

individual at least 30 days prior to the deadline for the State agency to certify its final file of claims for offset to FCS. The deadline for this final file is in early December. During the test State agencies indicated that they did not understand that if, for example, a review request was received in mid-November, even if the State agency review determined that the claim was past due and legally enforceable, it could not be referred. These claims are not referable because there is not a 30-day opportunity for the individual to appeal to FCS before the deadline for the State agency to refer its final files to FCS. As explained above, IRS regulations at 26 CFR 301.6402-6(d)(2) state that if the review is conducted by an agent of the Federal agency (in this case, the State agency), the individual must be accorded at least 30 days from the agent's determination to request a review by the Federal agency.

To accommodate the schedule for State agency final files and the 30-day opportunity which must be provided individuals to request a Federal-level review, this rule proposes at § 273.18(g)(5)(v)(E) that State agencies cannot refer for offset any claim for which a review request is received unless, by October 31 preceding the offset year, the State agency has completed its review of the claim, determined that the claim is past due and legally enforceable, and provided the individual with its decision. The Department believes that this proposal will not have a major impact on the number of claims referred for FTROP. During the test of FTROP most review requests were received relatively early in the 60-day period provided for those requests.

Some review requests will be received too late for the October 31 deadline but within the 60 days provided for timely review requests. As during the test, such claims are not referable for offset in the immediately upcoming offset year. In such situations State agencies should review the request and provide individuals their decisions on whether the claim is past due and legally enforceable and subject to collection by tax refund offset. Such claims could then be included in the processing cycles for the succeeding offset year.

*f. FCS action on Appeals of State Agency Reviews.* The August 1991 General Notice provided in paragraph f(1) that FCS would not review State agency decisions on review requests when it received such requests later than 30 days after the date of the State agency decision on the original review. This rule proposes at § 273.18(g)(5)(vi)(A) that FCS act on all

timely requests for FCS review of State agency review decisions, and that such a request is timely if it is received by FCS within 30 days of the date of the State agency review decision.

The August 1991 General Notice stated in paragraph f(2) that when FCS received timely requests for reviews of State agency decisions, FCS would either: (1) Complete the requested review and notify the State agency and individual of its determination; or (2) notify the State agency that FCS had not completed its review and that the State agency must delete the claim from its final files certified to FCS for referral for offset. This rule proposes the same actions at § 273.18(g)(5)(vi)(B). In addition, this rule proposes at § 273.18(g)(5)(vi)(B) that FCS provide funds to refund the charge for the offset fee if FCS is late in notifying the State agency to delete a claim, where FCS finds that the claim is not referable and the claim is offset because of the late notification. For timely requests for review received by FCS, where the State agency's decision is dated after October 31 prior to the offset year, FCS will complete its review and notification of the results of its review, but the claim shall not be referred for offset in the immediately upcoming offset year, as specified above. This proposal is found at § 273.18(g)(5)(v)(E) and § 273.18(g)(5)(vi)(C).

The August 1991 General Notice stated in paragraph f(3) the components of FCS reviews of State agency decisions on review requests. Those components were: (1) Requesting documentation from the State agency about the appeal; (2) determining the correctness of the State agency decision; and (3) notifying the individual and State agency of this determination. The August 1991 General Notice stated in paragraph f(3)(iii)(A) that if FCS determined that the State agency was correct (the claim was past due and legally enforceable), FCS would also notify the individual that any further appeals must be made through the courts. The August 1991 General Notice stated in paragraph f(3)(iii)(B) that if FCS determined that the State agency determination that the claim was past due and legally enforceable was incorrect, FCS would request that the State agency take appropriate corrective action. This rule would include these provisions, slightly modified, at § 273.18(g)(5)(vi)(D), (E) and (F). The rule proposes to specify the types of documentation FCS would request from State agencies. These items are consistent with the documentation State agencies would be required to have in order for a claim to be considered referable for collection

through FTROP. The types of documentation are: printouts of electronic records and/or copies of claim demand letters, results of fair hearings, advance notices of disqualification hearings, results of such hearings, records of payments, 60-day notices, the review requests and documentation, decision letters, and pertinent records of such things as telephone conversations.

*g. Referral of Claims for Offset.* The August 1991 General Notice required in paragraph g(1) that State agencies comply with FCS operating guidelines when submitting certified files of claims for tax offset. As discussed earlier in this preamble, this rule proposes replacing the requirement for compliance with operating guidelines with the requirement that State agencies submit data in the format and schedules provided by FCS. Accordingly, this rule at § 273.18(g)(5)(vii)(A) would require that State agencies submit certified files by the date specified by FCS. The August 1991 General Notice required in paragraph g(2) that, by the date specified in the FCS guidelines, State agencies certify in writing to FCS that all claims in the final files of claims meet the requirements for referral under FTROP, including the issuance of all due-process notifications to individuals. This rule proposes at § 273.18(g)(5)(vii)(A) to require this certification letter and statement. The letter and statement are necessary because the IRS requires that Federal agencies provide the IRS such letters and statements with their certified files. In addition, this rule proposes at § 273.18(g)(5)(vii)(A) to require that the certification letter also state that the State agency has not included in the certified file of claims any claim which, as provided in paragraph (g)(5)(vi) of this section, FCS notified the State agency is not past due or is not legally enforceable, or any claim for which FCS notified the State agency that it has not completed its review.

As discussed earlier, the rule proposes to require that State agencies state in the certification letter that their 60-day notice complies with IRS and FCS requirements. State agencies must provide FCS copies of the formats for these letters as required by current food stamp regulations requiring submittal to FCS of State agency operating guidelines and forms. (See 7 CFR 272.3(b)(2).)

The August 1991 General Notice required in paragraph g(3) that State agencies provide the name, address and telephone number of State agency contacts to be included in the notices of offset which IRS sends taxpayers whose