions and construction.

(a) For the purposes of the standards in this part, the terms ''claim'' and ''debt'' are synonymous and interchangeable. They refer to an amount of money, funds, or property that has been determined by an agency official to be due the United States from any person, organization, or entity, except another Federal agency. For the purposes of administrative offset under 31 U.S.C. 3716, the terms ''claim'' and ''debt'' include an amount of money, funds, or property owed by a person to a State (including past-due support being enforced by a State), the District of Columbia, American Samoa, Guam, the United States Virgin Islands, the Commonwealth of the Northern Mariana Islands, or the Commonwealth of Puerto Rico.

(b) A debt is ''delinquent'' if it has not been paid by the date specified in DOE'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.

(c) In this part, words in the plural form shall include the singular and vice versa, and words signifying the masculine gender shall include the feminine and vice versa. The terms ''includes'' and ''including'' do not exclude matters not listed but do include matters that are in the same general class.

(d) Recoupment is a special method for adjusting debts arising under the same transaction or occurrence. For example, obligations arising under the same contract generally are subject to recoupment.

(e) The term ''Department of Energy'' or ''DOE'' includes the National Nuclear Security Administration.

§ 1015.103 Antitrust, fraud, tax, interagency, transportation account audit, acquisition contract, and financial assistance instrument claims excluded.

(a) The standards in this part relating to compromise, suspension, and termination of collection activity do not apply to any debt based in whole or in part on conduct in violation of the antitrust laws or to any debt involving fraud, the presentation of a false claim, or misrepresentation on the part of the debtor or any party having an interest in the claim. Only the DOJ has the

authority to compromise, suspend, or terminate collection activity on such claims. The standards in this part relating to the administrative collection of claims do apply, but only to the extent authorized by the DOJ in a particular case. Upon identification of a claim based in whole or in part on conduct in violation of the antitrust laws or any claim involving fraud, the presentation of a false claim, or misrepresentation on the part of the debtor or any party having an interest in the claim, DOE will promptly refer the case to the DOJ for action. At its discretion, the DOJ may return the claim to DOE for further handling in accordance with the standards in this part.

(b) Part 1015 does not apply to tax debts.

(c) Part 1015 does not apply to claims between Federal agencies. Federal agencies should attempt to resolve interagency claims by negotiation in accordance with Executive Order 12146 (3 CFR, 1980 Comp., pp. 409–412).

(d) Part 1015 does not apply to claims arising from the audit of transportation accounts pursuant to 31 U.S.C. 3726 which shall be determined, collected, compromised, terminated, or settled in accordance with regulations published under the authority of 31 U.S.C. 3726 (*see* 41 CFR parts 101–141, administered by the Director, Office of Transportation Audits, General Services Administration) and are otherwise excepted from these regulations.

(e)(1) Part 1015 does not apply to claims arising out of acquisition contracts, subcontracts, and purchase orders which are subject to the Federal Acquisition Regulations System, including the Federal Acquisition Regulation, 48 CFR subpart 32.6, and the Department of Energy Acquisition Regulation, 48 CFR subpart 932.6, and which shall be determined or settled in accordance with those regulations; and

(2) Part 1015 does not apply to claims arising out of financial assistance instruments (*e.g.*, grants, cooperative agreements, and contracts under cooperative agreements) and loans and loan guarantees, which shall be determined or settled in accordance with 10 CFR 600.26 and 10 CFR 600.112(f).

§ 1015.104 Compromise, waiver, or disposition under other statutes not precluded.

Nothing in this part precludes DOE from disposing of any claim under statutes and implementing regulations other than subchapter II of chapter 37 of Title 31 of the United States Code (Claims of the United States Government) and the standards in this part. In such cases, the specifically applicable laws and regulations will generally take precedence over this part.

§ 1015.105 Form of payment.

Claims may be paid in the form of money or, when a contractual basis exists, the Government may demand the return of specific property or the performance of specific services.

§ 1015.106 Subdivision of claims not authorized.

Debts may not be subdivided to avoid the monetary ceiling established by 31 U.S.C. 3711(a)(2). A debtor's liability arising from a particular transaction or contract shall be considered a single debt in determining whether the debt is one of less than $100,000 (excluding interest, penalties, and administrative costs) or such higher amount as the Attorney General shall from time to time prescribe for purposes of compromise or suspension or termination of collection activity.

§ 1015.107 Required administrative proceedings.

DOE is not required to omit, foreclose, or duplicate administrative proceedings required by contract or other laws or regulations.

§ 1015.108 No private rights created.

The standards in this part do not create any right or benefit, substantive or procedural, enforceable at law or in equity by a party against the United States, its agencies, its officers, or any other person, nor shall the failure of DOE, Treasury, the DOJ or other agency to comply with any of the provisions of this part be available to any debtor as a defense.

Subpart B—Standards for the Administrative Collection of Claims

§ 1015.200 Scope.

The subpart sets forth the standards for administrative collection of claims under this part. This subpart corresponds to 31 CFR part 901 of the Treasury Federal Claims Collection Standards.

§ 1015.201 Aggressive agency collection activity.

(a) Heads of DOE Headquarters Elements and Field Elements or their designees must promptly notify the appropriate DOE finance office of claims arising from their operations. A claim will be recorded and controlled by the responsible finance office upon receipt of documentation from a competent authority establishing the amount due.

(b) In accordance with 31 CFR Chapter IX parts 900–904 and this part, DOE will aggressively collect all debts arising out of activities. Collection activities shall be undertaken promptly with follow-up action taken as necessary.

(c) Debts referred or transferred to Treasury, or Treasury-designated debt collection centers under the authority of 31 U.S.C. 3711(g), shall be serviced, collected, or compromised, or the collection action will be suspended or terminated, in accordance with the statutory requirements and authorities applicable to the collection of such debts.

(d) DOE will cooperate with other agencies in its debt collection activities.

(e) DOE will refer debts to Treasury as soon as due process requirements are complete, and should refer such debts no later than 180 days after the debt has become delinquent. On behalf of DOE, Treasury will take appropriate action to collect or compromise the referred debt, or to suspend or terminate collection action thereon, in accordance with the statutory and regulatory requirements and authorities applicable to the debt and action. Appropriate action to collect a debt may include referral to another debt collection center, a private collection contractor, or the DOJ for litigation. (See 31 CFR 285.12, Transfer of Debts to Treasury for Collection.) This requirement does not apply to any debt that:

(1) Is in litigation or foreclosure;

(2) Will be disposed of under an approved asset sale program;

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

(4) Will be collected under internal offset procedures within three years after the debt first became delinquent.

(f) Treasury is authorized to charge a fee for services rendered regarding referred or transferred debts. DOE will add the fee to the debt as an administrative cost (see § 1015.212(c)).

§ 1015.202 Demand for payment.

(a) 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 DOE to resolve the debt. Generally, one demand letter issued 30 days after the initial notice, bill, or written demand should suffice. 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) Demand letters will inform the debtor of:

(1) The basis for the indebtedness and the rights, if any, the debtor may have to seek review within DOE;

(2) The applicable standards for imposing any interest, penalties, or administrative costs;

(3) The date by which payment should be made to avoid late charges (*i.e.*, interest, penalties, and administrative costs) and enforced collection, which generally should not be more than 30 days from the date that the demand letter is mailed or hand-delivered;

(4) The name, address, and phone number of a contact person or office within DOE;

(5) DOE's intent to refer unpaid debts to Treasury for collection;

(6) DOE's intent to authorize Treasury to add fees for services rendered as an administrative fee;

(7) DOE's intent to authorize Treasury to utilize collection tools such as credit bureau reporting, private collection agencies, administrative wage garnishment, Federal salary offset, tax refund offset, administrative offset, litigation, and other tools, as appropriate, to collect the debt;

(8) DOE's willingness to discuss alternative methods of payment;

(9) The debtor's entitlement to consideration of a waiver, depending on applicable statutory authority; and

(10) DOE's intent to suspend or revoke licenses, permits, or privileges for any inexcusable or willful failure of a debtor to pay such a debt in accordance with DOE regulations or governing procedures.

(c) DOE will seek to ensure that demand letters are mailed or hand-delivered on the same day that they are dated.

(d) DOE will seek to respond promptly to communications from debtors, within 30 days whenever feasible, and will advise debtors who dispute debts to furnish available evidence to support their contentions.

(e) Prior to the initiation of the demand process or at any time during or after completion of the demand process, if DOE determines to pursue, or is required to pursue, offset, the procedures applicable to offset should be followed (see § 1015.203 of this subpart). The availability of funds or money for debt satisfaction by offset and DOE's determination to pursue collection by offset shall release DOE from the necessity of further compliance with paragraphs (a), (b), and (c) of this section.

(f) Prior to referring a debt for litigation, DOE should advise each person determined to be liable for the debt that, unless the debt can be collected administratively, litigation may be initiated. This notification should comply with Executive Order 12988 (3 CFR, 1996 Comp, pp. 157–163) and should be given as part of a demand letter under paragraph (b) of this section.

(g) When DOE learns that a bankruptcy petition has been filed with respect to a debtor, before proceeding with further collection action, DOE should immediately seek legal advice from appropriate legal counsel concerning the impact of the Bankruptcy Code on any pending or contemplated collection activities. Unless counsel determines 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 should stop immediately.

(1) After seeking legal advice, a proof of claim should be filed in most cases with the bankruptcy court or the Trustee. DOE 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 DOE is a secured creditor, it may seek 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, DOE will seek legal advice from counsel to determine whether its payments to the debtor and payments of other agencies available for offset may be frozen until relief from the automatic stay can be obtained from the bankruptcy court. DOE also will seek legal advice from counsel to determine whether recoupment is available.

§ 1015.203 Collection by administrative offset.

(a) *Scope.* (1) The term ''administrative offset'' has the meaning provided in 31 U.S.C. 3701(a)(1).

(2) This section does not apply to:

(i) Debts arising under the Social Security Act (42 U.S.C. 301, *et. seq.*) except as provided in 42 U.S.C. 404;

(ii) Payments made under the Social Security Act (42 U.S.C. 301, *et. seq.*) except as provided for in 31 U.S.C. 3716(c) (see 31 CFR 285.4, Federal Benefit Offset);

(iii) Debts arising under, or payments made under, the Internal Revenue Code (see 31 CFR 285.2, Tax Refund Offset) or the tariff laws of the United States;

(iv) Offsets against Federal salaries to the extent these standards are inconsistent with regulations published to implement such offsets under 5 U.S.C. 5514 and 31 U.S.C. 3716 (see 5 CFR part 550, subpart K, and 31 CFR 285.7, Federal Salary Offset);

(v) Offsets under 31 U.S.C. 3728 against a judgment obtained by a debtor against the United States;

(vi) Offsets or recoupments under common law, state law, or Federal statutes specifically prohibiting offsets or recoupments of particular types of debts; or

(vii) Offsets in the course of judicial proceedings, including bankruptcy.

(3) 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.

(4) Unless otherwise provided by law, administrative offset of payments under the authority of 31 U.S.C. 3716 to collect a debt may not be conducted more than 10 years after the Government's right to collect the debt first accrued, unless facts material to the Government's right to collect the debt were not known and could not reasonably have been known by the official or officials of the Government who were charged with the responsibility to discover and collect such debts. This limitation does not apply to debts reduced to a judgment.

(5) In bankruptcy cases, DOE will seek legal advice from appropriate legal counsel concerning the impact of the Bankruptcy Code, particularly 11 U.S.C. 106, 362, and 553, on pending or contemplated collections by offset.

(b) *Mandatory centralized administrative offset.* (1) As described in § 1015.201(e), under the DCIA, DOE is required to refer all debts over 180 days delinquent to Treasury for purposes of debt collection (*i.e.*, cross-servicing). Administrative offset is one type of collection tool used by Treasury to collect debts referred under 31 CFR 285.12. Thus, by transferring debts to Treasury, DOE will satisfy the requirement to notify Treasury of debts for the purposes of administrative offset and duplicate referrals are not required. A debt, which is not transferred to Treasury for purposes of debt collection, however, may be subject to the DCIA requirement of notification to Treasury for purposes of administrative offset.

(2) The names and taxpayer identifying numbers (TINs) of debtors who owe debts referred to Treasury as described in paragraph (b)(1) of this section shall 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 the Secretary of the 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 will be offset to satisfy the debt.

(3) Treasury will notify the debtor/payee in writing that an offset has occurred to satisfy, in part or in full, a past due, legally enforceable delinquent debt. The notice shall 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 DOE as the creditor agency requesting the offset, and a contact point within DOE who will respond to questions regarding the offset.

(4) As required in 31 CFR 901.3(b)(4), DOE will refer a delinquent debt to Treasury for administrative offset, only after the debtor:

(i) Has been sent written notice of the type and amount of the debt, the intention of DOE to use administrative offset to collect the debt, and an explanation of the debtor's rights under 31 U.S.C. 3716; and

(ii) Has been given:

(A) The opportunity to inspect and copy DOE records related to the debt;

(B) The opportunity for a review within DOE of the determination of indebtedness; and

(C) The opportunity to make a written agreement to repay the debt.

(iii) DOE may omit the procedures set forth in paragraph (a)(4) of this section when:

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

(B) The debt arises under a contract as set forth in *Cecile Industries, Inc.* v. *Cheney,* 995 F.2d 1052 (Fed. Cir. 1993) (notice and other procedural protections set forth in 31 U.S.C. 3716(a) do not supplant or restrict established procedures for contractual offsets accommodated by the Contracts Disputes Act); or

(C) In the case of non-centralized administrative offsets conducted under paragraph (c) of this section, DOE 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, DOE shall give the debtor such notice and an opportunity for review as soon as practicable and shall promptly refund any money ultimately found not to have been owed to the Government.

(iv) When DOE previously has given a debtor any of the required notice and review opportunities with respect to a particular debt (see § 1015.202), DOE need not duplicate such notice and review opportunities before administrative offset may be initiated.

(5) When DOE refers delinquent debts to Treasury, DOE must certify, in a form acceptable to Treasury, that:

(i) The debt(s) is (are) past due and legally enforceable; and

(ii) DOE has complied with all due process requirements under 31 U.S.C. 3716(a) and DOE regulations.

(6) Payments that are prohibited by law from being offset are exempt from centralized administrative offset. Treasury may exempt classes of DOE payments from centralized offset upon the written request of the Secretary of DOE.

(7) In accordance with 31 U.S.C. 3716(f), Treasury may waive the provisions of the Computer Matching and Privacy Protection Act of 1988 concerning matching agreements and post-match notification and verification (5 U.S.C. 552a(o) and (p)) for centralized administrative offset upon receipt of a certification from DOE that the due process requirements enumerated in 31 U.S.C. 3716(a) have been met. The certification of a debt in accordance with paragraph (b)(5) of this section will satisfy this requirement. If such a waiver is granted, only the Data Integrity Board of Treasury is required to oversee any matching activities, in accordance with 31 U.S.C. 3716(g). This waiver authority does not apply to offsets conducted under paragraphs (c) and (d) of this section.

(c) *Non-centralized administrative offset.* (1) Generally, non-centralized administrative offsets are ad hoc case-by-case offsets that DOE conducts, at DOE's discretion, internally or in cooperation with the agency certifying or authorizing payments to the debtor. Unless otherwise prohibited by law, when centralized administrative offset is not available or appropriate, past due, legally enforceable non-tax delinquent debts may be collected through non-centralized administrative offset. In these cases, DOE may make a request directly to a payment-authorizing agency to offset a payment due a debtor to collect a delinquent debt. For example, it may be appropriate for DOE to request that the Office of Personnel Management (OPM) offset a Federal employee's lump sum payment upon leaving Government service to satisfy an unpaid advance.

(2) DOE shall comply with offset requests by creditor agencies to collect debts owed to the United States, unless the offset would not be in the best interest of the United States with respect to the program of DOE, or would otherwise be contrary to law. Appropriate use will be made of the cooperative efforts of other agencies in effecting collection by administrative offset.

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

(d) *Requests to OPM to offset a debtor's anticipated or future benefit payments under the Civil Service Retirement and Disability Fund.* Upon providing OPM written certification that a debtor has been afforded the procedures provided in paragraph (b)(4) of this section, DOE 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 831.1801–831.1808. 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. This will satisfy any requirement that offset be initiated prior to the expiration of the time limitations referenced in paragraph (a)(4) of this section.

(e) *Review requirements.* (1) For purposes of this section, whenever DOE is required to afford a debtor a review within the agency, DOE shall provide the debtor with a reasonable opportunity for an oral hearing when the debtor requests reconsideration of the debt and DOE 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.

(2) Unless otherwise required by law, an oral hearing under this section is not required to be a formal evidentiary hearing, although DOE will carefully document all significant matters discussed at the hearing.

(3) This section does not require an oral hearing with respect to debt collection systems in which a determination of indebtedness rarely involves issues of credibility or veracity and DOE has determined that review of the written record is ordinarily an adequate means to correct prior mistakes.

(4) In those cases when an oral hearing is not required by this section, DOE will accord the debtor a ''paper hearing,'' that is, a determination of the request for reconsideration based upon a review of the written record.

§ 1015.204 Reporting debts.

(a) DOE may disclose delinquent debts to consumer reporting agencies in accordance with 31 U.S.C. 3711(e), the DCIA, the revised Federal Claims Collection Standards (31 CFR parts 900–904) published November 22, 2000, and other applicable authorities. DOE will ensure that all of the rights and protections afforded to the debtor under 31 U.S.C. 3711(e) have been fulfilled. Additional guidance is contained in Treasury's ''Guide to the Federal Credit Bureau Program,'' revised October 2001.

(b) As described in § 1015.201(e), under the DCIA (31 U.S.C. 3711(g)), DOE is required to transfer all debts over 180 days delinquent to Treasury for purposes of debt collection (*i.e.*, cross-servicing). As part of its regular debt collection procedures, Treasury will report debts it is collecting to the appropriate designated credit reporting agencies on behalf of DOE. A debt not transferred to Treasury for purposes of debt collection, however, may be subject to the DCIA requirement to report all non-tax delinquent consumer debts to credit reporting agencies.

§ 1015.205 Credit reports.

(a) In order to aid DOE in making appropriate determinations as to the collection and compromise of claims; the collection of interest, penalties, and administrative costs; and the likelihood of collecting the claim, DOE may institute a credit investigation of the debtor at any time following receipt of knowledge of the claim.

(b) As described in § 1015.201(e), under the DCIA (31 U.S.C. 3711(g)), DOE is required to transfer all debts over 180 days delinquent to Treasury for purposes of debt collection (*i.e.*, cross-servicing). As part of its regular debt collection procedures, Treasury may also institute a credit investigation of the debtor on behalf of DOE.

§ 1015.206 Contracting with private collection contractors and with entities that locate and recover unclaimed assets.

(a) DOE may contract with private collection contractors in accordance with 31 U.S.C. 3718(d), the DCIA, the revised Federal Claims Collection Standards (31 CFR parts 900–904) published November 22, 2000, and other applicable authorities.

(b) As described in § 1015.201(e), under the DCIA, DOE is required to transfer all debts over 180 days delinquent to Treasury for purposes of debt collection (*i.e.*, cross-servicing) under 31 U.S.C. 3711(g). As part of its regular debt collection procedures, Treasury may refer delinquent debts to private collection contractors on behalf of DOE.

(c) DOE may enter into contracts for locating and recovering assets of the United States, such as unclaimed assets. DOE must establish procedures acceptable to Treasury before entering into contracts to recover assets of the United States held by a state government or a financial institution.

(d) DOE may enter into contracts for debtor asset and income search reports. In accordance with 31 U.S.C. 3718(d), such contracts may provide that the fee a contractor charges DOE for such services may be payable from the amounts recovered, unless otherwise prohibited by statute.

§ 1015.207 Suspension or revocation of eligibility for loans and loan guaranties, licenses, permits, or privileges.

(a) Unless waived by the Secretary of DOE or his designee, DOE may not extend financial assistance in the form of a loan, loan guarantee, or loan insurance to any person who DOE knows to be delinquent on a non-tax debt owed to a Federal agency. This prohibition does not apply to disaster loans. The authority to waive the application of this section may be delegated to the Chief Financial Officer and redelegated only to the Deputy Chief Financial Officer of DOE. DOE may extend credit after the delinquency has been resolved. See 31 CFR 285.13 (Barring Delinquent Debtors From Obtaining Federal Loans or Loan Insurance or Guarantees).

(b) In non-bankruptcy cases, DOE offices seeking the collection of statutory penalties, forfeitures, or other types of claims should 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 DOE's regulations or governing procedures. The debtor should be advised in DOE's written demand for payment of DOE's ability to suspend or revoke licenses, permits, or privileges. Any DOE office making, guaranteeing, insuring, acquiring, or participating in loans should consider suspending or disqualifying any lender, contractor, or broker from doing further business with DOE or engaging in programs sponsored by DOE 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 another Federal agency. The failure of any surety to honor its obligations in accordance with 31 U.S.C. 9305 should 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 by Treasury.

(c) The suspension or revocation of licenses, permits, or privileges also should extend to Federal programs or activities that are administered by the states on behalf of the Federal Government, to the extent that they affect the Federal Government's ability to collect money or funds owed by debtors. Therefore, states that manage Federal activities, pursuant to approval from DOE, should ensure that appropriate steps are taken to safeguard against issuing licenses, permits, or privileges to debtors who fail to pay their debts to the Federal Government.

(d) In bankruptcy cases, before advising the debtor of DOE's intention to suspend or revoke licenses, permits, or privileges, DOE will seek legal advice from counsel concerning the impact of the Bankruptcy Code, particularly 11 U.S.C. 362 and 525, which may restrict such action.

§ 1015.208 Administrative wage garnishment.

(a) DOE may use administrative wage garnishment to collect money from a debtor's disposable pay to satisfy delinquent debt in accordance with section 31001(o) of the DCIA, codified at 31 U.S.C. 3720D. Treasury has issued regulations implementing the administrative wage garnishment provisions contained in the DCIA, at 31 CFR 285.11. DOE has adopted these regulations in their entirety.

(b) As described in § 1015.201(e) of this part, under the DCIA (31 U.S.C. 3711(g)), DOE is required to transfer all debts over 180 days delinquent to Treasury for purposes of debt collection (*i.e.*, cross-servicing). As part of its regular debt collection procedures, Treasury may use administrative wage garnishment on behalf of DOE.

§ 1015.209 Tax refund offset.

(a) DOE may authorize the Internal Revenue Service (IRS) to offset a tax refund to satisfy delinquent debt in accordance with 31 U.S.C. 3720A, Reduction of Tax Refund by Amount of Debt. Treasury has issued regulations implementing the tax refund offset as part of Treasury's mandatory centralized offset at 31 CFR 285.2, Offset of Tax Refund to Collect Past-Due, Legally

Enforceable Non-tax Debt. DOE has adopted 31 U.S.C. 3720A and 31 CFR 285.2 in their entirety. The due process requirements of 31 U.S.C. 3720A are contained in §§ 1015.203(b)(4), and 1015.203(e) of this part.

(b) As described in § 1015.201(e) of this part, under the DCIA (31 U.S.C. 3711(g)), DOE is required to transfer all debts over 180 days delinquent to Treasury for purposes of debt collection (*i.e.*, cross-servicing). As part of its regular debt collection procedures, Treasury may use tax refund offset on behalf of DOE.

§ 1015.210 Liquidation of collateral.

(a) DOE may liquidate security or collateral through the exercise of a power of sale in the security instrument 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 best 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 DOE learns that a bankruptcy petition has been filed with respect to a debtor, DOE will seek legal advice from counsel 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.

§ 1015.211 Collection in installments.

(a) Whenever feasible, DOE shall 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, DOE may accept payment in regular installments. DOE will obtain a current financial statement showing the debtor's assets, liabilities, income, and expenses from debtors who represent that they are unable to pay in one lump sum, and independently verify such representations whenever possible. DOE may also obtain credit reports or other financial information to assess installment requests. DOE may use its own financial information form or a DOJ form, such as the Financial Statement of Debtor (OBD–500) (see § 1015.302(g) of this part). When DOE agrees to accept payments in regular installments, it will obtain a legally enforceable, written agreement from the debtor that specifies all of the 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 should bear a reasonable relation to the size of the debt and the debtor's ability to pay. If possible, the installment payments should be sufficient in size and frequency to liquidate the debt in three years or less.

(c) Security for deferred payments should be obtained in appropriate cases. DOE may accept installment payments notwithstanding the refusal of the debtor to execute a written agreement or to give security, at DOE's option.

§ 1015.212 Interest, penalties and administrative costs.

(a) Except as provided in paragraphs (g), (h), and (i) of this section, DOE shall charge interest, penalties and administrative costs on debts owed to the United States pursuant to 31 U.S.C. 3717. DOE shall mail or hand-deliver a written notice to the debtor, at the debtor's most recent address available to DOE, explaining DOE's requirements concerning these charges except where these requirements are included in a contractual or repayment agreement. These charges shall continue to accrue until the debt is paid in full or otherwise resolved through compromise, termination, or waiver of the charges.

(b) DOE shall charge interest on debts owed the United States as follows:

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

(2) Unless otherwise established in a contract, repayment agreement, or by statute, the rate of interest charged shall be the rate established annually by Treasury in accordance with 31 U.S.C. 3717. Pursuant to 31 U.S.C 3717, DOE 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. DOE will document the reason(s) for its determination that the higher rate is necessary.

(3) The rate of interest, as initially charged, shall remain fixed for the duration of the indebtedness. When a debtor defaults on a repayment agreement and seeks to enter into a new agreement, DOE 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 shall not be compounded, that is, interest shall not be 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 shall be added to the principal under the new repayment agreement.

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

(d) Unless otherwise established in a contract, repayment agreement, or by statute, DOE shall charge a penalty, pursuant to 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 shall accrue from the date of delinquency.

(e) DOE 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 guaranties. 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 shall be computed annually. DOE will 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 DOE shall be applied first to outstanding penalties, second to administrative costs, third to interest, and last to principal.

(g) DOE shall waive the collection of interest and administrative costs imposed pursuant to this section on the portion of the debt that is paid within 30 days after the date on which interest began to accrue. DOE may extend this 30-day period on a case-by-case basis. In addition, DOE 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 set forth in these standards for the compromise of debts, or if DOE determines that collection of these charges is against equity and good conscience or is not in the best interest of the United States.

(h) When a debtor requests a waiver or review of the debt, DOE will continue

to accrue interest, penalties, and administrative costs during the period collection activity is suspended. Upon completion of DOE's review, interest, penalties, and administrative costs related to the portion of the debt found to be without merit will be waived.

(i) DOE is authorized to impose interest and related charges on debts not subject to 31 U.S.C. 3717, in accordance with the common law.

§ 1015.213 Analysis of costs.

DOE will prepare periodic comparisons of costs incurred and amounts collected. Data on costs and corresponding recovery rates for debts of different types and in various dollar ranges will be used to compare the cost effectiveness of alternative collection techniques, establish guidelines with respect to points at which costs of further collection efforts are likely to exceed recoveries, assist in evaluating offers in compromise, and establish minimum debt amounts below which collection efforts need not be taken.

§ 1015.214 Use and disclosure of mailing addresses.

(a) When attempting to locate a debtor in order to collect or compromise a debt under §§ 1015.100–105 of this part or other authority, DOE may send a request to Treasury to obtain a debtor's mailing address from the records of the IRS.

(b) DOE may 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.

§ 1015.215 Federal salary offset.

(a) DOE may authorize Treasury to offset a Federal salary to satisfy delinquent debt in accordance with 5 U.S.C. 5514, Installment Deduction for Indebtedness to the United States; 5 CFR 550.1101 through 550.1108, Collection by Offset from Indebted Government Employees; 31 CFR parts 900–904, the revised Federal Claims Collection Standards; and 31 CFR 285.7, Salary Offset. DOE shall ensure that all of the rights and protections afforded to the debtor under 5 U.S.C. 5514 and 31 CFR 901.3 have been fulfilled. Claims due from Federal employees will be collected in accordance with DOE Order 2200.2B, Collection from Current and Former Employees for Indebtedness to the United States.

(b) As described in § 1015.201(e), under the DCIA (31 U.S.C. 3711(g)), DOE is required to refer all debts over 180 days delinquent to Treasury for purposes of debt collection (*i.e.*, cross-servicing). As part of its regular debt collection procedures, Treasury may use Federal salary offset on behalf of DOE.

§ 1015.216 Exemptions.

(a) The preceding sections of this part, to the extent they reflect remedies or procedures prescribed by the Debt Collection Act of 1982 and the DCIA, such as administrative offset, use of credit bureaus, contracting for collection agencies, and interest and related charges, do not apply to debts arising under, or payments made under, the Internal Revenue Code of 1986, as amended (26 U.S.C. 1, *et seq.*); the Social Security Act (42 U.S.C. 301, *et seq.*) except to the extent provided under 42 U.S.C. 404 and 31 U.S.C. 3716(c); or the tariff laws of the United States. These remedies and procedures, however, may be authorized with respect to debts that are exempt from the Debt Collection Act of 1982 and the DCIA, to the extent that they are authorized under some other statute or the common law.

(b) This section should not be construed as prohibiting the use of these authorities or requirements when collecting debts owed by persons employed by agencies administering the laws cited in paragraph (a) of this section unless the debt arose under those laws.

Subpart C—Standards for the Compromise of Claims

§ 1015.300 Scope.

This subpart sets forth the standards for the compromise of claims under this part. This subpart corresponds to 31 CFR part 902 of the Treasury Federal Claims Collection Standards.

§ 1015.301 Scope and application.

(a) The standards set forth in this subpart apply to the compromise of debts pursuant to 31 U.S.C. 3711. DOE's Chief Financial Officer or designee or Heads of Field Elements or designees in field locations may exercise such compromise authority for debts arising out of activities of, or referred or transferred for collection services to, DOE when the amount of the debt then due, exclusive of interest, penalties, and administrative costs, does not exceed $100,000 or any higher amount authorized by the Attorney General.

(b) Unless otherwise provided by law, when the principal balance of a debt, exclusive of interest, penalties, and administrative costs, exceeds $100,000 or any higher amount authorized by the Attorney General, the authority to accept the compromise rests with the DOJ. DOE will evaluate the compromise offer, using the factors set forth in this part. If an offer to compromise any debt in excess of $100,000 is acceptable to DOE, DOE shall refer the debt to the Civil Division or other appropriate litigating division in the DOJ using a Claims Collection Litigation Report (CCLR). DOE may obtain the CCLR from the DOJ's National Central Intake Facility. The referral shall include appropriate financial information and a recommendation for the acceptance of the compromise offer. DOJ approval is not required if DOE rejects a compromise offer.

§ 1015.302 Bases for compromise.

(a) DOE may compromise a debt if the Government cannot collect the full amount because:

(1) The debtor is unable to pay the full amount in a reasonable time, as verified through credit reports or other financial information;

(2) The Government is unable to collect the debt in full within a reasonable time by enforced collection proceedings;

(3) The cost of collecting the debt does not justify the enforced collection of the full amount; or

(4) There is significant doubt concerning the Government's ability to prove its case in court.

(b) In determining the debtor's inability to pay, DOE should consider relevant factors such as the following:

(1) Age and health of the debtor;

(2) Present and potential income;

(3) Inheritance prospects;

(4) The possibility that assets have been concealed or improperly transferred by the debtor; and

(5) The availability of assets or income that may be realized by enforced collection proceedings.

(c) DOE will verify the debtor's claim of inability to pay by using a credit report and other financial information as provided in paragraph (g) of this section. DOE will consider the applicable exemptions available to the debtor under state and Federal law in determining the Government's ability to enforce collection. DOE may also consider uncertainty as to the price that collateral or other property will bring at a forced sale in determining the Government's ability to enforce collection. A compromise effected under this section should be for an amount that bears a reasonable relation to the amount that can be recovered by enforced collection procedures, with regard to the exemptions available to the debtor and the time that collection will take.

(d) If there is significant doubt concerning the Government's ability to

prove its case in court for the full amount claimed, either because of the legal issues involved or because of a bona fide dispute as to the facts, then the amount accepted in compromise of such cases should fairly reflect the probabilities of successful prosecution to judgment, with due regard given to the availability of witnesses and other evidentiary support for the Government's claim. In determining the litigative risks involved, DOE will consider the probable amount of court costs and attorney fees pursuant to the Equal Access to Justice Act, 28 U.S.C. 2412, that may be imposed against the Government if it is unsuccessful in litigation.

(e) DOE may compromise a debt if the cost of collecting the debt does not justify the enforced collection of the full amount. The amount accepted in compromise in such cases may reflect an appropriate discount for the administrative and litigative costs of collection, with consideration given to the time it will take to effect collection. Collection costs may be a substantial factor in the settlement of small debts. In determining whether the cost of collecting justifies enforced collection of the full amount, DOE should consider whether continued collection of the debt, regardless of cost, is necessary to further an enforcement principle, such as the Government's willingness to pursue aggressively defaulting and uncooperative debtors.

(f) DOE generally will not accept compromises payable in installments. This is not an advantageous form of compromise in terms of time and administrative expense. If, however, payment of a compromise in installments is necessary, DOE will obtain a legally enforceable, written agreement providing that, in the event of default, the full original principal balance of the debt prior to compromise, less sums paid thereon, is reinstated. Whenever possible, DOE also will obtain security for repayment in the manner set forth in subpart B of this part.

(g) To assess the merits of a compromise offer based in whole or in part on the debtor's inability to pay the full amount of a debt within a reasonable time, DOE will, if feasible, obtain a current financial statement from the debtor, executed under penalty of perjury, showing the debtor's assets, liabilities, income, and expenses. DOE also may obtain credit reports or other financial information to assess compromise offers. DOE may use its own financial information form or may request suitable forms from the DOJ or the local United States Attorney's Office.

§ 1015.303 Enforcement policy.

Pursuant to this part, DOE may compromise statutory penalties, forfeitures, or claims established as an aid to enforcement and to compel compliance, if DOE's enforcement policy in terms of deterrence and securing compliance, present and future, will be adequately served by DOE's acceptance of the sum to be agreed upon.

§ 1015.304 Joint and several liability.

(a) When two or more debtors are jointly and severally liable, DOE will pursue collection activity against all debtors, as appropriate. DOE will not attempt to allocate the burden of payment between the debtors, but will proceed to liquidate the indebtedness as quickly as possible.

(b) DOE will seek to ensure that a compromise agreement with one debtor does not release DOE's claim against the remaining debtors. The amount of a compromise with one debtor shall not be considered a precedent or binding in determining the amount that will be required from other debtors jointly and severally liable on the claim.

§ 1015.305 Further review of compromise offers.

If DOE is uncertain whether to accept a firm, written, substantive compromise offer on a debt that is within DOE's delegated compromise authority, it may refer the offer to the Civil Division or other appropriate litigating division in the DOJ, using a CCLR accompanied by supporting data and particulars concerning the debt. The DOJ may act upon such an offer or return it to DOE with instructions or advice.

§ 1015.306 Consideration of tax consequences to the Government.

In negotiating a compromise, DOE will consider the tax consequences to the Government. In particular, DOE will consider requiring a waiver of tax-loss-carry-forward and tax-loss-carry-back rights of the debtor. For information on discharge of indebtedness reporting requirements see § 1015.405 of this part.

§ 1015.307 Mutual releases of the debtor and the Government.

In all appropriate instances, a compromise that is accepted by DOE will be implemented by means of a mutual release, in which the debtor is released from further non-tax liability on the compromised debt in consideration of payment in full of the compromise amount and the Government and its officials, past and present, are released and discharged from any and all claims and causes of action arising from the same transaction that the debtor may have. In the event a mutual release is not executed when a debt is compromised, unless prohibited by law, the debtor is still deemed to have waived any and all claims and causes of action against the Government and its officials related to the transaction giving rise to the compromised debt.

Subpart D—Standards for Suspending or Terminating Collection Activity

§ 1015.400 Scope.

The subpart sets forth the standards for terminating collection activity. This subpart corresponds to 31 CFR part 903 of the Treasury Federal Claims Collection Standards.

§ 1015.401 Scope and application.

(a) The standards set forth in this subpart apply to the suspension or termination of collection activity pursuant to 31 U.S.C. 3711 on debts that do not exceed $100,000, or such other amount as the Attorney General may direct, exclusive of interest, penalties, and administrative costs, after deducting the amount of partial payments or collections, if any. Prior to referring a debt to the DOJ for litigation, DOE may suspend or terminate collection under this part with respect to debts arising out of activities of, or referred to, DOE.

(b) If, after deducting the amount of any partial payments or collections, the principal amount of a debt exceeds $100,000, or such other amount as the Attorney General may direct, exclusive of interest, penalties, and administrative costs, the authority to suspend or terminate rests solely with the DOJ. If DOE believes that suspension or termination of any debt in excess of $100,000 may be appropriate, DOE shall refer the debt to the Civil Division or other appropriate litigating division in the DOJ, using the CCLR. The referral should specify the reasons for DOE's recommendation. If, prior to referral to the DOJ, DOE determines that a debt is plainly erroneous or clearly without legal merit, DOE may terminate collection activity regardless of the amount involved without obtaining DOJ concurrence.

§ 1015.402 Suspension of collection activity.

(a) DOE may suspend collection activity on a debt when:

(1) DOE cannot locate the debtor;

(2) The debtor's financial condition is expected to improve; or

(3) The debtor has requested a waiver or review of the debt.

(b) Based on the current financial condition of the debtor, DOE may suspend collection activity on a debt when the debtor's future prospects justify retention of the debt for periodic review and collection activity and:

(1) The applicable statute of limitations has not expired; or

(2) Future collection can be effected by administrative offset, notwithstanding the expiration of the applicable statute of limitations for litigation of claims, with due regard to the 10-year limitation for administrative offset prescribed by 31 U.S.C. 3716(e)(1); or

(3) The debtor agrees to pay interest on the amount of the debt on which collection will be suspended, and such suspension is likely to enhance the debtor's ability to pay the full amount of the principal of the debt with interest at a later date.

(c)(1) DOE shall suspend collection activity during the time required for consideration of the debtor's request for waiver or administrative review of the debt if the statute under which the request is sought prohibits DOE from collecting the debt during that time. As indicated in § 1015.212(h), DOE will continue to accrue interest, penalties, and administrative costs during the period collection activity is suspended.

(2) If the statute under which the request is sought does not prohibit collection activity pending consideration of the request, DOE may use discretion, on a case-by-case basis, to suspend collection. Further, DOE ordinarily will suspend collection action upon a request for waiver or review if DOE is prohibited by statute or regulation from issuing a refund of amounts collected prior to DOE's consideration of the debtor's request. However, DOE will not suspend collection when DOE determines that the request for waiver or review is frivolous or was made primarily to delay collection.

(d) When DOE learns that a bankruptcy petition has been filed with respect to a debtor, in most cases the collection activity on a debt must be suspended, pursuant to the provisions of 11 U.S.C. 362, 1201, and 1301, unless DOE can clearly establish that the automatic stay has been lifted or is no longer in effect. DOE will seek legal advice immediately from counsel and, if legally permitted, take the necessary legal steps to ensure that no funds or money is paid by DOE to the debtor until relief from the automatic stay is obtained.

§ 1015.403 Termination of collection activity.

(a) DOE may terminate collection activity when:

(1) DOE is unable to collect any substantial amount through its own efforts or through the efforts of others;

(2) DOE is unable to locate the debtor;

(3) Costs of collection are anticipated to exceed the amount recoverable;

(4) The debt is legally without merit, or enforcement of the debt is barred by any applicable statute of limitations;

(5) The debt cannot be substantiated; or

(6) The debt against the debtor has been discharged in bankruptcy.

(b) Before terminating collection activity, DOE will have pursued all appropriate means of collection and determined, based upon the results of the collection activity, that the debt is uncollectible. Termination of collection activity ceases active collection of the debt. The termination of collection activity does not preclude DOE from retaining a record of the account for purposes of:

(1) Selling the debt, if Treasury determines that such sale is in the best interests of the United States;

(2) Pursuing collection at a subsequent date in the event there is a change in the debtor's status or a new collection tool becomes available;

(3) Offsetting against future income or assets not available at the time of termination of collection activity; or

(4) Screening future applicants for prior indebtedness.

(c) Generally, DOE shall terminate collection activity on a debt that has been discharged in bankruptcy, regardless of the amount. DOE may continue collection activity, however, subject to the provisions of the Bankruptcy Code, for any payments provided under a plan of reorganization. Offset and recoupment rights may survive the discharge of the debtor in bankruptcy and, under some circumstances, claims also may survive the discharge. For example, if DOE is a known creditor of a debtor, its claims may survive a discharge if DOE did not receive formal notice of the proceedings. DOE will seek legal advice from counsel if it believes it has claims or offsets that may survive the discharge of a debtor.

§ 1015.404 Exception to termination.

When a significant enforcement policy is involved, or recovery of a judgment is a prerequisite to the imposition of administrative sanctions, DOE may refer debts for litigation even though termination of collection activity may otherwise be appropriate.

§ 1015.405 Discharge of indebtedness; reporting requirements.

(a) Before discharging a delinquent debt (also referred to as a close out of the debt), DOE shall take all appropriate steps to collect the debt in accordance with 31 U.S.C. 3711(g), including, as applicable, administrative offset, tax refund offset, Federal salary offset, referral to Treasury, Treasury-designated debt collection centers or private collection contractors, credit bureau reporting, wage garnishment, litigation, and foreclosure. Discharge of indebtedness is distinct from termination or suspension of collection activity under § 1015.400 of this part and is governed by the Internal Revenue Code. When collection action on a debt is suspended or terminated, the debt remains delinquent and further collection action may be pursued at a later date in accordance with the standards set forth in this subpart. When DOE discharges a debt in full or in part, further collection action is prohibited. Therefore, DOE will make the determination that collection action is no longer warranted before discharging a debt. Before discharging a debt, DOE must terminate debt collection action.

(b) 31 U.S.C. 3711(i) requires DOE to sell a delinquent non-tax debt upon termination of collection action if Treasury determines such a sale is in the best interests of the United States. Since the discharge of a debt precludes any further collection action (including the sale of a delinquent debt), DOE may not discharge a debt until the requirements of 31 U.S.C. 3711(i) have been met.

(c) Upon discharge of an indebtedness, DOE must report the discharge to the IRS in accordance with the requirements of 26 U.S.C. 6050P and 26 CFR 1.6050P–1. DOE may request Treasury or Treasury-designated debt collection centers to file such a discharge report to the IRS on DOE's behalf.

(d) When discharging a debt, DOE must request that litigation counsel release any liens of record securing the debt.

Subpart E—Referrals to the Department of Justice

§ 1010.500 Scope.

This subpart sets forth the standards for referrals to the Department of Justice. This subpart corresponds to 31 CFR part 904 of the Treasury Federal Claims Collection Standards.

§ 1015.501 Referrals to the Department of Justice and the Department of the Treasury's Cross-Servicing Program.

(a) DOE may authorize Treasury to refer a delinquent debt to the DOJ for litigation in accordance with 31 U.S.C. 3711(g), the DCIA, the revised Federal Claims Collection Standards (31 CFR parts 900–904), and other applicable authorities. DOE shall ensure that all of the rights and protections afforded to the debtor under 31 U.S.C. 3711(e) have been fulfilled.

(b) As described in § 1015.201(e), under the DCIA (31 U.S.C. 3711(g)), DOE is required to transfer all debts over 180 days delinquent to Treasury for purposes of debt collection (*i.e.*, cross-servicing). As part of its regular debt collection procedures, Treasury will refer debts to the DOJ for litigation on behalf of DOE.

§ 1015.502 Prompt referral.

(a) If a debt is not referred to the DOJ through Treasury's cross-servicing program, DOE shall promptly refer to the DOJ for litigation debts on which aggressive collection activity has been taken in accordance with § 1015.200 of this part and that cannot be compromised, or on which collection activity cannot be suspended or terminated, in accordance with §§ 1015.300 and 1015.400 of this part. DOE may refer those debts arising out of activities of DOE. Debts for which the principal amount is over $1,000,000, or such other amount as the Attorney General may direct, exclusive of interest and penalties, shall be referred to the Civil Division or other division responsible for litigating such debts at the DOJ, Washington, DC. Debts for which the principal amount is $1,000,000, or less, or such other amount as the Attorney General may direct, exclusive of interest or penalties, shall be referred to the DOJ's Nationwide Central Intake Facility as required by the CCLR instructions. Claims will be referred as early as possible, consistent with aggressive agency collection activity and the observance of the standards contained in the Federal Claims Collection Standards (31 CFR parts 900–904), and, in any event, well within the period for initiating timely lawsuits against the debtors. DOE shall make every effort to refer delinquent debts to the DOJ for litigation within one year of the date such debts last became delinquent. In the case of guaranteed or insured loans, DOE will make every effort to refer these delinquent debts to the DOJ for litigation within one year from the date the loan was presented to DOE for payment or re-insurance.

(b) The DOJ has exclusive jurisdiction over the debts referred to it pursuant to this section. DOE shall refrain from having any contact with the debtor and shall direct all debtor inquiries concerning the claim to the DOJ. DOE shall notify the DOJ immediately of any payments credited by DOE to the debtor's account after referral of a debt or claim under this section. The DOJ shall notify DOE, in a timely manner, of any payments it receives from the debtor.

§ 1015.503 Claims Collection Litigation Report.

(a) Unless excepted by the DOJ, DOE shall complete the CCLR (see § 1015.301 of this part), accompanied by a signed Certificate of Indebtedness, to refer all administratively uncollectible claims to the DOJ for litigation. DOE shall complete all of the sections of the CCLR appropriate to each claim as required by the CCLR instructions and furnish such other information as may be required in specific cases.

(b) DOE shall indicate clearly on the CCLR the actions it wishes the DOJ to take with respect to the referred claim. The CCLR permits DOE to indicate specifically any of a number of litigative activities which the DOJ may pursue, including enforced collection, judgment lien only, renew judgment lien only, renew judgment lien and enforce collection, program enforcement, foreclosure only, and foreclosure and deficiency judgment.

(c) DOE also shall use the CCLR to refer claims to the DOJ to obtain the DOJ's approval of any proposals to compromise the claims or to suspend or terminate DOE collection activity.

§ 1015.504 Preservation of evidence.

DOE will take care to preserve all files and records that may be needed by the DOJ to prove its claims in court. DOE ordinarily will include certified copies of the documents that form the basis for the claim in the packages referring its claims to the DOJ for litigation. DOE shall provide originals of such documents immediately upon request by the DOJ.

§ 1015.505 Minimum amount of referrals to the Department of Justice.

(a) DOE shall not refer for litigation claims of less than $2,500, exclusive of interest, penalties, and administrative costs, or such other amount as the Attorney General shall from time to time prescribe. The DOJ promptly shall notify DOE if the Attorney General changes this minimum amount.

(b) DOE shall not refer claims of less than the minimum amount unless:

(1) Litigation to collect such smaller claims is important to ensure compliance with DOE's policies or programs;

(2) The claim is being referred solely for the purpose of securing a judgment against the debtor, which will be filed as a lien against the debtor's property pursuant to 28 U.S.C. 3201 and returned to DOE for enforcement; or

(3) The debtor has the clear ability to pay the claim and the Government effectively can enforce payment, with due regard for the exemptions available to the debtor under state and Federal law and the judicial remedies available to the Government.

(4) DOE will consult with the Financial Litigation Staff of the Executive Office for United States Attorneys in the DOJ prior to referring claims valued at less than the minimum amount.

PART 1018—REFERRAL OF DEBTS TO IRS FOR TAX REFUND OFFSET

■ 2. The authority citation for Part 1018 continues to read as follows:

Authority: 31 U.S.C. 3720A; Pub. L. 98–369; 98 Stat. 1153.

PART 1018—[REMOVED]

■ 3. Part 1018 is removed.

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 15

Administrative Claims Under Federal Tort Claims Act

CFR Correction

In Title 14 of the Code of Federal Regulations, Parts 1 to 59, revised as of January 1, 2003, in § 15.3, on page 78, add paragraph (c) to read as follows:

§ 15.3 Administrative claim, when presented; appropriate office.

* * * * *

(c) Claim forms are available at each location listed in paragraph (b) of this section.

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