

amendment to their Plan of Operation stating that they will comply with the requirements for FTROP and salary offset. (Section D of this preamble explains why State agencies which implement FTROP must also implement salary offset.) Amendments would be due to FCS regional offices twelve months before the beginning of a State agency's first offset year. Amendments for State agencies currently participating would be due 90 days after publication of the final rule on FTROP. (See the last section of this preamble, "Effective Date.")

The August 1991 General Notice required State agencies to attend a training session on FTROP policy and procedures prior to beginning to test the program. The Department expects to continue to require new State agencies to attend such a training session but is not proposing to include the requirement in regulations.

The IRS specifies what information they need for the various tasks required to match FSP recipient claims to Federal income tax return information, to effect offsets, and for reporting and accounting functions. The IRS also sets schedules for submission of data to them and for the various reports which they produce and distribute. These instructions and schedules are contained in the annually revised IRS Revenue Procedure, "Magnetic Media Reporting for Federal Income Tax Refund Offset Program (Debtor Master File)." FCS conducts field edits to assure that data which State agencies submit conform to IRS formats, and FCS works with State agencies to correct problems which would result in data being rejected by the IRS. State agency data and format problems sometimes require that State agencies resubmit data. For example, magnetic tapes must be preceded by a specific Job Control Language (JCL). If the JCL is incorrect, the State agency may have to produce another tape. On the other hand, FCS is able to correct some problems without requiring a second submission. For example, if Social Security Numbers (SSN's) are not correctly justified in the data field, FCS may be able to shift them to their correct position. The problems which FCS can correct are limited, however, and State agencies have the primary responsibility for detecting and correcting data and format errors prior to submitting recipient claim files to FCS. Since data submitted to the IRS must be correctly formatted, FCS will not submit data from a State agency to the IRS until the State agency's data conforms to IRS format requirements. Consequently, this rule proposes at section 273.18(g)(5)(i)(B) that State agencies

must submit data according to the record formats specified by FCS and/or the IRS.

This rule also proposes at section 273.18(g)(5)(i)(B) that State agencies submit data according to schedules provided by FCS. State agencies need to submit files early enough to allow sufficient time for transmittal to FCS, for FCS to conduct field edits and to consolidate State agency submissions, and for FCS to mail files to IRS to meet IRS deadlines. FCS will provide State agencies each year a schedule for State agency data submissions to FCS. This schedule will also include other FTROP due dates so that State agencies have one source as a reference for meeting the various FTROP deadlines.

IRS currently requires that FCS provide data to IRS on magnetic tape. During the early testing of FTROP, State agencies submitted their data to FCS on magnetic tape. Managing tape submissions for the number of State agencies currently participating has proven inefficient. Consequently, during January 1994 FCS began implementing electronic data transmission. To provide for this technology and for future improvements in this area, this rule proposes at section 273.18(g)(5)(i)(B) that State agencies must submit data by means of magnetic tape, electronic data transmission or other method specified by FCS.

*b. Claims Referable for Offset.* The provisions of DEFRA codified at 31 U.S.C. 3720A(b) and IRS regulations at 26 CFR 301.6402-6(c) specify criteria for debts which can be referred for offset from Federal income tax refunds. The August 1991 General Notice included those criteria as well as additional criteria required for the FSP. This rule proposes at section 273.18(g)(5)(ii) to include substantially the same criteria, the most general of which is specified by DEFRA: All claims submitted for tax offset must be past-due and legally enforceable. The rule then proposes a number of specific criteria for determining claims past-due and legally enforceable. Only recipient claims which meet those criteria may be referred for collection under FTROP.

*General Criteria:* For purposes of testing FTROP, the Department chose to limit FTROP to IHE and IPV claims. This rule proposes that same limitation at section 273.18(g)(5)(ii)(A). The August 1991 General Notice further specified in paragraph b(1) that these claims had to be "properly established" as required by FSP regulations. This rule expands the statement of that requirement by referencing at section 273.18(g)(5)(ii)(A)(1) current rules on recipient claims and disqualification

hearings for IPV's. The Department also wants to make clear that State agencies must have documentation that the claims they submit for collection under FTROP are properly established. Consequently, this rule proposes at section 273.18(g)(5)(ii)(A)(2) that State agencies must have such documentation on claims which they refer under FTROP. Specifically such documentation would include such items as electronic records and/or paper copies of claim demand letters, results of fair hearings, advance notices of disqualification hearings, results of such hearings, and records of payments. In this context an electronic record would be such items as dates of demand letters and the formats of such letters.

*The Three-Month Delinquency Period:* Temporary IRS regulations at 26 CFR 301.6402-6T(b)(2) provided that referable debts must be delinquent at least three months at the time the offset is made. The August 1991 General Notice in paragraph b(3) provided that for purposes of FTROP recipient claims must be delinquent at least three months as of the date the State agency certified its final files to FCS. That date is usually in early December. Further in this regard, the August 1991 General Notice specified in paragraphs b(3)(i) and (ii) that a claim could not be considered delinquent for purposes of FTROP if either: (1) the State agency was responding to a request for a fair hearing which was made within the 90 days following the initial demand letter; or (2) the time allowed for responding to the initial demand letter had not elapsed. Final IRS regulations at 26 CFR 301.6402-6 do not include an explicit three-month minimum delinquency nor do those regulations use the term "delinquency." The preamble to the final IRS rule states that a three month minimum delinquency is ensured because of the various notices and actions that must occur prior to referring debts under FTROP.

During the test of FTROP, State agencies raised questions about the criteria for "delinquency" of claims for FTROP purposes. These questions were answered with specific discussion of such considerations as whether payments were being regularly made. This rule incorporates policy developed in response to those questions and does not use the terms "delinquent" or "delinquency" with respect to determining whether a recipient claim may be referred for collection under FTROP. If a claim meets the criteria for being past due and legally enforceable as proposed in this rule, the claim would be subject to FTROP.